

ORIGINAL

VOLUME II OF II

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Jasper County
Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BILLY PHILLIPS,

APPELLANT

APPELLATE CASE NO 2016-000108

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATES EX. 1 (CD OF 911 CALL)

STATES EX. 54 (DVD OF BP SURVEILLANCE)

STATES EX. 58 (DVD OF PHILLIP'S 5/19/13 INTERROGATION)

COURT'S EX. 2 (UNREDACTED PHILLIP'S 5/19/13 INTERROGATION)

DIRECT EXAMINATION OF ILA SIMMONS BY MS. JONES

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- 1 palms of somebody's hands, what is that consistent with?
- 2 A That is most consistent with someone having touched
- 3 something with gunshot residue on it. If I were to shoot
- 4 a gun and lay it here on the counter and someone was to
- 5 come behind me and touch the gun, they would get it on
- 6 the palms of their hands, but not necessarily the backs
- 7 of the hands.
- 8 Q Okay. And you mentioned somebody just touching a gun
- 9 that had recently been fired. Is it that easy to
- 10 transfer gunshot residue?
- 11 A Yes, ma'am. Gunshot residue has the consistency of
- 12 flour. So, if you were to discharge a gun and touch the
- 13 gun -- if someone was to come behind me and touch the
- 14 gun, they can transfer it right onto their hands.
- 15 Q Were you asked to examine some gunshot residue kits in
- 16 this case?
- 17 A Yes, ma'am.
- 18 Q How many kits were you asked to examine?
- 19 A Four.
- 20 MS. JONES: Permission to approach, Your Honor.
- 21 Q Ms. Simmons, I am showing you what has previously been
- 22 marked as State's #41A, State's #41B, State's #41C, and
- 23 State's #41D. Can you please identify these for the
- 24 Court?
- 25 A Yes, ma'am. State's Exhibit #41A is a gunshot residue

1 kit collected from Darius Woods. State's #41B is a
2 gunshot residue kit collected from Davonte Freeman.
3 State's #41C is a gunshot residue kit collected from
4 Shontay McKeithan and State's #41D is a gunshot residue
5 kit collected from Billy Phillips.

6 Q Who did you receive these items from?

7 A I would have received them from the investigator from
8 SLED, from either the crime scene investigator that
9 collected the samples or from the investigator,
10 Investigator Williams, Special Agent Williams.

11 Q Okay. And this would have happened at SLED?

12 A It would have been on site.

13 Q Within the closed compounds of the SLED Department?

14 A That's correct.

15 Q Okay. Do you remember when you received these items?

16 A May I consult my notes?

17 Q Uh-huh.

18 A I received them into my custody on July 11th of 2013 to
19 do an analysis.

20 Q Okay. When you received these items, did they appear to
21 have been tampered with or altered with or changed in
22 any way?

23 A No, ma'am. They were not. Each gunshot residue kit is
24 sealed by the person who collects it and it comes with a
25 piece of tape on the back and this isn't just like

DIRECT EXAMINATION OF ILA SIMMONS BY MS. JONES

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1 scotch tape where you can remove it and put it back
2 down. This is evidence tape that is tamper resistant. If
3 someone were to go and alter this in any way, you can
4 tell. So, none of them had been tampered or opened in
5 any way since the investigator that collected the kit
6 had sealed them.

7 Q Had they been opened, what would you have done?

8 A I would have made a note of that and I would have also
9 contacted the agency that submitted them.

10 Q But in this case, they all appeared to be sealed. All
11 four kits appeared to be sealed?

12 A Yes, ma'am. They were.

13 MS. JONES: Your Honor, at this time State moves State's
14 #41, State's #41A, B, C, and D into evidence.

15 THE COURT: Any objection from the Defense?

16 MR. PLEXICO: Yes, on relevancy at this point, Your
17 Honor. Nothing's been testified to about them. They're not
18 relevant at this point. We don't have any evidentiary value
19 as she has not explained the results.

20 THE COURT: I overrule your objection.

21 MS. JONES: Thank you, Your Honor.

22 (Whereupon, gunshot residue kits were admitted into
23 evidence as State's Exhibits #41A, #41B, #41C, and #41D, over
24 objection.)

25 Q Ms. Simmons, can you please explain your findings in

DIRECT EXAMINATION OF ILA SIMMONS BY MS. JONES

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1 regards to the GSR kit done on Davonte Freeman? I
2 believe that was State's #41B.

3 THE COURT: I didn't specifically say, but these items
4 are, indeed, in evidence.

5 A On the gunshot residue kit collected from Davonte
6 Freeman, round particles containing antimony were found
7 on the palm of the right hand. One particle containing
8 barium and aluminum was found on the back of the right
9 hand. Round lead particles were found on the left palm
10 and no particles of gunshot residue were found on the
11 back of the left hand.

12 Q You said there was one particle found on the back of his
13 right hand?

14 A Yes, ma'am.

15 Q But the majority of the particles are found on his
16 palms?

17 A Yes, ma'am.

18 Q So, in your opinion, what is that consistent with?

19 A That is most consistent with someone having touched
20 something that had gunshot residue on it.

21 Q In your training, somebody that has fired a gun, do they
22 typically have more than particles on the backs of their
23 hands?

24 A Yes, ma'am. In fact, when we only find one particle, we
25 have to stipulate in our reports that we say no

DIRECT EXAMINATION OF ILA SIMMONS BY MS. JONES

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1 information can be provided as to where this particle
2 was deposited.

3 Q Okay. Thank you. With regards to State's #41C, the GSR
4 kit done on Shontay McKeithan, what were your findings?

5 A I found one particle of antimony on the right palm. No
6 particles of gunshot residue on the back of the right
7 hand and one particle of antimony on the left palm and
8 no gunshot residue particles on the back of the left
9 hand.

10 Q And, again, what is the findings regarding her GSR kit,
11 what is that consistent with?

12 A It's a possibility that this person may have touched
13 something with gunshot residue on it. There were so few
14 particles that were found, I cannot say for certain.

15 Q Okay.

16 A Because antimony can be found in places other than
17 gunshot residue. Gunshot residue is made up of lead,
18 barium, and antimony. When you find those three
19 chemicals together in a round form, it comes only from
20 the discharge of a firearm. There is no place else in
21 nature or manmade that makes a gunshot residue particle
22 like that. So, if you just find an antimony particle it
23 could be from something other than a gun discharge or
24 gunshot residue.

25 Q Okay. And that's what you found on Ms. McKeithan?

- 1 A Yes, ma'am.
- 2 Q Okay. State's Exhibit #41A, the GSR kit on Darius Woods?
- 3 A Yes, ma'am. No gunshot residue analysis was performed on
- 4 this kit because this person had sustained several
- 5 gunshot wounds and if someone is fired at, they can have
- 6 gunshot residue on their hands simply from being the
- 7 target of a gunshot and we don't analyze for victims
- 8 because they could have gunshot residue on them. If I
- 9 have a water pistol fight, if I shoot somebody with
- 10 water or if they get water on theirs in shooting their
- 11 own pistol, you can't tell. The water is going to be the
- 12 same. It's the same with gunshot residue. If I'm
- 13 shooting at someone and they get gunshot residue on
- 14 their hands and they're shooting back at me, you're not
- 15 going to be able to differentiate the gunshot residue.
- 16 So, that's why we don't analyze victims.
- 17 Q So, all gunshot residue is the same regardless if it's
- 18 fired from a revolver, automatic, or from any sort of
- 19 firearm?
- 20 A Yes, ma'am. Because the ammunition that's used, the
- 21 primer that's placed into the ammunition is all the
- 22 same.
- 23 Q And with regards to State's #41D, the gunshot residue
- 24 kit of Billy Phillips?
- 25 A Yes, ma'am.

DIRECT EXAMINATION OF ILA SIMMONS BY MS. JONES

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1 Q What were your findings there?

2 A Also, no gunshot residue analysis was performed because
3 the kit was taken beyond the four to six hour time frame
4 in which we analyze a kit.

5 Q Okay. Can you explain that four to six hour time frame?

6 A Yes, ma'am. We have conducted laboratory testing within
7 our laboratory and we have found -- we've shot hundreds
8 of firearms, thousands of different types of ammunition.
9 We will shoot the gun and then take a gunshot residue
10 kit form the analyst in the laboratory. And we've found
11 after six hours, no gunshot residue exists on the hands
12 anymore. So, if a gunshot residue kit is collected
13 beyond six hours from the time of the shooting, we don't
14 analyze that.

15 Q Okay. And how were you made aware that this kit was
16 collected beyond the six hours?

17 A In each gunshot residue kit there is a form that the
18 collecting officer fills out. It contains the name of
19 the person for whom the kit's been collected, the time
20 of shooting, and the time that the GSR kit was collected
21 and I can extrapolate from that that there was about
22 seven hours and ten minutes.

23 Q So, in this case, seven hours and ten minutes had
24 passed ---

25 A Yes.

- 1 Q --- from the shooting to the collecting of the GSR kit?
- 2 A Yes.
- 3 Q Okay. Had it been within that six hours though, you
- 4 would have tested this kit?
- 5 A Yes, ma'am.
- 6 Q But since it was outside of seven hours, in your
- 7 opinion, the likelihood of even finding any GSR was
- 8 pretty slim?
- 9 A It would have been zero, according to our laboratory
- 10 testing.
- 11 Q Okay. So, even if he had fired a gun, he would not have
- 12 had GSR ---
- 13 A Not seven hours and ten minutes after.
- 14 Q Okay. Thank you. I have no further questions for you.
- 15 Thank you.
- 16 THE COURT: Cross-examination, Mr. Plexico.

17 CROSS-EXAMINATION

18 BY MR. PLEXICO:

- 19 Q Okay. Do you have the form you're referring to with you,
- 20 ma'am?
- 21 A Yes, sir.
- 22 Q That you relied upon? May I see that?
- 23 MR. PLEXICO: May I approach and get the form?
- 24 A Which form would you like, from which GSR?
- 25 Q That would be on Mr. Phillips.

CROSS EXAMINATION OF ILA SIMMONS BY MR. PLEXICO

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- 1 A Yes, sir.
- 2 Q Thank you. (Looks at document). Okay. Did you get a GSR
- 3 kit that was taken at two-thirty from Billy Phillips?
- 4 A Oh, from Billy Phillips?
- 5 Q Yes.
- 6 A Yes, sir. This kit was listed as having been taken at
- 7 5:40 AM.
- 8 Q Okay. Now, were you given two GSR kits?
- 9 A From my notes, I received four.
- 10 Q You received four. Did you get one or two concerning
- 11 Billy Phillips?
- 12 A Just one.
- 13 Q Okay. Sergeant McIntosh never gave you a GSR kit that
- 14 was taken at two-thirty?
- 15 A No, sir. I did not see a GSR kit that was given at two-
- 16 thirty.
- 17 Q If a test had been taken at two-thirty, that would have
- 18 been within the acceptable window for you to have tested
- 19 it?
- 20 A Yes.
- 21 Q That would have strong evidentiary value if it had been
- 22 turned into you, would it have not?
- 23 A Yes, sir. If it had been collected at that time, we
- 24 would have been able to analyze it.
- 25 Q Okay. If it existed, you're saying that you don't have

- 1 it?
- 2 A Yes, sir. That's correct.
- 3 Q What would be the normal procedure, say, for one that
- 4 was taken at two-thirty?
- 5 A It would have been analyzed just as the other two GSR
- 6 kits were analyzed.
- 7 Q Are you the only state laboratory that analyzes GSR
- 8 kits?
- 9 A Yes, sir. At this time we are.
- 10 Q So, if you don't have it, it wasn't turned in. Is that
- 11 correct?
- 12 A That's correct.
- 13 Q It would have been lost or some unknown explanation for
- 14 a two-thirty test that was taken, a GSR test?
- 15 A Yes, sir. We did not receive a two-thirty GSR test.
- 16 Q You're saying that you have never done a GSR test and
- 17 found anything after six hours?
- 18 A That's correct. From our laboratory testing, yes, sir.
- 19 Q Okay. All right. Did you do a gunshot residue test on
- 20 Wrenshad Anderson in regards to this matter?
- 21 A No, sir.
- 22 Q Okay.
- 23 MR. PLEXICO: I don't have anything further.
- 24 THE COURT: Any redirect?
- 25 MS. JONES: No, Your Honor.

DIRECT EXAMINATION OF MICHELLE EICHENMILLER BY MS. JONES 567

1 THE COURT: Very good. You may step down and you're free
2 to leave. Thank you. You may call your next witness.

3 MS. JONES: The State calls Michelle Eichenmiller.

4 THE COURT: Ms. Eichenmiller, please come forward.

5 Approach the clerk, place your left hand on the Bible and
6 raise your right hand as the clerk administers the oath.

7 (After being duly sworn by the Clerk of Court, MICHELLE
8 EICHENMILLER testified as follows:)

9 THE COURT: Have a seat in the witness chair and I'm
10 going to ask you to speak loudly, clearly, and slowly, in
11 order that we can hear everything that you have to say and
12 let's start with your full name and let's spell that last
13 one.

14 THE WITNESS: My name is Michelle Eichenmiller, E-I-C-H-
15 E-N-M-I-L-L-E-R.

16 THE COURT: Very Good. Ms. Jones.

17 MS. JONES: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. JONES:

20 Q Agent Eichenmiller, where are you employed?

21 A I work for the South Carolina Law Enforcement Division.

22 I work in the forensic laboratory in the firearms
23 department.

24 Q How long have you been at SLED?

25 A It'll be ten years in April.

1 Q Okay You said you worked in the firearms department?

2 A Yes, ma'am.

3 Q In what capacity do you work in firearms?

4 A I'm a forensic firearms examiner.

5 Q Did you -- do you receive some sort of specialized
6 training or education to achieve this?

7 A I did. I have a bachelor's degree in biology. I also
8 have a Masters in Forensic Science. In order to earn
9 firearms identification, though, we need to go through a
10 training program that's in-house. So, I completed a SLED
11 in-house training program, which means I've read a lot
12 on my own. I did microscopic comparison's. I also sat in
13 the offices of trained examiners to learn how they do
14 the job. After four years I finish up and I take a
15 comprehensive exam and then I did a mock court and they
16 decided I was good enough to go on my own.

17 Q So, you did become ---

18 A Yes. I'm a qualified examiner.

19 Q Have you ever testified in court, in general sessions
20 Court?

21 A Yes.

22 Q How many times?

23 A About thirty-five.

24 Q Okay.

25 MS. JONES: Your Honor, at this time, the State moves

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1 Agent Eichenmiller in as an expert in firearms.

2 THE COURT: Any query with regard to her qualifications?

3 MR. PLEXICO: No, Your Honor.

4 THE COURT: She is indeed qualified as an expert and
5 allowed to render her opinions in this field of study.

6 MS. JONES: Thank you, Your Honor.

7 Q Agent Eichenmiller, did you received any evidence in
8 this case to analyze?

9 A I did.

10 Q And what did you receive?

11 A Can I refer to my notes? I received one revolver. I
12 also received a bullet core. Another item was a bullet
13 jacket and a small lead fragment and then the last item
14 was a bullet jacket, a bullet core, and two small lead
15 fragments.

16 Q Okay. When you say bullet core and jacket fragment, can
17 you describe what you mean by those words?

18 A Sure. The jacket is -- if you think of an M&M, it's the
19 hard shell and the inside is the lead core or the
20 chocolate filling of an M&M. So, in this case, the two
21 became separated and so I had two different items to
22 look at.

23 Q Okay.

24 MS. JONES: Permission to approach, Your Honor?

25 THE COURT: Yes.

DIRECT EXAMINATION OF MICHELLE EICHENMILLER BY MS. JONES 570

1 Q Agent Eichenmiller, I'm going to show you what has been
2 previously marked as State's #3. Can you please identify
3 that for the Court?

4 A Whenever I receive evidence in a case, I'll write on it
5 my initials, the case number and the item number. This
6 is the firearm I received in this case.

7 Q And what kind of firearm is that?

8 A It's a Ruger model LCR revolver.

9 Q What caliber?

10 A This one is .38 special.

11 Q Okay. And this is, in fact, the actual firearm you
12 received to analyze in this case?

13 A Yes, it is.

14 Q And you say that your initials indicated that?

15 A Yes.

16 Q Okay. Who did you receive this from?

17 A I'm not sure. I received it from Agent Dawn Claycomb.

18 Q And when was that?

19 A May 21st, 2013.

20 Q Okay. Prior to your receiving it, did it appear to be
21 tampered with in any way?

22 A No.

23 Q Had it been would you have noted so?

24 A Yes. I would have noted it in my notes.

25 MS. JONES: Your Honor, at this time, State moves State's

DIRECT EXAMINATION OF MICHELLE EICHENMILLER BY MS. JONES

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1 #3 into evidence.

2 THE COURT: Any objection from the Defense?

3 MR. PLEXICO: No, Your Honor.

4 THE COURT: Three is into evidence.

5 (Whereupon, a revolver is admitted into evidence as
6 State's Exhibit #3, without objection.)

7 MS. JONES: And permission to publish to the jury, Your
8 Honor?

9 THE COURT: You may.

10 Q Now, Agent Eichenmiller, I'm going to ask you, what is
11 this right here?

12 A It's a lock, a gun lock to make it safe.

13 Q Okay. That wasn't on the gun when you received it?

14 A I don't think so.

15 Q And this is a .38 revolver?

16 A Yes, ma'am.

17 Q Agent Eichenmiller, I'm also going to show you what has
18 been previously marked as State's #40. And within
19 State's #40, State's #40A, State's #40B, and State's
20 #40C. Can you please indicate to the Court what those
21 are?

22 A The same thing. Whenever I receive any evidence, I'll
23 write on it with the lab number, the item number and my
24 initials. These are the items I examined in this case.
25 They're my items #2, #36 and #37.

1 Q And you did indicate your initials on those items?

2 A Yes.

3 Q And your initials indicate that they hadn't been
4 tampered with?

5 A Right. They're still sealed with my initials on the
6 seal, as well.

7 Q Okay. And what date did you receive those items?

8 A I received item #2 on May 21st, 2013.

9 Q And what is item -- there's lots of numbers here.

10 A Sorry.

11 Q Your item #2 is State's what?

12 A Is State's #40-C.

13 Q Okay.

14 A And then State's #40A and B, I received on May 23rd of
15 2013.

16 Q And who did you receive those items from?

17 A From Agent Claycomb.

18 Q Okay. And did any of these items, Items #40A, B, or C
19 appear to be tampered with in any way?

20 A No.

21 Q No. The seals were intact?

22 A Yes.

23 MS. JONES: Your Honor, at this time the State moves
24 State's #40, State's #40A, B, and C into evidence.

25 THE COURT: Any objection from Defense?

DIRECT EXAMINATION OF MICHELLE EICHENMILLER BY MS. JONES 573

1 MR. PLEXICO: No, Your Honor.

2 THE COURT: They're each in evidence.

3 (Whereupon, bullet fragments are entered into evidence
4 as State's Exhibit #40, #40A, #40B, and #40C, without
5 objection.)

6 Q When you received all four of these items, the gun
7 including the bullet and the bullet fragments and what
8 not, what do you do with them?

9 A Whenever I receive evidence in a case, I do
10 documentation. I'll take pictures of the overall
11 containers, how I received it, what they looked like.
12 I'll also do worksheets to document for -- in the case
13 of the firearm, the make, model, serial number, if the
14 safety works. For bullets, what we do is just write up a
15 worksheet and measure them, we weigh them, we write down
16 if we saw any trace evidence, what we did with the trace
17 evidence and then I will test fire the firearm. We have
18 a water tank in our department where I proceed -- I
19 shoot the firearm and then I'll get perfect test
20 specimens and I know they came from the firearm, I'll
21 use those to compare to evidence that was received, to
22 see if I see enough characteristics, in my opinion, that
23 these items were fired by the firearm.

24 Q And did you, in fact, do that in this case?

25 A I did.

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1 Q With regards to the revolver you received, was it in
2 working order?

3 A It was.

4 Q It was. And you were able to go forward with these tests
5 with that gun?

6 A Yes.

7 Q And what were your conclusions?

8 A My conclusion for State's #40-C was it's just the bullet
9 core. It's just the inside. It never actually contacts
10 the firearm, so there were no marks on it that I could
11 use to identify to the firearm. State's #40-B was a
12 bullet jacket and a small lead fragment. The jacket made
13 contact with the barrel of the firearm, so there were
14 marks on it that I could use to identify it and, in my
15 opinion, item #40-B was fired by the revolver. State's
16 #40-A is a bullet jacket, a fired bullet core and then
17 two small fragments. The jacket was the only thing that
18 had marks on it that I could use and, in my opinion,
19 they were also fired by the firearm.

20 Q From this same .38 caliber revolver?

21 A Yes.

22 Q So, this gun is the gun that fired those bullets, the
23 fragments?

24 A Correct.

25 Q And those are fragments -- the fragments were recovered

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1 from autopsy?

2 A Yes.

3 Q The autopsy of Darius Woods?

4 A Yes.

5 Q Thank you. Agent Eichenmiller, I have no further
6 questions for you. Thank you.

7 THE COURT: Cross-examination, Mr. Plexico.

8 MR. PLEXICO: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. PLEXICO:

11 Q The second page of your report, you note that the test
12 specimens could not be entered into the integrated
13 ballistics identification system because they didn't
14 meet the current SLED criteria for entry. What does that
15 mean?

16 A The integrated ballistics identification system is sort
17 of like a database for firearms. It's like a fingerprint
18 database for firearms. SLED only enters cartridge cases.
19 So, in this case, the revolver -- we don't enter
20 cartridge cases from the revolver and we no longer do
21 bullets. So, we couldn't enter any test specimens from
22 this revolver.

23 Q Okay. So, you don't enter cartridges?

24 A Cartridge cases from revolvers, no, we don't.

25 Q Okay. All right. How many points of reference do you

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1 need to make an identification on a particular bullet to
2 a gun?

3 A We use sufficient agreement. This isn't a mathematical
4 term that we can come across. It's based on my training
5 and experience that the match -- the individual
6 characteristics that I see, exceed the best non-match,
7 which means they're better than ones I know weren't
8 fired by the same firearm and they're consistent in
9 appearance with what I know is fired by the same firearm
10 based on my training and what I've seen in the past. So,
11 I keep that in mind when I'm looking at new evidence
12 versus new test fires.

13 Q So, it's in the eye of the beholder?

14 A Correct.

15 Q So, you could be wrong?

16 A In order for me to have one hundred percent
17 verification, someone else came after me and looked at
18 it, as well, and then they also signed their initials to
19 an identification.

20 Q So, if you had it wrong and they got it wrong, you just
21 simply have two wrong opinions, because it's subjective.

22 A I could be.

23 MR. PLEXICO: I don't have anything further.

24 THE COURT: Any redirect?

25 MS. JONES: Briefly, Your Honor.

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1 REDIRECT EXAMINATION

2 BY MS. JONES:

3 Q But everybody in that department, the person that would
4 come in with the second opinion, has had extensive
5 training and experience in firearms, as well?

6 A In this case, he's had more than forty years of
7 experience.

8 Q Okay. Thank you.

9 THE COURT: All right. You may step down. Thank you. Ms.
10 Jones call your next witness.

11 MS. JONES: The State calls Dr. Batalis.

12 THE COURT: Dr. Batalis, please come forward. Approach
13 the clerk. You can put your papers down, place your left hand
14 on the Bible and raise your right hand as the clerk
15 administers the oath.

16 (After being duly sworn by the Clerk of Court, DR.

17 NICHOLAS BATALIS testified as follows:)

18 THE COURT: I'd ask you to come forward and have a seat
19 in the witness chair. Pull up real close to that microphone
20 and speak loudly and clearly and slowly in order that we can
21 hear everything that you have to say and let's start with
22 your full name. And let's spell that last one.

23 THE WITNESS: My name is Nicholas Ike Batalis,
24 B-A-T-A-L-I-S.

25 THE COURT: Very good. Ms. Jones, you're recognized.

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1 MS. JONES: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. JONES:

4 Q Dr. Batalis, where do you work?

5 A I work at the Medical University of South Carolina in
6 Charleston.

7 Q And in what capacity do you work at the Medical
8 University?

9 A I'm employed there as a forensic pathologist.

10 Q Okay. And what is a forensic pathologist?

11 A So, stepping back a little back a little bit, a
12 pathologist is a medical doctor and the specialty of
13 general pathology is the study of disease. So, a typical
14 pathologist would take specimens from a surgeon, would
15 examine those and determine whether it's cancer or not
16 cancer. We're also generally the doctors that oversee
17 the laboratories. So, if you get a laboratory test done,
18 we're the ones that would help your family doctor
19 interpret those. Forensic pathology is in a sub-section,
20 a specialty within pathology that specializes in the
21 legal aspects of medicine. For the most part, we perform
22 autopsies to determine the cause and manner of death.

23 Q How long have you been employed at MUSC?

24 A I've been employed there for about seven-and-a-half
25 years.

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1 Q And did you have to receive some specialized education
2 and training to become a forensic pathologist?

3 A Certainly. So, after completing medical school at
4 Indiana University, I then came to MUSC in Charleston
5 for a four-year residency and general training, so
6 general pathology. After completing that, I passed a
7 national certifying examination to become board
8 certified, then went on to perform a one-year specialty
9 fellowship in forensic pathology at the Dallas County
10 Medical Examiner's Office in Dallas, Texas. Again, after
11 that, I took another examination to become board
12 certified. At that time, I entered my current job.

13 Q Okay. Have you ever testified in general sessions Court
14 before?

15 A Yes, probably I would say forty to fifty times in South
16 Carolina, once in Texas, and a couple times in North
17 Carolina.

18 Q Okay. Thank you.

19 MS. JONES: Your Honor, at this time, the State would
20 offer Dr. Batalis in as an expert in forensic pathology.

21 THE COURT: Any inquiry with regard to his
22 qualifications?

23 MR. PLEXICO: No, Your Honor.

24 THE COURT: He is so qualified and allowed to render his
25 opinions in the field of study of forensic pathology. Once

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1 again, we'll charge you the law with regard to expert

2 testimony at the conclusion of the case. Ms. Jones.

3 MS. JONES: Thank you, Your Honor.

4 Q Dr. Batalis, did you have an opportunity to perform an
5 autopsy on Darius Woods?

6 A Yes, I did on May 21st, 2013.

7 Q What time was this autopsy?

8 A We did this at 9:00 in the morning.

9 Q Okay. When you begin to perform an autopsy, what are
10 some of the first things that happen?

11 A So, when we perform an autopsy, the first thing we do is
12 bring the body into our autopsy suite, place it on the
13 table, and before we've done any manipulation of the
14 body, cleaned the body, taken anything off, we take an
15 overall set of photographs that we call our as-is
16 photographs. At that point, we will then collect any
17 evidence; remove the clothing and document all of that
18 stuff. We clean the body and then take another set of
19 photographs to document the body after it's been
20 cleaned. At that point, we then conduct an external
21 examination. We're examining the body from head to toe
22 for stuff as basic as skin color, hair color, eye color,
23 but then also tattoos, scars, and any evidence of
24 injury.

25 Q And did you, in fact, do that in the autopsy of Mr.

DIRECT EXAMINATION OF DR. NICHOLAS BATALIS BY MS. JONES

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- 1 Woods?
- 2 A We did.
- 3 Q And as part of these preliminary, do you determine a
- 4 height and weight for an individual?
- 5 A Yes, we do. We measure the length of the body and we get
- 6 a weight.
- 7 Q How tall was Mr. Woods?
- 8 A He was approximately seventy inches in length, which
- 9 would be five foot, ten inches.
- 10 Q Okay. During this autopsy, did you discover any
- 11 abnormalities with Mr. Woods?
- 12 A Yes. The major abnormalities in this case were two
- 13 gunshot wounds; one on the right side of the neck and
- 14 one in the back of the head.
- 15 Q Okay. Aside from the gunshot wounds, did you discover
- 16 any other abnormalities?
- 17 A In addition to the two gunshot wounds, he just had one
- 18 abrasion or scrape just above his left knee.
- 19 Q Were there any certain characteristics about this
- 20 abrasion that stood out? Were you able to determine if
- 21 he received it postmortem or pre-mortem?
- 22 A The abrasion did not seem to have a lot of bleeding to
- 23 it, which would tell us it probably happened either kind
- 24 of right at the time of death or even shortly afterward.
- 25 We can tell that because if you fall down and scrape

1 your hand walking out of the courthouse, you'd expect
2 there to be bleeding because your heart's pumping blood
3 to that area to try and heal. In this case, the abrasion
4 had more of a dried appearance. It didn't seem like
5 there really had been much blood that had been to that
6 area. So, that would tell us it happened around the time
7 of death.

8 Q And when you say abrasion, is that commonly referred to
9 as a scrape or a scratch?

10 A Exactly.

11 Q Okay. Was a toxicology report performed or a toxicology
12 test done on Mr. Woods?

13 A Yes. So, in the course of the autopsy we collect various
14 fluids from the body and submit them to a national
15 laboratory for toxicology testing and for this decedent
16 we submitted samples of blood and urine to the
17 laboratory.

18 Q Okay. Did anything come back in those samples?

19 A Yes, the blood results, which are most important because
20 that would tell you what he was actually being effected
21 by at the time of death, they were positive for THC,
22 which is the active ingredient in marijuana and then
23 also a breakdown product or metabolite of THC, which is
24 not active.

25 Q So, just marijuana. That's it?

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1 A Correct.

2 Q Okay. I want to go back to those two gunshot wounds. If
3 you could, wound by wound, explain to the Court what
4 your findings were.

5 A Sure. There were two gunshot wounds. We basically
6 ordered them in just kind of, in the way that we
7 approach them on the body and identify them. We can't
8 really say which one definitely came first or last. So,
9 the first one I would describe was one on the right side
10 of the neck. So, this one was almost at the corner of
11 the jaw, the right side of the jaw, kind of high up on
12 the neck. So, it was a circular wound, very
13 characteristic of an entrance wound. The bullet then
14 passed through the skin of the neck, went through the
15 mandible. So, that's the lower part of your jaw. Went
16 into the oral cavity and so into the mouth and then
17 worked it's way actually into the maxillae, so it's the
18 upper part of your jaw on the left side. So, this was
19 traveling predominantly from the decedent's right side
20 to his left. It was a little bit upward because again,
21 it came in, in the lower jaw and went into the upper
22 jaw, and also a little bit from back to front, although
23 just a little bit.

24 Q Okay. So, the entrance wound was lower than the exit
25 wound?

1 A There was no exit wound, but we could see -- we
2 recovered part of the jacket and you could see where it
3 penetrated into the tissues in the mouth. But, yes, so
4 it did go upward a little.

5 Q Okay. Could this trajectory, this direction, could that
6 be consistent with a shooter being shorter than Mr.
7 Woods?

8 A It could be.

9 Q You stated you recovered something from inside. What did
10 you recover?

11 A It's within the mouth. We recovered, just kind of
12 floating, it wasn't stuck in any particular tissue, we
13 found a metal jacket that surrounded the bullet and then
14 within the tissue of the neck on the right side, we
15 found a small portion of a bullet that likely broke off
16 as it fractured or went through the lower jaw. So, we
17 recovered a small portion of the bullet and then the
18 jacket that would have been wrapped around the bullet.

19 Q Okay.

20 MS. JONES: Permission to approach, Your Honor?

21 THE COURT: Yes.

22 Q Dr. Batalis, I'm showing you what has been previously
23 marked as State's #65. Can you identify that photograph,
24 please?

25 A Yes, I can.

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1 Q What is that?

2 A This is a photograph I took at the autopsy of the jacket
3 that I spoke of and the small fragment of bullet that we
4 recovered from the pathway before it.

5 Q And that picture actually depicts the jacket and the
6 fragment?

7 A It does.

8 MS. JONES: Your Honor, at this time, State moves State's
9 #65 into evidence.

10 THE COURT: Any objection?

11 MR. PLEXICO: No, Your Honor.

12 THE COURT: Sixty-five is into evidence.

13 (Whereupon, a bullet fragment and jacket are entered
14 into evidence as State's Exhibit #65, without objection.)

15 Q And Dr. Batalis, I'm going to show you what's been
16 previously admitted as State's #40B. Can you please
17 identify that?

18 A Yes, this is the jacket that we recovered that's
19 pictured in ---

20 Q Okay. So, in that bag is what is depicted in this
21 photograph?

22 A Correct.

23 Q Okay. Thank you. Were you able to determine whether this
24 shot, the sort of range this shot was fired from?

25 A So, when determining the range of a gunshot, we rely on

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1 a couple of different things. So, when the gun is fired,
2 obviously the bullet comes out and so we know that
3 happens. A couple of other things come out of that gun.
4 When you have that explosion, that small explosion in
5 the gun that propels the bullet, so you get this cloud
6 of gasses that will come out and dissipate into the air.
7 Along with that, you have soot, which is kind of the
8 burnt up gunpowder and residue from the explosion. The
9 soot will travel, depending on the type of weapon and
10 the type of ammunition, somewhere between six and twelve
11 inches from the barrel of the gun. We did not see that
12 in this case. So, we know it was not within six to
13 twelve inches. The other thing that comes out are pieces
14 of gunpowder that burned in that small explosion or even
15 some types of gunpowder that do not get consumed. So
16 those will also fly out of the barrel of the gun and
17 strike the skin and cause small little scrapes that we
18 call stippling. Stippling, depending on the type of
19 weapon and ammunition, will travel three to four feet
20 before it just kind of falls to the ground. And again,
21 we did not see either of these things. So, we don't have
22 any evidence on the body that this gunshot was fired
23 from within three to four feet.
24 Q Okay. Thank you. Would this, this gunshot that you have
25 referred to as number one, would this have been fatal?

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1 A It would not have been immediately fatal. It didn't
2 travel through any of the major blood vessels in the
3 neck, your carotid artery, or jugular vein. The head and
4 neck is a very vascular area so there would be
5 significant bleeding with it, but it's nothing that you
6 would expect to die within a matter of minutes. If you
7 didn't get treated within a day or two, it's possible
8 you could have died from bleeding or infection at that
9 point, but not immediately.

10 Q Dr. Batalis, onto what you have labeled wound number
11 two. Can you please describe that wound.

12 A Sure. So, the second gunshot entrance wound we
13 identified was on the back of the head. So, one was in
14 the middle of the back of the head and just about an
15 inch or inch-and-a-half left of midline. So, the back
16 left of the head, kind of between your ear and the
17 middle of the back of the head.

18 Q What sort of injuries would that wound have caused?

19 A So, this bullet after going through the back of the
20 head, the back of the scalp on the left side, it went
21 through the occipital bone, so that's the back part of
22 your skull, which is a very, very hard portion of bone.
23 After going through that, it went through the back
24 portion of the left side of the brain, then crossed over
25 to the right side of the brain, went through part of the

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1 right side of the brain and then ended up kind of being
2 embedded in the temporal bone, which is a bone on the
3 front right side of the skull. So, this bullet traveled
4 from the back left side of his head, almost in an even
5 line. So, it didn't really go up, didn't go down. So, it
6 kind of went straight across from the back left side to
7 the front right side, traveling through the skull and
8 the brain tissue.

9 Q Was there an exit wound associated with that?

10 A There was not. We recovered a bullet and jacket from the
11 right side of the skull and the right side of the brain.

12 MS. JONES: Permission to approach the witness, Your
13 Honor?

14 THE COURT: You may.

15 Q Dr. Batalis, I'm showing you what has been marked as
16 State's #66. Can you please identify that photograph?

17 A Yes, I can. This is a photograph of the bullet and
18 bullet fragments and the jacket that we recovered from
19 the right side of the brain on the right side of the
20 skull.

21 Q And does that picture fairly and accurately depict the
22 bullet and the fragments, the jacket and the fragments?

23 A Yes, it does.

24 Q Okay.

25 MS. JONES: Your Honor, at this time, State moves State's

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1 #66 into evidence.

2 THE COURT: Any objection?

3 MR. PLEXICO: No, Your Honor.

4 THE COURT: Sixty-six is into evidence without objection.

5 (Whereupon, a bullet, jacket and fragments are entered
6 into evidence as State's Exhibit #66, without objection.)

7 Q And Dr. Batalis, I'm going to show you what's previously
8 been admitted as State's #40. What is that?

9 A This is the envelope and the bullet and jackets that are
10 depicted in the photograph.

11 Q So, this is the actual bullet and jacket fragments that
12 you recovered from autopsy?

13 A Correct.

14 Q Okay. Thank you. When you were speaking about the
15 earlier gunshot wound, you mentioned stippling and
16 whatnot. What did you find in regards to this gunshot
17 wound?

18 A So, regarding the first one, we didn't see any of those
19 things, so we would say that was most likely more than
20 three to four feet. Regarding the second wound, the
21 wound to the back of the head, this was a contact
22 gunshot wound. We can tell that looking at a couple of
23 different things. I mentioned as the gun is fired you
24 kind of have that explosion of gases. So, if you're more
25 than a couple of feet away, the gasses will leave the

1 gun and, again, kind of just dissipate in the air. When
2 the gun is pressed against the body, and especially
3 against the skin overlying a bone, that gas has nowhere
4 to go and so it causes much more of a larger expanding
5 entrance wound. So, this entrance wound was much bigger
6 than the one we saw in the jaw and had tears in the skin
7 that would indicate, again, that the gun was pressed up
8 against the skin. Also, going along with that, I
9 mentioned the soot earlier and that's the kind of burnt
10 up gun powder from the explosion that propels the
11 bullet. We also saw that soot material within the skin
12 and on his skull. So, again, it confirms that the gun
13 had to be pressed against the skin to cause that large
14 wound and put the soot into the tissue and on the skull.

15 Q So, in this wound number two, the gun was placed right
16 up against the back side of the head?

17 A Correct.

18 Q Dr. Batalis, what was Mr. Woods cause of death?

19 A His cause of death was the gunshot wounds of the head
20 and neck. And of the two wounds, the gunshot wound to
21 the back of the head would have been much more
22 immediately fatal.

23 Q And Dr. Batalis, what was Mr. Woods manner of death?

24 A The manner of death was homicide, meaning it was death
25 coming at the hands of another.

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1 Q Thank you. I have no further questions.

2 THE COURT: Cross-examination, Mr. Plexico?

3 MS. JONES: Yes. Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. PLEXICO:

6 Q Thanks for taking the time to come here, sir.

7 A Yes, sir.

8 Q I just want to start with this, the first wound that you
9 mentioned. You said that it was or could be consistent
10 with somebody being shorter or other things. When a
11 bullet hits the bone, could it have changed course,
12 deviated?

13 A Certainly, hitting the bone could have changed the
14 course to some extent and as it enters the body of the
15 mandible or your jaw bone is very firm. That being said,
16 bullets travel at a speed of several hundred or even
17 over a thousand feet per second. So usually, the
18 deviation isn't that significant. The other thing that
19 would go along with that is the pathway coming slightly
20 upward. Around the entrance wound there's a slight
21 abrasion. So, a bullet before it strikes the skin is
22 traveling in a spiral, like a football. So, as that kind
23 of drills through the skin, it'll leave a small abrasion
24 around the sides. And so this one, that abrasion was --
25 if you're looking at a clock, coming from the seven to

1 ten o'clock aspect. So, it's at the lower part of the
2 wound, which would mean the bullet struck the lower part
3 of the wound heading a little bit upward.

4 Q Okay. A taller person shooting, depending on how they're
5 holding the gun at the time, could cause the same type
6 of trajectory if they fired the gun from below?

7 A Certainly. What I can testify to is the relationship of
8 the barrel of the gun to the skin when the gun was
9 fired.

10 Q So, that has no scientific relation to the height of the
11 shooter. Would that be a fair estimation?

12 A I don't know about a scientific relation. I would say
13 there are multiple circumstances in which we could have
14 the same trajectory.

15 Q Okay. With different sized people?

16 A Correct.

17 Q With that, thank you for coming out.

18 THE COURT: Any redirect?

19 MS. JONES: No, Your Honor.

20 THE COURT: You may step down. You're free to leave, Dr.

21 Batalis.

22 DR. BATALIS: Thank you, Your Honor.

23 THE COURT: Ms. Jones, you may call your next witness.

24 MS. JONES: Your Honor, at this time, the State rests.

25 THE COURT: Madam Forelady, ladies and gentlemen of the

1 jury, at this time, we're required to take up matters of law
2 outside of your presence. I'm going to ask that you retire to
3 the jury room but do not discuss the case in any way, shape
4 or form.

5 (Jury out at 10:20 AM)

6 THE COURT: I'll be happy to entertain motions at this
7 time.

8 DIRECTED VERDICT MOTION

9 MR. PLEXICO: Yes, Your Honor. I would move for a
10 directed verdict on the indictment 2014-GS-27-312, charging
11 my client with murder, Your Honor. They have only a
12 circumstantial evidence case. There is nothing that they have
13 put forward that shows anything that could not be explained
14 as an innocent act by my client. They have shown that my
15 client is there, approximately, at the time of death. They've
16 show other people were there or nearby, approximately, at the
17 time of death. He ran a large retail drug business. He was
18 well-known in the community to have lots of drugs and money.
19 This could have been done by anybody. Merely to charge the
20 last person who was seen with him seems to me to be a bit far
21 fetched without more evidence and I just don't think that,
22 while highly suspicious, it does not give rise to enough
23 evidence to go to a jury. So, I'd move for direct verdict on
24 those grounds.

25 THE COURT: Ms. Jones, I'll be glad to hear from you.

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1 MS. JONES: Thank you, Your Honor. Respectfully, I
2 disagree with Mr. Plexico's interpretation of the evidence
3 presented. I believe there is substantial evidence in this
4 case to prove the guilt of Mr. Phillips. We have admitted
5 both circumstantial and direct evidence in this case. He was
6 the last person known to be with Mr. Woods prior to his
7 death. He even says, himself, he was possibly the last person
8 to see him alive. I believe with his DNA being on the murder
9 weapon, along with other things, along with the eye witness
10 testimony, there is absolutely substantial evidence to
11 present as a question of fact for the jury.

12 THE COURT: Is his DNA actually on there?

13 MS. JONES: His DNA is on the gun in the form that he
14 cannot be excluded.

15 THE COURT: Yeah.

16 MR. PLEXICO: Which goes back to my motion that it was
17 not relevant evidence because it didn't say it was. It would
18 only confuse the jury to hear the evidence and now that
19 that's in, I understand your prior ruling on that, but now
20 that that's in, there is no evidence that's substantial.

21 THE COURT: The state of the law is in circumstantial
22 evidence cases there has to be substantial circumstantial
23 evidence. Once again, in your opinion, what is the
24 substantial circumstantial evidence?

25 MS. JONES: Your Honor, I believe that the time line

1 starting with the early morning hours of Mr. Phillips being
2 with Mr. Green, Mr. Reginald Green, his anger towards the
3 victim earlier on in the day, his specific anger towards his
4 not having his PlayStation. As the day progresses, we learn
5 that Mr. Phillips is in and out of Mr. Woods' home all day
6 long. We learn from Mr. Donte Jenkins that, in fact, the
7 PlayStation is there when Donte lets Mr. Phillips into the
8 home. We also learn that during the day Mr. Phillips has no
9 money. He has no marijuana and he does not have his
10 PlayStation. Fast forward to about nine-thirty, Mr. Phillips
11 is the last person to see -- to be seen with Mr. Woods when
12 Mr. Woods is still alive. Taylor Cowherd testified to that.
13 Subsequently, Wrenshad Anderson testified, while waffling a
14 bit, Your Honor, that he did see him some time before ten
15 o'clock. We know that because he went to the gas station and
16 the gas station closed at ten o'clock.

17 THE COURT: When did they talk to Wrenshad?

18 MS. JONES: When did law enforcement?

19 THE COURT: When did law enforcement talk to Wrenshad?

20 This took place when?

21 MS. JONES: I can tell you it was far after the
22 investigation. His statement is dated September 29th, 2015,
23 which also came out in testimony. I asked him when he spoke
24 with law enforcement about this case. After he is seen by
25 Wrenshad he goes -- he is not truthful with what he tells law

1 enforcement of what the rest of his night's activities
2 include. In fact, he goes to the BP gas station. He leaves
3 that out in both interviews and in the BP gas station he is
4 seen holding a big wad of cash. We've heard that Mr. Woods is
5 known to carry approximately eight hundred dollars cash in
6 his pocket. Also when family members of Mr. Woods went to the
7 home the next day, the PlayStation was nowhere to be found.
8 There were no signs of forced entry to the home. Law
9 enforcement did not find any money in the home or any
10 marijuana in the home, two things that Mr. Woods was known to
11 always have on him, specifically the cash. Ms. Dawn Childers
12 testified that he always has about eight hundred dollars cash
13 on him in small combinations and in that video it depicts Mr.
14 Phillips counting out a large quantity of cash. He does have
15 multiple bills to pay for the few items that he does buy at
16 the gas station. Indicating that those, in fact, were also
17 small denominations. He gave two interviews with law
18 enforcement, neither of which are consistent with each other.
19 He initially denies being there a hundred percent when the
20 shooting happens. Subsequently, he makes up this story about
21 the three men and the one going inside, hearing the shot or
22 shots and then he flees the scene. He also fled to Greenwood
23 after his first interview. And then after his second
24 interview, he fled to California. Both of which, in the
25 State's opinion, are consciousness of guilt. We believe all

1 of that and I may be leaving out some information, but I
2 believe those are the key pieces of circumstantial evidence
3 that tend to prove Mr. Phillips guilty of this crime on both
4 of these indictments.

5 THE COURT: There wasn't an arrest warrant out on him
6 when he went to Greenwood, was there?

7 MS. JONES: Not when he went to Greenwood.

8 THE COURT: How about when he went to California?

9 MS. JONES: I believe the warrant ---

10 MR. PLEXICO: The warrant was served, I believe in May of
11 2014. Certainly not when he went to Greenwood.

12 MS. JONES: He was, as Your Honor knows, he was in
13 custody. And I believe law enforcement waited to serve him
14 with that warrant until he came back into South Carolina. He
15 was brought back by the Marshals on a probation violation
16 warrant.

17 THE COURT: All right. We certainly aren't going to talk
18 about that in closing arguments.

19 MR. PLEXICO: Just one point. No one identified that the
20 PlayStation over there as my client's. It's alleged to have
21 been there that day.

22 THE COURT: That's a factual issue that I bet you're
23 going to point out to the jury. All right. I think that there
24 is substantial circumstantial evidence that at least rises to
25 a scintilla of evidence that would get us beyond the directed

1 verdict stage.

2 FIFTH AMENDMENT RIGHTS

3 THE COURT: At this time, I'm going to ask Mr. Phillips
4 to stand and raise your right hand.

5 MR. PHILLIPS: (Complies)

6 THE COURT: Raise Your right hand as the clerk
7 administers the oath.

8 (Whereupon, the Defendant was duly sworn by the Clerk of
9 Court)

10 THE COURT: Mr. Phillips, at this time I'm going to
11 explain to you certain of your rights. Pay very close
12 attention. If you do not understand anything I say, please
13 let me know. If you want me to explain anything in more
14 detail, let me know and I'll do that. Do you understand?

15 MR. PHILLIPS: Yes, sir.

16 THE COURT: All right. We have now reached the stage of
17 the trial where you may present your defense. You have the
18 right to claim the protections given to you by the Fifth
19 Amendment to the Constitution of the United States of
20 America. This amendment provides, in relevant part, no person
21 shall be compelled in any criminal case to be a witness
22 against himself. This means that you cannot be required to
23 testify in this case. You have the right to testify on your
24 own behalf. However, no one can make you testify. This is a
25 personal right and no one can waive this right except you. If

1 you decide to testify, you will be subject to the same rules
2 that govern other witnesses. You may be examined and cross-
3 examined on any relevant issue in this case. In addition, if
4 you have any convictions involving dishonesty or false
5 statements or crimes punishable by imprisonment for more than
6 one year, and this Court determines that the probative value
7 of admitting this evidence outweighs the prejudicial effect
8 to you, the Solicitor will be able to introduce your record
9 to attack your credibility. If you decide to testify, this
10 decision on your part must be freely, voluntarily, and
11 intelligently made with knowledge of the protections given to
12 you by the Fifth Amendment and the consequences of your
13 decision to testify. If you decide not to testify, I will
14 instruct the jurors that they cannot give the fact that you
15 did not testify any consideration whatsoever and there is to
16 be absolutely no prejudice to you because you did not
17 testify. I'll specifically give the foreman instructions that
18 they are not to even discuss that in the jury room. They
19 won't even talk about it. It's left entirely up to you
20 whether or not to testify. You may talk with your attorney,
21 your family and friends, anyone else, but the final decision
22 will be left entirely up to you. Do you understand what I've
23 explained to you, Mr. Phillips?

24 MR. PHILLIPS: Yes, sir.

25 THE COURT: Do you have any questions about what I've

1 explained to you?

2 MR. PHILLIPS: No, sir.

3 THE COURT: Have you discussed with your lawyer whether
4 you should testify or not?

5 MR. PHILLIPS: Yes, sir.

6 THE COURT: All right. And do you wish to talk with your
7 lawyer anymore about this issue?

8 MR. PHILLIPS: No, sir.

9 THE COURT: Do you wish to testify?

10 MR. PHILLIPS: No, sir.

11 THE COURT: All right. Mr. Plexico, obviously this is the
12 Defense's opportunity to put forth a defense. He has the
13 right to call other witnesses. Do you intend to do so?

14 SECOND DIRECTED VERDICT MOTION

15 MR. PLEXICO: I don't, Your Honor. But before I go to
16 that stage, I'd also move to dismiss Indictment 2014-GS-27-
17 602. I'd ask for a direct verdict on that on the same grounds
18 as I did on 312, previously.

19 THE COURT: You're protected on the record. Your motion
20 is denied.

21 MR. PLEXICO: I understand I have to close in front of
22 the jury. I am going to move then for a ruling, same motions,
23 for, basically, sufficiency of the evidence.

24 THE COURT: All right. Very good. I think now would be
25 the appropriate time for us to have a charge conference.

1 CHARGE CONFERENCE

2 All right, I'm going to charge the law with regard to an
3 explanation of the roles of the jury and the trial judge and
4 explain the fact that if an individual is charged or
5 indicted, the indictment itself is not evidence. I'm going to
6 charge that in view of the fact that there are multiple
7 charges, each one of them needs to be considered separately
8 and distinctly. I'll charge presumption of innocence, charge
9 reasonable doubt. I'm going to charge the simple version and
10 the longer version. I'm going to charge direct and
11 circumstantial evidence. I'll charge the law with regard to
12 how to evaluate the statement of the Defendant. I'll charge
13 the failure of the Defendant to testify can't be used against
14 him in some detail. I'm going to charge the law with regard
15 to how to evaluate the credibility of witness. I'm going to
16 charge the law with regard to prior inconsistent statements.
17 Prior record of witness and how the jury can use that to
18 evaluate the credibility of witnesses if they choose to do
19 so. I'm going to charge the law with regard to expert
20 witnesses. The issue of identification is sort of a tricky
21 one because typically when you think about the issue of
22 identification, we talk about people seeing a crime take
23 place and you've got eyewitnesses saying this is the
24 individual who did that. We don't have that in this case.
25 However, we do have an instance where one of the witnesses

1 identifies Mr. Phillips as being at the house, but I don't
2 think it's really -- this is not an identification case. What
3 is the State's position?

4 MS. JONES: Your Honor, I agree. I think a charge
5 regarding that may confuse the jury.

6 THE COURT: Very good. Mr. Plexico?

7 MR. PLEXICO: Your Honor, if Ms. Cowherd/Lanier, now
8 Cowherd, was mistaken, she was -- another person that was
9 there she couldn't even identify the color of the man's
10 shirt, but she says in the darkness that she recognized the
11 face of my client. She could not pick that face out of a six-
12 pack, which has since disappeared, that six-pack lineup that
13 has since disappeared when she was shown the one photo and
14 then asked, is it him. I think the identity of who that
15 person was on the porch that night may very well have been
16 the true killer. So, I would ask for that, Your Honor.

17 THE COURT: Well, all right. In view of that, I will,
18 indeed charge that. It'll be left up to y'all to explain that
19 there is, under this circumstances no one contends that they
20 saw the shooting, that to the extent that one of the witness
21 attempts to put the Defendant at the house, I'll charge that.
22 I'm going to charge the mere presence charge, essentially the
23 mere presence at the scene is not sufficient to prove
24 someone's guilty of a crime in some detail. We're all
25 familiar with that charge. I'm going to charge the substance

1 of the law with regard to murder and the substance of the law
2 with regard to possession of a weapon during the commission
3 of a violent crime.

4 I have a verdict form here. I'll ask the lawyers to come
5 forward and take a look at the verdict form.

6 (Attorneys comply)

7 THE COURT: Any objection from the State?

8 MS. JONES: No, Your Honor.

9 THE COURT: Any objection from the Defense?

10 MR. PLEXICO: No, Your Honor.

11 THE COURT: Both the State and the Defense agree with the
12 verdict form.

13 MR. PLEXICO: I did have some to -- I didn't think we
14 would move so quickly today. I haven't had a chance to clock
15 them in. I do have four that I would like to ---

16 THE COURT: We'll talk about those now.

17 MR. PLEXICO: I don't have copies for everyone.

18 THE COURT: All right. Well, tell us about them.

19 MR. PLEXICO: All right. My first request for charge is
20 on spoilation of evidence, Your Honor. In this case it was
21 testified that a GSR kit was taken at two-thirty. I pulled
22 out the search warrant and I pulled out the return. I showed
23 it to the testifying officer, who was McIntosh. Sometime -- I
24 don't know what happened to it, but the crime happened -- I
25 think it was around ten forty ---

1 THE COURT: Let me see your charge on that.

2 MR. PLEXICO: This is from State v. Cheeseborough.

3 THE COURT: Have you had an opportunity to review that,
4 Ms. Jones?

5 MS. JONES: I have not, Your Honor.

6 THE COURT: Well, let's let Ms. Jones take a gander at
7 that one. While you're doing that, just bear with me. I'm
8 going to step back here and get my bench book.

9 (Brief break)

10 THE COURT: What is the State's position with regard to
11 spoilation of evidence?

12 MS. JONES: Your Honor, I'm looking at the Cheeseborough
13 right now and we would object to the charge, as well. There's
14 no evidence. We feel that in order to prove a violation they
15 had to demonstrate that the evidence was destroyed in bad
16 faith. I don't think there's any testimony that it was
17 destroyed in bad faith. That the evidence has to be
18 exculpatory, it has to be apparently exculpatory. In this
19 case, the six-pack lineup ---

20 THE COURT: I think those issues go with whether or not
21 you dismiss the case. You know, those issues about bad faith
22 and that sort of thing come into play if an individual was
23 trying to have the case dismissed. But just as far as
24 evidence that might have been destroyed, I mean, that goes --
25 even in a civil case can we charge if there is, indeed,

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1 evidence that's destroyed, you can argue that, you know, it
2 was inadvertent. You can argue that it wasn't bad faith. You
3 can argue whatever you want to. I think that the law prevails
4 in regard to the destruction of evidence. So I will indeed
5 charge that. And can I have that charge back?

6 MR. PLEXICO: May I continue?

7 THE COURT: Yes.

8 MR. PLEXICO: My next request to charge is on the
9 voluntariness of the statement, Your Honor. And I also have,
10 adjoining that is a request for a definition of diminution.
11 There's multiple statements in the record and on the
12 videotape about my client being high on drugs, about him
13 having drank. They make fun of my client being so high. They
14 start telling him oh, that must have been some really good
15 stuff. They, themselves, appear convinced that my client is
16 very high and inebriated, but I think this goes to the
17 diminution of his rights, which is an important phrase, an
18 important concept in this case. And I believe that my client
19 would have exercised his rights differently if they had
20 looked at him and been fair and said we need to interview the
21 young man when he's not drunk and high. Therefore, the fact
22 that they went in, knew he was drunk, knew he was high, took
23 advantage of the situation, diminished his right to remain
24 silent, diminished his right to exercise his right to an
25 attorney and the diminution, I believe, can be however slight

1 and still be, my client would still be entitled to the
2 charge. It is very important that we safeguard the rights of
3 the Defendant to be able to voluntarily, intelligently,
4 knowingly exercise his rights and those things cannot be done
5 when you're high on drugs and being interviewed by the police
6 when you're intoxicated, being interviewed by the police and
7 certainly not when you're high on drugs and intoxicated.

8 THE COURT: That goes -- the law that I'm going to charge
9 with regards to voluntariness of the statement asks that
10 they, the jury, to consider all the circumstances of the
11 questioning and there was a great deal of discussion. They
12 actually saw the video of the interview and the law is very
13 clear and defines what voluntary is and my charge that I'm
14 going to charge adequately covers that. I'm also going to
15 charge the burden of proof and the Defendant's right not to
16 testify. I've already stated that.

17 MR. PLEXICO: All right. You mentioned his failure to
18 testify. I would ask that you not describe it as a failure to
19 testify. And that, I believe that's been ruled against. That
20 I would ask that, specifically, his right not to testify be
21 referred to in the charge, because a failure indicates that
22 he had a duty to do something that he did not, in fact, do
23 and we have no duty to. And that's State v. Atkins, a 2003
24 Court of Appeals case.

25 THE COURT: I think I just referred to that in passing as

1 failure of the Defendant to testify. But the charge itself,
2 the charge says this; I instruct you and emphasize that the
3 fact the Defendant did not testify is not a fact to be
4 considered by you in any way in your deliberations and your
5 consideration on the question of guilt or the innocence of
6 the Defendant. So, I don't say failure anywhere.

7 MR. PLEXICO: And, Your Honor, not to belabor the point,
8 but so I could understand how to form my argument. What words
9 would you use in substitute of diminution of rights as far as
10 the statement was made by the accused, uninfluenced by the
11 promise of reward or threat or render a diminution of his
12 rights? Just so I'll know.

13 THE COURT: You can define diminution of rights any way
14 you want to, I reckon.

15 MR. PLEXICO: All right. Do you use the phrase diminution
16 of rights in your charge?

17 THE COURT: Let me look. This is what I'm going to charge
18 in regard to the statement of the Defendant. A statement
19 alleged to have been made by the Defendant has been admitted
20 into evidence in this case. The Court has determined that the
21 statement is admissible and I instruct you that you make the
22 ultimate decision of whether or not the Defendant made the
23 statement. If the Defendant made the statement, you must
24 determine whether the statement was made by the Defendant
25 voluntarily and of his own freewill. This means that the

1 statement was not caused by pressure, force, fear, threats,
2 coercion or intimidation by hope for or promise of leniency
3 or a reward of any kind. In determining whether a statement
4 is voluntary, you should consider both the characteristics of
5 the Defendant and the details of the questioning. Some of the
6 factors you must consider are: the age of the Defendant, the
7 Defendant's education or lack of education, the Defendant's
8 mental ability or capacity, the Defendant's IQ or
9 intelligence, the Defendant's background and environment,
10 place and length of detention, the nature of the questioning,
11 the bias or lack thereof to the Defendant of his
12 constitutional rights including but not limited to the right
13 to remain silent, that any statement can be used against him
14 in a court of law, the right to have a lawyer present, that
15 if he could not afford a lawyer, a lawyer would be appointed
16 to represent him without any costs and that he could stop
17 making his statement at any time. You must carefully consider
18 all of the surrounding circumstances before you give any
19 weight to an alleged statement. The State has the burden of
20 proving beyond a reasonable doubt that the alleged statement
21 was voluntary. If you determine it was, you may give the
22 statement any further consideration that you deem proper. You
23 must decide that weight, if any -- you must decide what
24 weight, if any, should be given to the alleged statement. If
25 you determine the alleged statement was not the free and

1 voluntary statement of the Defendant, you should not consider
2 the statement at all. That's what I'm going to charge.

3 MR. PLEXICO: I think that leaves out the concept of
4 diminution of rights and I would ask if you would ask those
5 four words.

6 THE COURT: What does the State have to say about that?

7 MS. JONES: Your Honor, I think that your proposed charge
8 is adequate. It covers ---

9 THE COURT: I think it does and it says a lot of
10 different things. It talks about all the facts and
11 circumstances. It talks about the capacity of the Defendant
12 to understand his rights and make a statement. I think it
13 adequately covers it to protect him on the record.

14 MR. PLEXICO: I would ask that my -- I want to move this
15 -- I have not clocked it in, but I would like to make this a
16 Court's Exhibit.

17 THE COURT: You may.

18 MR. PLEXICO: The voluntariness of the statement. Thank
19 you, Judge. My requests for charge, that is.

20 THE COURT: Very good. All right. Any additional requests
21 from the State?

22 MS. JONES: No, Your Honor.

23 THE COURT: Very good. Y'all need a moment to gather your
24 thoughts?

25 MR. PLEXICO: Could we take fifteen minutes, please, Your

1 Honor.

2 THE COURT: Maybe not fifteen but we will take some time.

3 Under these circumstances, the State goes first.

4 MR. PLEXICO: I'm going to clock in the request to
5 charge, Madam Court Reporter, and bring you a certified copy.

6 THE COURT: I don't think it's necessary to clock it in.
7 Just make it a part of the record.

8 MR. PLEXICO: Very good.

9 (Whereupon, Court's Exhibit #4 was marked for
10 identification.)

11 THE COURT: I've never seen a charge requests clocked in
12 before in my life.

13 MR. PLEXICO: I routinely do that to make sure it's part
14 -- in case I forget to.

15 THE COURT: We will stand at ease for about ten minutes.
16 We'll proceed forward here momentarily.

17 MS. JONES: Thank you, Your Honor.

18 THE COURT: Mr. Plexico, I'm going to recognize you and
19 allow you to rest on the record.

20 MR. PLEXICO: Yes, Your Honor.

21 (Brief break)

22 THE COURT: Anything from the State before we proceed?

23 MS. JONES: No, Your Honor.

24 THE COURT: Anything from the Defense?

25 MR. PLEXICO: Just my client, Your Honor.

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1 (Defendant enters courtroom)

2 THE COURT: Mr. Plexico, I'm going to allow you to rest
3 on the record and your motions are protected with regard to
4 directed verdict. There's no point in doing it again, unless
5 you want to put it on the record.

6 MR. PLEXICO: Yes, sir, Your Honor. And that would be on
7 the sufficiency of the evidence would be my grounds to do it
8 on the record.

9 THE COURT: That's correct. We're ready for the jury. If
10 we could hold those doors back there to let no one else to
11 come in.

12 (Jury in at 11:04 AM)

13 THE COURT: Madam Forelady, ladies and gentlemen of the
14 jury, you've heard the State's case. Mr. Plexico, you're
15 recognized.

16 MR. PLEXICO: Your Honor. The Defense would rest at this
17 point.

18 THE COURT: Very good. Madam Forelady, ladies and
19 gentlemen of the jury, you've heard all the evidence that's
20 going to be presented in this trial. And now, as I mentioned
21 to you earlier, the lawyers would have the opportunity to
22 address you in summary fashion, very similar to what they did
23 in opening statements. However, this is closing argument and
24 these presentations would be truly argumentative in nature
25 because at this point in time, you have heard all of the

1 evidence and these very fine lawyers will have an opportunity
2 to point to the evidence that supports their relative
3 positions. What they have to say is not evidence. However, it
4 will aid you immensely in your deliberation process. You and
5 I have been dealing with this case since Monday, but they've
6 been dealing with it for a period of time. So, pay very close
7 attention to what they have to say. Ms. Jones, you're
8 recognized.

9 MS. JONES: Thank you, Your Honor.

10 CLOSING STATEMENT

11 BY MS. JONES:

12 Good morning, still. I want to thank y'all for being
13 with us. It's been a long four days already and I appreciate
14 your time. While y'all have been here, y'all have heard
15 numerous people on that witness stand. Y'all have seen tons
16 of evidence. You've heard the scientists. You've heard from
17 friends of Mr. Woods, the victim in this case and you've
18 heard from a friend of the Defendant in this case as well,
19 Reggie Green. And at this point, I'm just going to try to
20 recap everything that we've heard and put it all together.

21 May 18th, 2013 ---

22 MR. PLEXICO: May I, May I ---

23 THE COURT: Yes.

24 (Mr. Plexico moves so that he can see information
25 portrayed on large screen in front of the jury.)

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1 MR. PLEXICO: Go ahead.

2 CLOSING STATEMENT CONTINUED

3 BY MS. JONES:

4 May 18th, 2013, that's the day that brings us all here.
5 That's the day that brought us all here this week. That is
6 the day that Darius was murdered. The day he was murdered by
7 the Defendant, Billy Phillips. Let's go back in time on that
8 day.

9 Let's go back to 11:00 AM on the 18th. The Defendant is
10 mad. He is really upset with Darius, his friend. Darius has
11 his PlayStation and he won't give it back. We hear this from
12 Reggie. The Defendant's own friend tell us this. We also know
13 from Reggie that the Defendant had no money. He was broke. I
14 think Reggie even said, "We were both broke". So, Reggie
15 wasn't giving him any money. He had no money. He had no
16 marijuana to smoke. And we know he smokes marijuana. The rest
17 of the day, the Defendant is in and out of the victim's home
18 all day long. They're friends. He's over there hanging out.
19 They're smoking weed. They're just hanging out. They're
20 friends. That's not out of the ordinary, but as the day goes
21 on, he gets mad. He gets more mad and more mad as the day
22 goes on.

23 Shortly after dark, the Defendant goes to Darius' home
24 for the last time. How do we know this? We know this because
25 Donte Jenkins tells us this. He tell us this because Donte

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1 got there some time after dark. He didn't really know what
2 time it was. It was dusk. It was turning dark. We know it was
3 springtime, so daytime is a little bit longer at that time of
4 the year. He lets the Defendant in through the front door of
5 that home. Donte says he leaves about nine fifteen. What
6 Donte leaves is, he leaves Darius and the Defendant in that
7 home alone with that PlayStation hooked up in the den, that
8 very den that the Defendant had to walk through to get to the
9 kitchen where we know he was.

10 Nine twenty-six, you heard from Taylor Cowherd. She says
11 that she calls Darius about nine twenty-six. She knows it was
12 nine twenty-six because she looked at her cell phone. She
13 calls him because she's coming over to get some money. It was
14 the ten dollars that Darius owed his brother. She's there for
15 a couple of minutes, she says, probably no longer than five
16 minutes. So, that puts her leaving about nine thirty that
17 night. What she says is when she comes to the house, she gets
18 there, Darius is not outside but his car is open. The doors
19 are open. Something's going on with his car and she sees Dee
20 on the front porch. She knows Dee. She's known him for years.
21 She said that she's known him since she was sixteen years
22 old, so about three years before 2013, she knew Dee. And
23 what's also important is that she called him by name. She
24 said, "Hey, Dee. What's up? Where's Darius?" Dee answers
25 because it was Dee. It was the Defendant on the porch that

1 night. There's no confusion about that. She called him by
2 name. He answered. She was standing over here and he was on
3 the porch. That's not far away. There's no confusion that
4 that was who was on the porch that night at nine-thirty. She
5 looked in his eyes and called him by name and he answered.

6 Now, the Defense is probably going to bring up this
7 photo lineup she was shown that is missing, that we don't
8 have any more. Well, she couldn't pick him out and she told
9 him why she couldn't pick him out. He wears glasses. He wears
10 glasses everyday. She'd never seen him without his glasses
11 on. You see him today. He wears glasses. They're rather thick
12 glasses. She can't recognize him in that picture because
13 nobody in that six-pack lineup has glasses on. She knows Dee
14 with glasses. She knows it was Dee because she called him by
15 name.

16 Let's fast forward to about nine-forty that night. Y'all
17 heard a pretty lively testimony from Wrenshad Anderson the
18 other day. He knows he saw the Defendant that night. He knows
19 it was before ten o'clock. It took some talking to, but we
20 were able to figure out it was about nine-forty that Wrenshad
21 saw him. We know he was at a party about eight-thirty. He
22 left about eight-thirty, went to his home to talk to some
23 people. He knows everybody, so he talked to people on the
24 street and then he goes to Short Stop gas station. He goes
25 there before it closes and they close at ten. So, that puts

1 us about nine-forty that night. He sees the Defendant walking
2 away from Darius' home. Wrenshad is walking towards Darius'
3 home and what the Defendant does is what Wrenshad remembers.
4 No, he may not remember exactly what time it was, but it was
5 the actions of the Defendant that Wrenshad remembers. He's
6 acting funny. He's trying to hide something. He doesn't know
7 what he's trying to hide, but he's trying to conceal
8 something. He's kind of walking to the side trying to get out
9 of the way so he can't be seen. He's trying to hide from
10 Wrenshad is what he's trying to do. He's trying to hide,
11 because he just murdered his friend about twenty feet away.

12 Some time after 10:00, the Defendant calls Reggie, his
13 friend. Somehow, he has now, I believe Reggie's exact words
14 were he scored some bud, marijuana. He had enough money to be
15 able to put gas in Reggie's car and he has money for cigars
16 and beer. He didn't have any money earlier. You remember he
17 was broke. Neither of them had any money. Now, all of a
18 sudden, right after this murder, the Defendant has cash. He
19 has all kinds of cash and he has marijuana. We know Darius
20 sold marijuana. We know Darius always had cash and he always
21 had marijuana. Two things that the Defendant now also has.

22 This money that Darius was known to have, we heard that
23 he kept some of it in a stash for a rainy day fund, I believe
24 his girlfriend Dawn said. He also kept it in his pocket, too.
25 Yes, he sold marijuana. He treated it like a business, like a

1 trade and to do that, you have to have your capital to
2 exchange with your customers. He kept it right there in his
3 pocket, easy access so he can give it to those customers when
4 he's selling his marijuana.

5 We also know that the Defendant's DNA cannot be excluded
6 from inside that pocket. You saw the picture of Darius. You
7 saw the picture of him with that gun, his gun on his stomach.
8 I want you to look at that picture. His pocket is also pulled
9 out. Somebody went through that pocket. Somebody went through
10 both of his pockets and that was the Defendant. Remember the
11 scissors example. If you don't touch it, you're excluded. If
12 you don't touch it, you're excluded. Defendant was not
13 excluded..

14 We know that about 10:25 Shontay arrives at Darius'
15 home. Shontay, you heard from her, she also went by,
16 Sunshine. About ten minutes later, Davonte arrives. They both
17 tell you that they're calling, they're honking on their
18 horns. Well, Shontay is honking her horn. Davonte doesn't
19 drive and nobody's coming to the door and this is unlikely.
20 This is not normal for Darius. They were there to buy
21 marijuana from him. He wasn't coming for their purchases.

22 We also know that when Sunshine is outside, Davonte says
23 this, too. When they're outside they hear Darius' phone
24 ringing on the inside. A cell phone doesn't ring very loud
25 and they were able to hear it from the outside to the inside.

1 Davonte goes inside and he finds his friend dead.

2 We know Davonte and Darius were friends because Davonte
3 said he was one of the few that had been allowed in that
4 home. He was over there that day hanging out with Darius and
5 he was the one that found his friend dead. He starts
6 panicking. He is hysterical. He is excited and not in a good
7 way. He just walked in on his friend, a friend that he had
8 just hours earlier been with. You can hear him on the 9-1-1
9 call, the background of the 9-1-1 call. That person that's
10 hysterical, that is hysterical in the background, that is
11 Davonte.

12 We know that at 10:43, this is the time that Shontay
13 calls 9-1-1. Davonte has now made it back outside and they
14 know that Darius is dead. They wait and the police ultimately
15 come and we also know at 10:43, which we don't know this from
16 the Defendant telling us this, he doesn't mention this in his
17 two statements to the police, we know this from the
18 surveillance footage from the gas station.

19 He's in the Taylor's gas station. He has a handful of
20 cash. He wasn't wearing a blue shirt that Taylor described
21 and that Wrenshad described. He's now wearing a gray tee
22 shirt. He got his beer, cigars and gas. Three things he had
23 no means to get earlier on in the day. Now, he has the money
24 to get them. Here he is. That is the Defendant and that, in
25 his hand, that's Darius' money that he just stole after he

1 murdered him. You can see him. He's looking down at it. He's
2 counting it out. He's counting it out and it is a big wad of
3 cash because Darius dealt with small bills. He didn't sell
4 lots of marijuana. He wasn't dealing with hundreds and
5 hundreds and hundreds of dollars at the time in his sales. He
6 needed fives and tens to make change. That's what's in his
7 hand. You see him get closer, and there it is. He has counted
8 out what he needs to buy those three beers, the cigars and
9 the gas for Reggie. He is paying for these items with his
10 dead friend's money.

11 We know that at 11:00, the police arrive and what sticks
12 out about this is they go through the home and it's more
13 important what they don't find. They don't find a
14 PlayStation. They find an Xbox. They don't find a
15 PlayStation. They don't find money, and we know Darius had
16 money, and they don't find marijuana and we know he had
17 marijuana. He was selling it earlier that day.

18 We also know that the family of Darius, you heard from
19 his brother Deandre, they go to the home the next day.
20 There's no PlayStation in that home when they go the next day
21 either. It's gone because Billy took it right after he
22 murdered Darius. That's where the PlayStation was when Donte
23 was in the home at 9:15, between 8:30 and 9:15, the night of
24 the murder. Why would those cords be there, except for that
25 something was very recently hooked up to them? That was the

1 Defendant's PlayStation and he was taking it back and he did
2 take it back after he murdered Darius.

3 We know that shortly before midnight Reggie drops the
4 Defendant off at an area near Darius' home. He called it Mr.
5 Hill's home. It was the yellow house that y'all saw the
6 picture of. It was a hangout spot. We also know that at this
7 time, the police are already there. The police responded at
8 11:00 to Darius' home. There are blue lights, there are
9 people everywhere. Defendant goes to this home right nearby
10 and he watches.

11 Let's fast forward a couple of hours to 3:00 AM.
12 Defendant is interviewed by Agent Williams and Agent Harley
13 with SLED. This was his first interview. What we also know
14 from their testimony is that a gunshot residue kit was taken
15 after this interview. This interview happened at 3:00 AM. It
16 lasted about an hour and forty-five minutes give or take,
17 then the GSR was taken. You heard from Ila Simmons that the
18 GSR kit she has was submitted at 5:40. That puts it being
19 after this interview, not at 2:30 AM. At 2:30 AM, he hadn't
20 even been interviewed yet. He hadn't even been interviewed by
21 the police yet, so how are they going to get a GSR kit?
22 They're not. There was one GSR kit and this is it and it was
23 outside of the six hours. It was actually seven hours and ten
24 minutes, so it wasn't tested.

25 We know what he was wearing during the interview. This

1 is what he was wearing, that same gray tee shirt that he has
2 on in the gas station. This is not a blue polo shirt. This is
3 not a dark shirt that is described by Taylor and Wrenshad. He
4 changed his clothes. Why did he change his clothes? He's
5 trying to cover up. He just murdered his friend and he's
6 trying to cover it up.

7 You know that we fast forward six days and go to May
8 24th, 2013. Defendant is interviewed by Agent Burnett with
9 SLED. This is his second interview. We also know that shortly
10 after this interview, he goes to California. He goes as far
11 away from Jasper County as he can. Why does he do this?
12 Because he's guilty.

13 So, let's go over these two interviews. He gave two
14 statements in his two separate interviews. I want to go
15 through these two interviews. The first interview, Agent
16 Williams and Agent Harley, these are the Defendant's words
17 now, he said that earlier that day he was hanging out with
18 Darius and Darius was breaking up weed at the desk, the desk
19 in the bedroom. Breaking up. He said he grabbed Darius' gun,
20 this .38 revolver. And I mis-spoke in my opening, I called it
21 a .32. He pointed it at Darius and played police. Okay?
22 That's what he says. He says he put the gun back on the desk
23 in the bedroom.

24 We know that he, according to the Defendant, was back
25 and forth all day, coming and going. He was smoking weed.

1 They're smoking marijuana all day long. Darius begins to work
2 on his car when Defendant leaves. Remember that. He starts
3 work on his car when he leaves, according to the Defendant.
4 We know that's not true, but Donte Jenkins puts him working
5 on his car earlier. Taylor Cowherd puts him working on his
6 car earlier, also, while the Defendant is still there. He's
7 coming up with stories now is what he's doing. He says he
8 leaves about 10:00. Well, we know he left before 10:00.

9 Wrenshad saw him before 10:00, because if you remember the
10 Short Stop gas station closes at ten and it was before then
11 that he saw the Defendant walking down the street. No one
12 else is at the home. He says no one else is there.

13 Something that's also interesting is he says he was
14 likely the last person to see Darius alive. Well, I may not
15 believe a lot of what he says, but I believe that, because I
16 know he was the last person that saw Darius alive that day.
17 He says he goes to his mom's house and then a friend's house
18 when he leaves Darius. He doesn't mention the BP gas station.
19 He doesn't mention being dropped off near Darius' home. He
20 doesn't mention anything about Reggie, but Reggie is friends
21 with the Defendant. Why would he say all that, if that's not
22 really what happened? The Defendant is backtracking. He's
23 trying to cover his tracks.

24 He also says that he hears about the murder between
25 10:20 and 10:45. Well, that's interesting because between

1 10:20 and 10:45, he was with Reggie. Reggie says there's no
2 mention of the murder while they're together. Another thing
3 that's interesting is the police didn't even know about it at
4 that time. How does he know something that the police don't
5 know? He knows that because he did it. He then changes his
6 story down the line in that first interview and says, no, it
7 was maybe like a few hours.

8 He says there's a rumor that they were going to rob
9 Darius. Deandre told him this. He also said the Defendant was
10 robbed Thursday before the murder. I want you also to
11 remember is you heard from some of Darius' closest friends.
12 You heard from a brother, from his girlfriend, two people
13 that he would confide in, that he would tell this information
14 to and they didn't know it. They had no knowledge. If you've
15 been robbed, you're going to tell your girlfriend. If you've
16 been robbed, you're going to tell your brother. One, because
17 you're probably really mad about it. Darius didn't say
18 anything about it. Why? Because it didn't happen. The
19 Defendant, again, is lying.

20 He also tries to say that one of the haters killed
21 Darius and that if Darius was shot then, he would have been
22 there when Darius was shot. He's denying he was there when
23 Darius was shot. I want you to remember that. He says he was
24 not there when Darius was shot. He then says again it was a
25 few hours after the murder when he found out Darius had been

1 killed, when earlier on in the interview, he said it was
2 between 10:20 and 10:45. He knew at 10:20 that Darius had
3 been killed. But now he's thinking, that doesn't add up.
4 Maybe I need to say something else. That's not making sense.
5 Maybe that's too early. I'm going to say it's been a few
6 hours. That doesn't put me there if I tell them it's been a
7 few hours. So, now he says it's been a few hours. He also
8 says he wore the same clothes all day long. We know that is
9 just a flat-out lie. He had two people putting him in that
10 blue polo shirt. The blue polo shirt was found. He didn't say
11 anything about changing clothes. He denies changing clothes.
12 In fact, he says he wore the same clothes all day. A lie.

13 Also, in his first interview, briefly before we get into
14 interview number two, you saw the interview. You watched
15 about an hour-and-a-half of that interview. It was long. It
16 was drawn out. It was a lot of the same thing over and over
17 and over, but in that hour-and-a-half, you were able to look
18 at the Defendant and see him talking. He was not somebody who
19 was impaired, who was so under the influence that he couldn't
20 understand what was going on. He's not somebody that the
21 police were taking advantage of. He's coherent. He's
22 rational. He understands what's going. And if he's a little
23 slow with his responses, he's thinking, what can I say that
24 will make sense, that will get me out of this, not because
25 he's so high that he can't understand what's happening.

1 Another thing about that interview is, any time the gun
2 or shooting Darius is brought up, "I'm hungry." "I want to go
3 to the Waffle House." He changes the subject like that. He
4 doesn't want to hear it because he knows what caused that.

5 Interview number two, six days later. He's had time to
6 think. I know what I'm going to do now is what he's thinking.
7 He blames it on three guys. If three guys did it and robbed
8 him, he'll tell the police the first time. If you're being
9 questioned about a murder and you know who did it and you
10 know it was these three guys and one of them even calls you
11 by name, you're going to tell the police that. You're going
12 to tell them right off the bat. He didn't though, because
13 that's not what happened. This is six days later that he has
14 now come up with this story because he's trying to get
15 himself out of it. He says he took off running when he heard
16 the shots. The first interview he says, "I wasn't there for
17 the shots." "I didn't hear anything." "I wasn't there." "I
18 left." Completely different from what he's saying now. He
19 again says he went to his moms and smoked cigarettes around
20 the complex. Never went to the BP. What do we know? He's
21 lying. There's video of him at the BP that night. We saw the
22 picture. We saw the pictures. We saw the video. We see him in
23 the BP at 10:43 PM, the same time the 9-1-1 call goes out,
24 with a handful of cash.

25 He's talking in the second interview about his

1 PlayStation. His PlayStation. His PlayStation. He said, "No,
2 Darius was actually robbed a week or so ago. I think that's
3 when they took that PlayStation. They took some weed and they
4 took some money. That's what happened to my PlayStation."

5 Well, we know that's not true. Nobody else says that Darius
6 was robbed that week. And we also know that that PlayStation,
7 the night of the murder was hooked up to that television in
8 the living room. The Defendant knew that PlayStation was
9 there because when Donte let him in that front door he walked
10 right past it. He also knows it was there because he took
11 after he shot and killed his friend. He flees. Why does he
12 flee? Why doesn't he stay around? He goes to Greenwood first.
13 He's scared. He says he's scared. That's what I'm going to do
14 when I'm scared. You're scared because you just murdered your
15 friend. You're not scared for any other reason.

16 Let's talk about the Defendant's lies. How do we know
17 the Defendant is a liar? Was he there when the murdered
18 happened? Ask yourself that. First interview he says, "No
19 way, absolutely not. I was not there." Let's fast forward six
20 days. He's had time to think. "Yeah. I was there. I was
21 sitting in a car outside. Three guys walked up. They barge
22 into the house. One of them went inside. I heard shots." How
23 does that jive with the first story? It doesn't. He's not
24 coming forward now to get this off his chest because he knows
25 these three guys went into rob and kill Darius. He's trying

1 to come up with a story to cover his tracks. It took six days
2 to come up with that story.

3 He also says he was playing police with Darius. Now, I'm
4 going to ask you what makes sense? Darius sold marijuana.
5 Darius was known to have a gun. In fact, this is his gun. Is
6 it rational to point a loaded gun at a drug dealer? A drug
7 dealer that carries a gun? Does that make sense? No, that
8 doesn't make sense. It doesn't make sense because it didn't
9 happen. He's trying to cover his tracks, a lie.

10 Anything linking to him that could possibly be on that
11 gun? Well, we have his DNA on that gun. We know he touched it
12 and we know it wasn't because he was playing police. That's a
13 story that does not make sense. He says he never changed
14 clothes all day. Well, again, he's lying and we have proof
15 he's lying because we saw two witnesses put him in a blue
16 polo and the video in the picture has got him in a gray tee
17 shirt at 10:43, right when the 9-1-1 call comes out.

18 He also lies about what he does after the murder. He
19 tells you, "I went to my mom's house. I hung out with some
20 friends in the complex. I got stuck in traffic and then I
21 came into the police department." No, no, no, no. None of
22 that. We know he went home. He went to his mom's house. He
23 did go to his mom's house. He went in to change because he
24 needed to get out of the clothes that he just murdered his
25 friend in. We know he calls Reggie. We know Reggie picks him

1 up. They smoke. They go to the BP gas station. The Defendant
2 buys everything. Reggie still doesn't have any money. The
3 Defendant has to pay for everything because now, somehow, he
4 has all this cash. And he leaves out a lot. He also leaves
5 out the fact that he went back to Darius' neighborhood after
6 the murder. He went back to that yellow house and he watched.
7 He was curious because he wanted to know what the police were
8 doing. He wanted to know what was going on and just how close
9 he was.

10 He also goes into this story of how Darius was robbed in
11 the past. Well, the only reason we know that is because
12 that's what he said. Nobody else can corroborate that. The
13 people closest to Darius just don't say it. They don't say it
14 because it didn't happen. They don't know anything about it.
15 You heard what Donte said.

16 Again, I keep going back to this PlayStation. And sadly,
17 this was the trigger for this murder. The PlayStation was
18 there May 18th at 9:15 when the Defendant is let in the home
19 by Donte. What we have, what we know happened on May 18th is
20 sadly a crime of opportunity. The Defendant has nothing. He
21 has no money. He has no marijuana. The one thing he has, the
22 wedding gift from his wife, he can't get it back. He may be
23 thinking, well, they have common friends and by every
24 account, they're friends. They were friends. He was one of
25 the trusted few let inside Darius' home. Why would a friend

1 murder another friend? But remember who we're dealing with.
2 We're dealing with the Defendant. He has nothing. He has no
3 money. He has no drugs. His friend won't give him back his
4 PlayStation. The one possession he has that means anything to
5 him. He's not going to put up with this. Throughout the day
6 he's back and forth through Darius' home. He sees everything
7 Darius' has. He sees all the money. He sees all the drugs. He
8 sees this nice home that Darius has. He sees his PlayStation.
9 And as the day progresses, he gets madder and madder and
10 madder to the point where he just can't take it anymore. His
11 mind is made up. He knows what he's going to do. He just
12 needs the opportunity to do it.

13 Nine-thirty, p.m., he is alone with Darius. Taylor was
14 the last person to see the two of them together. Alone, now
15 is his opportunity. Darius is outside working on his car.
16 He's got his head in the trunk. He's working on the tag
17 light. He's back and forth from the passenger seat where he
18 gets the lightbulb and goes to the back. Not wearing his gun.
19 Not wearing his gun. He's not wearing his gun because he
20 trusts the Defendant. The Defendant's on that porch and he
21 goes in the front door. He goes inside that home. He's now in
22 there alone. What is he doing in the house? He goes into the
23 Defendant's bedroom. He should not be in this bedroom. The
24 common area is fine. The kitchen, the den, okay. His bedroom,
25 he should not be in there. This is the bedroom where Darius

1 kept his marijuana. You saw this picture. This is the table
2 that the Defendant said that Darius was breaking up his
3 marijuana at. This is inside his bedroom. This is his
4 business. This is where he kept his tools for his trade. You
5 see the scale. You see the marijuana seeds. You see the gun
6 holster. What you don't see is the gun in the holster because
7 the Defendant has already used it to murder Darius. Darius
8 comes inside and catches the Defendant in his bedroom. Or
9 maybe he was curious as to what was going on, as to why he no
10 longer saw the Defendant on his porch. But he goes inside. He
11 sees the Defendant in his room. Dee picks up the revolver,
12 points it at Darius. Darius is now able to realize what is
13 happening. He turns to run out of his own bedroom door as
14 he's being pointed at with his own gun. He turns around and
15 the Defendant fires the first shot and it strikes him right
16 there. It spins him around and he's trying to flee for his
17 life. He is trying to run out of his home, his own home, as
18 he's backing up, before that first shot is fired. No, he
19 trips. He loses one of his shoes. He's backing up out of his
20 doorway. He drops the tool bit that's in one of his hands and
21 he turns and the first shot is fired. You see that. That's
22 what he was holding when he was shot the first time by his
23 friend. He tripped. He could not get away fast enough. Also,
24 I want you to remember what Dr. Batalis said about this first
25 shot. It was an upward angle. It was consistent with the

1 shooter being shorter than Darius. Darius was five ten. The
2 Defendant is not a tall person. The Defendant's not done.
3 Darius is hurt. He is bleeding. His back is towards the
4 Defendant. He walks right up to him puts the gun up against
5 his head and executes him. He fired one last shot into the
6 back of Darius' head. And Darius dies. We know all of this
7 because we heard from Dr. Batalis. You can look at the
8 pictures. You see that picture. That's what he dropped when
9 he was first presented with the gun in his face. He trips
10 over the carpet and this is where he ultimately died. He has
11 the screwdrivers and tools in his hands from working on his
12 car. He had just come in from working on his car. He drops
13 them as the second shot is fired. The Defendant has just
14 murdered his friend, but he's not done. He rolls Darius over.
15 Darius lands face first from that second shot and he rolls
16 him over. And we know he rolled him over because you heard
17 from Paramedic Horton and you saw the picture. This is
18 Darius' neck. I want you to look at that blood pattern. He
19 was rolled over to his back. He did not land like this.
20 Someone trying to get something out of his pockets did this
21 and that someone is the Defendant. Remember, he needs that
22 money. He doesn't have any money and Darius always had money.
23 I also want you to remember Lilly Gallman. She was the
24 DNA expert. And her testimony, while as streamlined as we
25 tried to keep it, is confusing. What I want you to remember

1 though is, I want you to remember the scissors analysis that
2 Ms. Masser was able to talk to Ms. Gallman about. If you
3 don't touch it, you are automatically excluded. One hundred
4 percent excluded. If you do not touch it, you are excluded.
5 If I don't touch this notepad, I am excluded, but if I touch
6 it, I can't be excluded. My cells have been left behind on
7 this item. And why does it happen with the pockets of Darius'
8 jeans that night? The reason the Defendant cannot be
9 excluded, his DNA cells are there is because he was going
10 through them after he shot and killed him. He didn't do
11 Darius' laundry. There's no explanation for why else his DNA
12 would be in there. He didn't wear these jeans. He was going
13 through his dead friend's pockets to rob him after he
14 murdered him. Look, it's pulled out. This pocket's empty. He
15 went through this pocket first, felt nothing in there. The
16 cash was in this pocket. He grabbed it. He left. He also left
17 Darius' own gun with him. You heard from Michelle
18 Eichenmiller, Darius' gun was the murder weapon. His revolver
19 is the gun where the bullets came from that were found in
20 Darius' autopsy. He's not empty-handed when he leaves that
21 home, the Defendant is not. Go back to what Wrenshad told
22 you. It was a little before ten. He wasn't certain with the
23 time, but right before ten o'clock the Defendant is
24 crouching, he's hiding. He's trying to conceal something.
25 He's right next to Darius' home. What is he trying to

1 conceal? His PlayStation, the marijuana, and the money is
2 down in his pockets.

3 What do we know? We know the Defendant's guilty. We
4 know that earlier in the day he had no money, no drugs,
5 nothing. Didn't have his PlayStation. He was mad. And then
6 shortly after the murder he has money and he has marijuana.
7 He has no explanation for how he has either of those things.
8 And the explanation is that they came from Darius' after he
9 murdered him. We know he's guilty because about ten, twenty
10 minutes passed when Taylor, someone other than the Defendant,
11 sees Darius alive. The Defendant fleeing the scene. This is
12 when he runs into Wrenshad, is trying to hide something under
13 his clothes. He's trying to hide from Wrenshad. Then he goes
14 to his mother's house and he changes clothes. Why does he
15 change clothes? Why does he feel the need to get out of that
16 blue polo shirt? He does this because he's scared they can
17 trace him back to that murder.

18 We know that shortly after Wrenshad sees him, the
19 Defendant calls Reggie. Now the Defendant has plenty of
20 money. He has plenty of marijuana also. He can buy cigars. He
21 can buy beer. He can buy gas. Remember him in that gas
22 station with that pile of money. There's no question that was
23 money in his hands. That's not papers. It's not mail, it's
24 not anything else. That is money he is counting out. If you
25 remember, he turns around and you see him. He's counting out

1 the money. We also know that Defendant's DNA is on the murder
2 weapon and inside Darius' pocket. Had his DNA not been there,
3 he would have been excluded. If I don't touch this, my DNA is
4 excluded. My DNA is not there. If I touch it. I cannot be
5 excluded. Had he not touched the gun or the pocket, his DNA
6 would not be there. And we know he touched the gun when he
7 shot and killed Darius and we know he touched the pocket when
8 he robbed him of his cash.

9 He gets two interviews. They are not consistent at all.
10 They're filled with lies. He's trying to explain the matter
11 that can't be explained. And why is he doing this? He's
12 backtracking, trying to cover his steps. He's doing this
13 because he's guilty. The truth is easy to remember. It's lies
14 that you get confused on. That's why he's not consistent. He
15 leaves Jasper County. He leaves Ridgeland. He goes to
16 Greenwood first and then he goes to California. He gets as
17 far away from Ridgeland as he possibly can. Why does he flee
18 after that interview with Agent Burnett? He flees because he
19 knows they're getting close. He knows the police are on his
20 trail and they are getting close. He's got to get out of
21 there and he's thinking this. He knows they're close because
22 he knows what he did. He knows he murdered Darius.

23 This is the time line of events that matter: Eleven
24 a.m., he's with Reggie. He's mad. He has no money, no
25 marijuana, upset about the PlayStation. Shortly after dark,

1 he's back at the victim's home. At 9:15, Donte leaves Darius'
2 home. He leaves the Defendant and Darius alone. Donte left
3 him earlier. We know at 9:30, Taylor sees the Defendant at
4 Darius' house on the front porch. They're the only two there.
5 A hundred percent sure it was said it was the Defendant. No
6 one else is there. Between 9:40 and 10:00, Wrenshad sees the
7 Defendant leaving Darius' home, or very near Darius' home,
8 hiding and trying to conceal something. We know at about
9 10:15, the Defendant calls Reggie saying he scored money and
10 weed. He didn't score money and weed. He murdered his friend
11 and robbed him of the money and marijuana. At 10:25, Shontay
12 arrives, shortly followed by Davonte. At 10:43, she calls
13 9-1-1, simultaneously, at the same time that the Defendant is
14 spending his dead friend's money at the gas station. We know
15 that about 11:00, law enforcement gets to the victim's home,
16 to Darius' home. They don't find marijuana and they don't
17 find a PlayStation. They don't find any money. Three things
18 we know Darius had that night. Three things the Defendant
19 said he did not have. Two, that we know of he had after the
20 murder, the money and the marijuana. And then between eleven
21 and twelve, the Defendant is dropped back off near Darius'
22 home. Reggie tells us this. He's friends with the Defendant.
23 He says, yeah, I dropped him off at Mr. Hill's home, right
24 near Darius' home. We saw lots of people. What they saw was
25 the police, not just people. They saw the police. Not just

1 people, they saw the police. And then about 3:00 AM, not
2 about 3:00 AM, but at 3:00 AM, is when he's interviewed by
3 Agent Harley and Agent Williams. After that interview, he
4 flees to Greenwood. We know that six days later on the 24th,
5 he's interviewed again for the second time, giving a
6 completely different story than what he said the first time.
7 A completely different story, nothing consistent and then he
8 goes to California, the other side of the country, as far
9 away from Ridgeland as he can possibly get.

10 You may be thinking well, that second story included the
11 story about the three men, the mysterious men that came in
12 and that's when the Defendant heard the shots. Does that make
13 sense? No, that does not make sense. It doesn't make sense
14 because it didn't happen and it doesn't make sense for
15 multiple reasons. It doesn't make sense because there's no
16 signs of forced entry and Darius just didn't let people in
17 his house. You heard from Deandre that if he had someone
18 around, he looked out the window and then he would unlock the
19 door and he would do his business outside. He kept the side
20 door locked. He kept the front door locked. He was not
21 vulnerable to an attack. So, if somebody was going to rob
22 him, they would have had to break in and there's no signs of
23 that. We know that the PlayStation is missing. We also know
24 his own Xbox is not missing and there's an Xbox there. If
25 you're going to rob somebody and this is a grab and go sort

1 of situation, you pick up stuff you can easily carry. They
2 had to go in that bedroom to get the marijuana and they had
3 go in that bedroom and see that Xbox. They left the Xbox. Why
4 did they leave the Xbox? Because they don't exist. Because
5 "they" is actually the Defendant. He didn't care about that
6 Xbox. He wanted his PlayStation.

7 One other thing, Darius was murdered with his own gun.
8 Three people going to rob a drug dealer, who by all accounts
9 from what we heard on that witness stand, everyone knows he
10 has this .38 revolver. They're going to break into his home
11 unarmed? They're going to break in without their own weapons,
12 because they know they're going to be facing Darius with his?
13 No. They aren't going to do that. It doesn't make sense. He
14 was shot with his own gun because that's the gun the
15 Defendant had access to, not those mysterious three men. They
16 do not exist.

17 This has been a long road to get to where we are today
18 and I like the comparison that we're lucky enough to live by
19 the water down here. We're very lucky. Wouldn't have it any
20 other way. When you go to the beach and put your feet in the
21 water, you stir up the sand a little bit, it gets cloudy and
22 you can't see your feet. You know they're there, but you
23 can't see them. The sand is stirred up. Eventually, it
24 settles and there they are. They were always there. They were
25 clouded, but they were always there. That's like the truth.

1 The truth is always simple. It may have been a difficult path
2 to get there, but it's always simple. It's always easy. The
3 big question about the truth is asking yourself what makes
4 sense. In this case everything points that the Defendant is
5 guilty of the murder of his friend. He murdered Darius Woods.
6 He is guilty and he is also guilty of possession a weapon
7 during the commission of a violent crime, Darius' own
8 protection, Darius' own gun.

9 THE COURT: Mr. Plexico, you're recognized.

10 MR. PLEXICO: If it pleases the Court, Madam Solicitor.

11 CLOSING STATEMENT

12 BY MR. PLEXICO:

13 This has been a long week and I want to thank y'all for
14 coming and paying attention. This is my client's only day in
15 Court. He will never have another day in Court. Remember what
16 I told you. His Honor is the judge of the law, you are the
17 judges of the fact and the State has to prove beyond a
18 reasonable doubt that they have carried their burden of
19 proving the Defendant guilty beyond a reasonable doubt.
20 Guilty, beyond a reasonable doubt. That was their duty today
21 and they have completely failed. We have no burden and no
22 responsibility to put forth evidence, but let me ask you,
23 just to start, with a few things.

24 I don't think it's been a long path to where they want
25 to go. I think it's been a lot of rabbit trails, running

1 around and around and around. Now, let me put this scenario
2 to you and I'll elaborate more. This is State's Exhibit #68.
3 This is where they're putting down -- now, this is where they
4 -- the scene of the crime. All right. There's the Subway over
5 at the BP. Subway's over in here. This comes down Jacob Smart
6 Boulevard, Wrenshad Anderson and Davonte Freeman living
7 without any power, broke, no money. Okay? Two brothers.
8 What do you know about Davonte? That he doesn't tell the
9 truth on the stand. That's called veracity, okay.
10 Credibility. He was in that house five to seven minutes.
11 Shontay said that. He denied it. Interrupted the crime scene.
12 Took the gun out, denied it. We know he doesn't tell the
13 truth. We know he steals. He used multiple names. He had
14 something to hide. The question is, what is it? His brother,
15 who looked high as a kite in here, I don't know what kind of
16 drugs he was on when he came here, but that just wasn't
17 normal behavior. That was not a credible witness. All right.
18 He admits to being here about the time -- remember what the
19 EMT worker said, fresh wound. Okay? He says he saw my
20 client, okay. Now, he admits that he was here. His brother's
21 coming up this way. You take the back street back here, you
22 have your Perkins over here. You have all this wooded area.
23 They could have taken stuff out of there and stashed it and
24 stole his money, went back and got it. Wrenshad could have
25 circled back around, gone back to his house, turned the power

1 back on with that money. Now, Wrenshad comes forward three
2 months ago?

3 What do we know, one thing we know out of Ms. Gallman,
4 who was hard to understand, the DNA lady. She said someone's
5 DNA has been in almost all those pockets. I don't know who it
6 was. They didn't give me a standard. I can do a test within a
7 week. As soon as they found out about the time of Darius'
8 death, wouldn't it have been smart for the State to have
9 tested the DNA of Wrenshad Anderson? They didn't bother
10 doing that. Wouldn't it have been smart if they had tested
11 the neighbor, Guy Matthews' DNA. They thought enough to take
12 a DNA test from him. Okay. Or GSR. They didn't bother testing
13 that.

14 Officer McIntosh under oath, a local officer, sat here
15 under oath and said he got a GSR kit from my guy at two
16 thirty. Well, that's what he said. Where is it? Why wasn't
17 it tested? This goes to a concept called spoliation of
18 evidence. When one side has evidence that could help clear
19 the Defendant and they don't act on it, you can hold that
20 against them in presuming that evidence would have been
21 favorable to the Defendant if they had bothered doing their
22 job. They failed to do that. And you know it's there. He said
23 I took it and this is the time. You can't run from it. Can't
24 get away from it. It's in the record. That's it.

25 Now, we don't know who was on the porch. Ms. Cowherd

1 came by, Lanier/Cowherd came by. It was in the dark. I could
2 tell the face, but what? Okay. I couldn't tell what kind of
3 shirt, okay? I saw a man leave. I put the truth down on the
4 statement. Now, no it's not true. Don't know. Was she high,
5 too? She came over to get ten dollars. Was that a ten dollar
6 bag she wasn't telling you about? Or was she already high?
7 I don't know. I mean, she's hanging out with a drug dealer,
8 okay? I mean, it looks like to me they all get high.

9 She couldn't pick him out of a lineup. Where's the
10 lineup? They lost it. Threw it away. It's not here, okay?
11 Evidence that's gone that could have been favorable for my
12 client. Where is it? We don't know. Okay.

13 Now, what happened here was a rush to judgment, okay?
14 My client goes over there. They decide what? Let's go get
15 him. We don't know what the circumstances were exactly
16 because the officer never testified that he gave him a choice
17 to come to the police station. Is this the way we think that
18 the police ought to work? We pick up somebody who's stoned,
19 okay? We pick up somebody who's been drinking and then we go
20 get -- we talk to them and get evidence against him. Look at
21 all the things they were doing to the guy, okay? Did he
22 really want to be there? No. What happens when you're high
23 and inebriated? Your guard goes down. You can't properly
24 exercise your rights. So, the circumstances that they were
25 interviewing him under diminished his constitutional right.

1 What about his capacity at the time being under the
2 influence, okay, to properly exercise, to knowingly and
3 intelligently exercise his constitutional rights? They
4 diminished and took that away from him. He didn't have the
5 capacity at that time, okay? They were convinced.

6 Let me tell you, if they keep you until five o'clock at
7 the police station, if you aren't convinced that they're
8 trying nail you, you ought to be. They were showing him death
9 photographs. They were just trying to freak the guy out and I
10 don't know what this is about -- as I recall what the tape
11 says in regards to when he found out, okay?

12 Who told you about Darius? This chick named Candy
13 Greene. What, did she just call you or what? No, I'm saying
14 I'm coming down the block. She said guess what happened? I'm
15 like what? Okay. I'm like get out of here. There was a bad
16 word in there and how did that make you feel? Messed up.
17 Well, it was a bad word for that. That's the way I recall it
18 being said. There was nothing about any time. Okay?

19 Then they come up with this speculative wads of cash.
20 Studying the BP video, he puts the beer on the counter, okay?
21 He's buying some cigars. He walks around the corner and he
22 come back and he flips something open that looks like a
23 wallet. That's not a wad of cash. Nobody can sit here and
24 just look at that video. They want you just to assume all
25 this stuff. There's no evidence to back up anything aside

1 from, they were friends.

2 The PlayStation was stolen, okay? That was it. That's
3 the evidence. Therefore, he killed him. And there's no other
4 evidence against my client. It's just absurd. That doesn't
5 make any sense. You don't know who was over there.

6 Now, I want to go over this one at a time and I hope I'm
7 not going to bore y'all too much. You know, they have all
8 these pieces of evidence, by the way. They have a screw
9 driver with a bit set. What does that say about my client?
10 You know, this isn't, I've got a bigger pile than you do.
11 It's, you take each one of those and say to yourself, does
12 this mean you're guilty? You make a yes stack and a no stack.
13 You're not going to have anything in the yes stack. Now, in
14 order to consider the evidence, that's the main question to
15 ask, okay? Now, we just can't throw it all in and then
16 decide, well, whatever, okay? Things that don't amount to
17 anything added together, zero, zero and zero is still zero.
18 That's an important concept.

19 What we would all like to know is that person who was,
20 as I said -- I kept reading the statement. DNA not
21 attributable to the standards for comparison is present. Over
22 and over again and I went around the pants where that person
23 was in eery pocket, okay? Now, that person's DNA was also on
24 the handgun. Every pocket almost, except one, and the handgun
25 and remember what about the DNA on the handgun? It said my

1 client couldn't be excluded. Doesn't mean he did anything.
2 Now remember, he's normally over there. So, you're passing
3 around a marijuana cigarette, it comes up here, it comes back
4 to me, I could have everybody's DNA on it when I did that.
5 Okay? And then I put mine. Think about it, okay? Now, that
6 wouldn't be unusual. They couldn't exclude Darius' DNA on
7 that same gun swab. He's the owner. So, it could have been
8 his or former Deputy Blessing, you know, with the -- he does,
9 I guess, the undercover work at Walmart, security, that kind
10 of thing, a security officer or loss prevention. He couldn't
11 be excluded. Oh, okay. So, there are going to be a lot of
12 people and extrapolate that to three hundred million. She
13 said scientists did math differently. I think math is math.
14 Okay. You know, one out of two is a fifty/fifty chance. One
15 in two hundred or three hundred million is a million and a
16 half people.

17 Now, they've got to show evidence that convinces you of
18 something beyond a reasonable doubt. Okay. Would you put any
19 money down on a one out of a one and a half million chance?
20 Okay. That's a million. One with six zeros. No. That's just
21 incomprehensible. Is that competent evidence upon which to
22 base a verdict of guilt? No.

23 The truth is, she sat up here and actually said his DNA
24 was -- started off it couldn't be excluded, but then it into,
25 they have his DNA. Nothing could be further from the truth.

1 You never heard Ms. Gallman once say yes, this is his DNA.
2 Okay? She could exclude him on most of it, okay? It simply
3 couldn't be excluded on one part that came off the pants.
4 Okay? Ended up and all that there is, is the unexplained
5 person who's been through all that stuff. Okay? Was it
6 Wrenshad Anderson? Why didn't they go ahead and test Wrenshad
7 Anderson? This is the guy who came in and was so rude,
8 wouldn't answer questions, appeared to be high on the stand,
9 which takes away his credibility, his believability. Okay?
10 Now, so don't fool yourself and stand your ground. You
11 know, I want you to listen to everybody but when you have
12 odds like that, nothing different was explained from the
13 expert, because it really wasn't there. They may be trained
14 how to testify in court at SLED. Okay? This became a rush to
15 judgment. That's not evidence.
16 So, I'm going to go over the testimony. This is going to
17 take a while and I'm going to apologize to start with, but
18 all of this is important. Lack of testimony. You can find
19 someone not guilty, okay, on the lack of evidence, which is
20 normally what happens. Okay? They wanted to minimize the
21 burglary angle. They didn't put the roommate up, Michelle
22 Gray, who's had her clothes stolen from this house. Okay.
23 That gets pretty bad. All right? When your clothes are being
24 stolen. Now, look at who we're talking about. We've got a
25 man, we can't say he deals in stolen guns, but he's got a

1 stolen gun out of Beaufort. He's got a girlfriend in Beaufort
2 that says, comes here -- he has so much money he buries it in
3 his mama's back yard, okay? He's hauling around a cash box
4 that flips open in front of Taurus Maymi. Okay? All right.
5 And he said, I ought to have robbed him. It's all in
6 evidence, okay? He had a great retail marijuana business if
7 there's such a thing. At least large, great, meaning large,
8 okay? A lot of people knew he had money and drugs.

9 Go back to Wrenshad and Davonte. No power, nothing.
10 Davonte had money to call up and buy some marijuana, but not
11 to turn on his electricity? How strung out is he? What would
12 he do? That should give you pause, okay?

13 Now, and he had a side door. Nobody knows who was coming
14 in and out of that house. It was a side door. And it doesn't
15 make any sense. And this whole idea about a few people were
16 allowed inside the house, his brother testified. That wasn't
17 a big deal, okay? He's not over there, okay, when he's
18 dealing drugs because he doesn't live that lifestyle. He
19 doesn't believe in violence. He doesn't believe in drugs.
20 He's a hardworking honest man. His brother should have
21 followed his path, okay? And it's a big loss for the family
22 but we can't convict the wrong guy. It just doesn't make
23 sense. All right.

24 There were a lot of people over there. A lot of people
25 knew about his stuff. They knew he had money. They were

1 jealous of him. Remember the haters. His own brother said he
2 didn't find out about the burglaries until after he passed
3 away. So, that shows the contact wasn't there because the
4 brother was there and available for his little brother. No
5 question about it. He loved him dearly, but he wasn't there
6 to participate in his drug activities, not at all. Even the
7 State said you never know when you might need your gun from
8 the angry customer or a jealous competitor. The State said
9 that in their opening, okay?

10 They talked about my client being a good friend. Why
11 shoot your source of free marijuana? Just go over there and
12 hang out and people come over there and buy pot and want to
13 smoke some, he gets a little free smoke, too. That doesn't
14 make any sense. The whole thing doesn't make -- their whole
15 theory of the case, there's just nothing to support it. It's
16 all speculation. Oh, he was that mad. Well, you know, things
17 happen. People get over it. You can't turn that into oh, he
18 went out and did this. There's no evidence to support that.

19 All right, Shontay McKeithan came over. And remember
20 looking at the picture, there's the house, here's Darius'
21 vehicle over toward the side door. She's parked facing that
22 way. She's in there listening to loud music, boom, boom, wah,
23 wah, wah, whatever. Okay. She might not hear a gunshot. It
24 could have happened while she was out front. She might not
25 have known. Between her texting and listening to her music in

1 the car, depending on how it is if you're downtown and you
2 hear a backfire or you hear a gunshot, you wouldn't know the
3 difference. It could have happened while she was there and
4 she didn't even know. She says that Davonte went in there. He
5 was in there for five to seven minutes, okay. She said I
6 heard him screaming and I heard him hysterical. No. What was
7 that boy doing in there all that time and coming out the side
8 door. Remember, her car was parked over here. Here's the side
9 door. Wrenshad's nearby, okay? Did he go over to cover for
10 his brother? What was going on? He couldn't turn on his
11 power. He didn't have any money either, did he? Neither did
12 Wrenshad. I mean, he's living without electricity. That's
13 pretty much bottom of the barrel. It's not quite living in
14 your car, but it was very close. She says I went inside. It's
15 on the tape. He's dead on the floor. Then she says no, I
16 didn't go in. You know, nobody's being completely honest
17 here. All right. It's like if your names Larry, if your
18 name's Freeman, if your name is Larry Jones, Davonte Jones or
19 is it Davonte Quinton Freeman, okay? I always lie to people.
20 I could hardly believe that he got up here and admitted it.
21 Is there any substance that as a juror searching for the
22 truth you would give any credibility to what this man says?
23 You've got to remember who you're dealing with. He says he
24 gives false names all the time. Thought he had a warrant out
25 on him. I didn't get to ask what did you think you got caught

1 at this time? Well, what did he get caught at? False
2 information, okay. That's a crime you're giving false
3 information to the police. What did the police do with it?
4 Why is it so bad? You write it down. You use it in court. And
5 then the policeman's using your words to falsely accuse
6 someone else. Okay. Remember the police are only as good as
7 the source. All right? That's why it's so serious. He can't
8 be trusted. That's what that tells you. And a thief, shotgun,
9 petit larceny. What's most important about what I brought out
10 about his prior record? It's the assault and battery second
11 degree, okay? He's not just a thief. He's a thief that hurts
12 you. Think about. Who runs with his brother, who's back there
13 with his brother Wrenshad and y'all saw the great character
14 that Wrenshad was from that witness stand. It was enough to
15 frighten you, okay? You couldn't get a straight answer out
16 of him. He couldn't pay attention. All right? What is he on?
17 What would you do when you live like that, okay? Your
18 power's off? No more speculation than what the State's saying
19 about my client. Think about. And right there at the time.
20 Probably the best witness for my client was the EMT
21 worker. She came in. She said that it was a fresh wound. And
22 these people got here about ten forty-four or so. All right.
23 It was a fresh wound then. My client's already gone. Okay.
24 And the more, ironically, Wrenshad Anderson was pushed on the
25 ten o'clock -- remember now, he didn't start talking until

1 like last September. October, November, December, you could
2 do a DNA test a week, that'd be thirteen opportunities they
3 had to bring his DNA down here and give you a sample. Now,
4 they couldn't do that. They could go get him and help him
5 write a statement from the boy that had -- a young man that
6 had no concept of time. Time didn't matter to him. So how he
7 could say if he saw my client when he did? How would he
8 remember what somebody was wearing twenty-seven months later?
9 Oh, they were wearing a blue shirt or a yellow shirt or a
10 gray shirt or a red shirt. Would you believe the person with
11 the abilities that you saw here could remember what somebody
12 was wearing twenty-seven months ago? No, if he saw him. But
13 to stupidly put himself there kept pushing it up. Well, that
14 just shows you he's right there, like he said, in the
15 neighborhood. Did he inflict the fresh wound? Fresh, okay?
16 That's impressive. Okay.

17 Now, somebody rolled him over, all right. Well, they
18 went over there and robbed him, killed him and robbed him.
19 But there's no evidence my client did that. They would have
20 found the money box, okay? Now, remember, he was going out
21 that night. He's headed to Beaufort. He's going wherever. His
22 house was getting broken into. Taylor Lanier says in her
23 statement he left. Well, did he go to his mom's house? Run
24 down to his mom's house or somewhere else? Stash his money
25 and stuff for whatever he needed or something or hide his

1 marijuana, we don't know. Was he out of marijuana? One of
2 the phrases I keep hearing people use on TV and my clients
3 sometimes -- I get an education I don't need in twenty-five
4 years of doing this -- is they call that re-upping, okay?
5 When you run out, you've got to re-up to have drugs to sell,
6 okay? Maybe he just ran out that day. I mean, we don't know,
7 okay? Maybe he paid some bills. Maybe he didn't have any
8 money that day. Maybe business wasn't as good, you know,
9 everybody thought it was or maybe the money was stolen. But
10 we don't know who did it. We just don't know who did it. So
11 he even says he came up by the cut. He came up by the woods
12 that's going over toward the apartments on the -- I guess
13 you'd call that Adams Street extension that comes up behind
14 the Chinese Restaurant. Okay. Lots of places to be over there
15 and hide stuff, okay? He admits being in the car. So, if he
16 was over there, he's really covered. He was over there
17 earlier and robbed him, okay. Maybe he left and got worried
18 about being seen. Maybe he was the last one out of the house,
19 okay. All right. And he saw Shontay pull up and that's why he
20 turned around and came back, to make sure she didn't see him
21 leaving the house. Maybe that's why he went in first. All
22 right? Was he looking to see they didn't miss anything?

23 Is that scenario anymore speculation than the case that
24 they have put up against my client? And the answer is no. And
25 it's just as likely, and just as probable. And the unknown

1 person is Wrenshad. The unknown DNA is Wrenshad. That's just
2 as likely. If that's not a reasonable doubt, I don't know
3 what is. Remember the guy lives three to five minutes away,
4 he and his girlfriend. They were all right there. All right.
5 Knew his gun. Knew it well, all right. That tells you a lot.
6 What happened? They were saying oh, well no forced entry.
7 The guys got tons of customers. Somebody comes up. He's got
8 marijuana in his bloodstream. He's high. His guard's down.
9 Hey brother. Man, what's going on, blah, blah. I come to get
10 some weed from you. Come in and it's not a ten or a twenty or
11 whatever it is. It's a gun, okay. All right. They robbed they
12 guy, kill him with his own gun. That way they leave with
13 theirs. That's what's called criminal thinking, all right. My
14 gun is still clean. I don't have to throw it away until I
15 kill somebody. But if I kill somebody with their gun, I get
16 to keep mine. It's criminal thinking. The people you see on
17 that witness stand, was that an example of criminal thinking?
18 I think they've got warrants on me. Okay. Wrenshad Anderson,
19 all right. Now, he denied walking outside with the gun. Well,
20 we know he did. And look at the drama. Is that drama for
21 real? Now, he can be that dramatic. Because remember now, I
22 think it was Officer Smith that said he kept up the lie about
23 the false name for like two hours. He is doing one thing,
24 okay, lying to the police and maintaining that lie, all the
25 while being dramatic. Now, it's been thirty months. There's

1 no point in being dramatic now, okay. The same way his
2 brother was dramatic and when you get into drama, what are
3 you trying to cover up? That's the question, okay? Why is
4 that? Was that overly dramatic? But you've got that second
5 story, okay, where I'm going to maintain my lie, okay? All
6 right.

7 Now, Ms. Claycomb came in as the crime scene
8 investigator. They picked up and did a lot of things. They
9 didn't come up with a fingerprint on my client. They didn't
10 come up, the DNA person, this is his DNA on an incriminating
11 item. Okay. Now, I'm surprised they didn't find more since he
12 hung out over there all the time, okay? All right. But let's
13 go to Agent Williams. I want to go back to the concept of
14 interviewing people who are intoxicated, okay, and under the
15 influence of marijuana. You know, that's just wrong. It's
16 wrong. If you're doing that and they're making all those
17 jokes, okay, about oh, that's really good. Oh, the Paul done
18 got you then. You know, you're high. What's somebody going to
19 do? You know, they're not going to sit there in the middle of
20 the police station and admit you're drunk. That's right
21 before they go to jail for public intoxication, all right.
22 You know, free and voluntary means they didn't order you in
23 the car. They gave you a choice, okay. You were rational at
24 the time that you gave the statement, meaning that you were
25 sober and you were not stoned. Okay. It's not a freely given

1 and voluntary statement if you don't have the capacity
2 understand. Y'all have the right as jurors to say we'll we're
3 not going to have this happen in America. This is how you get
4 wrongful convictions, okay? Is when you come in here, all
5 right and you start taking, just letting the State slide but
6 not follow the rules. The Judge will tell you the conditions
7 when the statement is given. It's the capacity to know and
8 understand and exercise your rights and when you get somebody
9 that's not in that condition, oh, they loved interviewing
10 him, kept him there until five in the morning, okay? They
11 knew they had their man shaking those death photographs at
12 him, trying to get it out of him or lose emotional control
13 over the loss of his friend. And you can imagine how horrible
14 that is, okay. All right. That's like brainwashing. You know,
15 this is as good we expect. You know, if the police come in
16 here and they want you to consider a statement, it ought to
17 be a statement from somebody who was not high, who was not
18 drunk. They're not keeping him there until five o'clock in
19 the morning asking him questions, okay. All right. You're
20 better than that. And the Judge will give you an option not
21 to consider that statement that he made because it doesn't
22 fall in American standards where you only take statements
23 from people who have the capacity to know what they're doing,
24 who have the intelligence, who's not high, who understands
25 what they're doing and waives that. If you don't have that,

1 how can you knowingly waive your rights and give a statement?
2 You can't. Okay? You can take that videotape and just shut it
3 down and say I will not consider anything that's said on it
4 because of the awful circumstances that they got that
5 statement. They go in there and laugh about him being high
6 and stoned and picked on him about it and then want to come
7 in here and tell you, oh, he was just fine. You saw. You
8 heard. Don't ignore it. You took an oath to follow the law.
9 The Judge will tell you if you don't think it was knowingly,
10 freely, and voluntarily given, okay, considering his capacity
11 at that time, you don't have to consider it. It's as if it
12 never happened, okay? Now, I'll tell you one thing by five
13 o'clock if he didn't know they were going to frame the guy,
14 because you might as well call it what it is, okay. He knew
15 by five o'clock. If he didn't know then, he knew by the time
16 the second agent talked to him, okay? He told the second
17 agent, I'm getting all these threats and stuff because he
18 testified to that. Okay. That's why my client left. Okay.
19 Rush to judgment, okay Without any evidence, which is this
20 same thing that the State has to do, too, is a rush to
21 judgment without any evidence. Innuendo, okay.
22 And the idea that my client had no money. Well, he said,
23 hey, the guy, he works more than me. A least he's got a
24 regular call on the job. Okay. I only work for the
25 tournament, you know. You know, they calling him regular.

1 Now, he's basically with his mother. What's the big need for
2 money? There is no money. And you're talking about some
3 beers, some cigars and a couple of -- whatever he said, buds
4 of marijuana or something. What does that cost, twenty
5 dollars? Does this sound like a man who just a big haul?
6 No. And they want you to take -- he's holding his wallet. You
7 can see it flip open if you're going to consider it. You can
8 see it flip open. And you, you know, come on. I mean, is that
9 evidence of guilt? No.

10 They haven't put anything up yet. So you're going to
11 convict a man for either being poor or having twenty dollars
12 or only having twenty dollars or having forty dollars or
13 something. I don't know. You can't look at that and say
14 that's money. They want to snow everybody. They don't want
15 you to bother with it. It's something you could argue about
16 what he had in his hand and I bet you'd have twelve different
17 opinions and you could argue about all that. If you can't say
18 it's money, you can't say it's money. It could be anything in
19 his wallet. And you really can't look at a person with that
20 demeanor when you consider it and say that he's not high and
21 he hadn't been drinking. Just take the word of the officers
22 for it. They believed it. They kept talking about it, didn't
23 they. Now, they want to come in here and say, no, he's fine,
24 use that as evidence. That's just wrong. You're better than
25 that. Don't let the State get away with doing that. Not in

1 this case.

2 And what do they have? No direct evidence, nothing and
3 you put in bad police behavior, okay? Bad, awful police
4 behavior, un-American I would suggest, police behavior.
5 Barely a circumstantial evidence case. That just compounds
6 the evil. That's more than reason to find my client not
7 guilty. Absolutely.

8 Now -- by the way, what was this about them not
9 interviewing Davonte. Okay? I asked Agent Williams the first
10 of that interview, Mr. McIntosh was saying, asking him, you
11 know the officer or something. And the guy goes, he's done
12 with Davonte. Then you see Agent Williams ask Agent Harley,
13 did you interview him? The second SLED agent? No. It had to
14 be the other one or just not talking to him at all. So what
15 happened? They go get Davonte's crap -- excuse my word. Make
16 up their mind. Spend three hours trying to hammer my client.
17 They fell for it. It's just ridiculous. They're going to
18 finger somebody. I know they're under a lot of pressure to
19 solve crime. Again, this is not the way to do it. Okay.

20 This GSR stuff. They're professionals, or supposed to
21 be. They waited until five o'clock. They knew there was no
22 point in taking the GSR kit after talking to him for hours,
23 okay? There was no point then. They should have done it
24 first. But you see they really didn't want one because the
25 results would have been favorable to my client. They had to

1 do one to have the paperwork look right. Oh, we just didn't
2 do it in time. They had plenty of time. They had two. One
3 they didn't submit, okay? Or didn't care about justice.
4 Didn't care about getting you the good information on the one
5 that came at two thirty, okay, because they were going to do
6 my client. They were going to get my client.

7 Now, you're not part of a lynch mob. There's already
8 been some rush to judgment. You know, we need careful,
9 considered deliberation, based on guilt proven by competent
10 evidence that takes away every reasonable doubt. The State's
11 simply failed to do this. And what else about Donte Jenkins
12 this whole thing about the PlayStation? It comes up thirty
13 months later. Well, I didn't say anything because, you know,
14 my mind had lapsed because Darius is gone. She was doing her
15 own investigation. So, if you have doubts, you're not the
16 only person who has doubts, you know.

17 And I still can't get over everything about Wrenshad. A
18 man who lives with no time line. They didn't produce the
19 evidence. When you start listening to this and you go, whoa,
20 you were there, you know, right around this time? What's the
21 first thing you ought to do? You ought to get him a DNA test.
22 And that's probably one of the most important tests. You
23 know, in this whole -- he never said anything bad about my
24 client. He was hauling away a money box, okay? He's got an
25 Xbox, he's hauling away a money box. Oh, he looked funny. I

1 don't like him. He a fool. What's that craziness? That
2 didn't make any sense. I mean, I'm just bewildered. Now,
3 somebody hauled this stuff away. If he was leaving, as they
4 want you to believe, I mean, it didn't go into thin air. Or
5 was it Wrenshad? Or just somebody else who was lower on
6 money, okay? Somebody could have driven down that side road,
7 came up behind KFC, robbed the man, left that way. Nobody
8 would ever know it. Could have been walking. Could have been
9 in a car. Could have been on a bicycle. Could have walked
10 down Adams Street, hung a left, went down to Savannah. He'd
11 have been out on the interstate. Could have went across the
12 main highway and Logan Lane and went down toward the
13 interstate that way, okay? Went out toward Johnson's
14 Crossing or whatever it is out there. I'm not sure. But, I
15 mean, you know, it could have been anybody, anybody. Yes, and
16 Mr. McIntosh did say he had a buccal swab from Guy Matthews,
17 which was also not turned in. And what about these denials?
18 A retired agent came in here, all right. He said the
19 interview was two or three hours, I forget, you know. How
20 many times do you have to say I didn't do it? I'm not guilty.
21 I didn't kill that man. Sir, I didn't kill my friend. I
22 didn't do it. I mean, over and over and over and over and
23 over and over again. The people don't care. The man is guilty
24 and you'd better tell us something. What does that mean, the
25 quality of what he says and what he's telling them. He's

1 getting drugs. All right. Is that the way to conduct an
2 interview and to get a statement out of somebody, okay? Look
3 at the second interview. If people know who you are, all
4 right. Came out and said his name. I wasn't there, okay. In
5 the second interview. Would you be eager to rat them out as
6 violent as this world is, okay? Would you leave? Who did it?
7 Or is that just a story that he told them just to get the guy
8 to shut up? Because after three hours, that's what human
9 beings do when they don't listen to you. It's like nagging of
10 a bad spouse, going on and on and on and on and on until they
11 finally tell them what they want to hear, okay, just to get
12 them quiet. And what happens when people do that? It's
13 called wrongful confessions, okay, or wrongful convictions.
14 May can get lucky and be freed after thirty years from now
15 and everybody -- nobody wants to get lucky that way. All
16 right. You want quality police work. It is not done here.
17 When a case presents obvious questions that will make you
18 hesitate to act, a reasonable person hesitate to act, okay,
19 on the evidence that's there, the State has a duty to fill
20 those holes and answer those obvious questions. That wasn't a
21 question about Wrenshad Anderson's DNA that just surfaced.
22 I'm not brilliant, okay? That's just obvious to any lay
23 person who's there. We want to test anybody who is nearby at
24 the time that you at least knew about. Not that the house
25 isn't right down the road from the interstate and somebody

1 could have just pulled off the interstate, just had a
2 haphazard robbery. You don't know. You just don't know. Like
3 I said over fifty denials, okay. I wish we had a GSR test to
4 give y'all on my client, okay. It could have been one of two,
5 but bad police behavior kept us from doing that, which is a
6 real shame for us. It's a shame for this community. And I
7 don't want you to think at all because this young man,
8 Davonte Freeman is talking about his brother who has a
9 different last name, that if Davonte Freeman was excluded,
10 that Wrenshad Anderson would have been. I think I got that
11 out clear, with the DNA. Ms. Gallman, the lady who testified
12 about the DNA was on the stand, okay. One doesn't mean the
13 other, all right. So, that question is still unanswered. And
14 if you have a billion, a million millions is a billion. So if
15 you've got a billion, you go well, you've got part of it, a
16 million there. Yeah, but he's still one in a million because
17 a million, million is a billion. Thank about it. All right.

18 Now, furthermore, I don't know her. I don't know where
19 the idea came from but I want to be sure that you did not
20 miss the forensic pathologist, the doctor who testified. His
21 idea about the size of the person could be any size. Okay.
22 Depending on how you hold the gun for that trajectory. It
23 doesn't mean it has to come from somebody shorter, taller or
24 the same size. It could have been anybody and that would also
25 have to do with the position of the person who was shot at

1 the time. Okay. If they dropped a screw driver and they were
2 leaning, okay? All right. None of that would have matter. It
3 would have made him shorter, okay. Maybe they were
4 scratching. Who knows, okay. Just use your common sense.

5 He said that the multiple trajectories for different
6 kinds of people. You know, I wish we knew who the
7 unspecified, okay, person was in all of these test results,
8 okay? Because that's probably who the true killer is. We
9 just don't know today. One day we might know. They might have
10 a comparison to run. That doesn't mean you have to convict
11 somebody today.

12 All right. You have heard all this evidence day after
13 day, all right. I know I'm a little slow sometimes and I hope
14 I haven't bored you. This is really an important case. There
15 is no evidence against my client. There's no direct evidence,
16 okay. Now, they used shameful techniques to try to get my
17 client convicted. I don't think they came up with the
18 evidence, all right. They haven't put up trustworthy
19 witnesses. My client, like I said, he knew they were after
20 him. Imagine being an innocent person and they're determined
21 hour after hour, interview after interview that they're going
22 to get him. Okay. They don't bother testing more likely
23 suspects because they've already staked their reputation on
24 you. Because when he was arrested, later okay, and then
25 Wrenshad Anderson came forward. They had already staked their

1 professional reputations that my client was guilty. They
2 couldn't go back and do the right thing, which was test
3 Wrenshad Anderson, do DNA swabs for him, compare them to the
4 results. And if he came up matching everything in there,
5 would not the agent have wanted to bring the right person to
6 justice or a solicitor? Okay, they may have said I have a
7 better prosecution case on Wrenshad Anderson than I have on
8 Billy Phillips, but they had staked their reputations on it,
9 okay. The process was moving. And even though they could,
10 they ignored that. And that, you don't know the answer to.
11 You don't know what the test would have been. Just like the
12 GSR test, okay. You can't see how good the picture was of my
13 client that anybody could recognize it, even yourselves, but
14 they don't have it. Can somebody claim to know him? Sure. If
15 that's the person they saw on the porch in the dark. You
16 don't know the color of the shirt. Somehow the Solicitor
17 believes that Cowherd, Ms. Lanier Cowherd knew the color of
18 the shirt. It was dark. She didn't know. I asked her. You
19 could tell the face but not the shirt. You remember that,
20 correct? Okay.

21 The State's taking testimony that's not there. We could
22 not -- the decedent couldn't be excluded, Jason Blessing
23 couldn't be excluded, my client couldn't be excluded on that
24 on that one item. That's just the few that they tested, okay.
25 Now, that went -- the State's presentation in their closing

1 said they couldn't be excluded because they have his DNA.
2 Nothing could be farther from the truth. You're being
3 deluded. Don't allow yourselves to be deluded. Okay? All
4 right. Sometimes it black and white. Sometimes things are
5 gray. All right. When you hesitate, when you pause and go
6 this isn't right, okay. I have a reasonable doubt. Pause,
7 hesitate, hesitate to act, there's no evidence. You're going
8 to take away someone's freedom. And remember, this isn't
9 about a fender bender, okay. We're not paying out an
10 insurance settlement. You're talking about -- when you come
11 to criminal court, these matters are serious. You're talking
12 about someone's freedom, okay. If you're going to take it
13 away, you need to make sure that the State -- because the
14 buck stops here is with each and every one of you
15 individually and as a group. Your conscience. We can't change
16 your decision. You make sure the State has carried their
17 burden putting forth proper evidence to prove my client
18 guilty of beyond every reasonable doubt. And if you hesitate,
19 and you doubt, you know a conviction wouldn't be right. Okay.
20 Stand by your principals. Talk, consider other peoples'
21 viewpoint. You have to go home with yourself after this and
22 it doesn't need to be a rush to judgment.

23 I want to thank y'all for your patience with me and for
24 your time. Mostly I want to thank you for your service as
25 jurors. I think Winston Churchill was right. He said aside

1 from serving in wartime that service on the jury was probably
2 your greatest responsibility as a citizen, greatest duty. Not
3 everybody comes to jury service and we're glad that y'all
4 did. We're glad that we had an opportunity -- I'm glad that
5 we have Americans that care and would come here and listen to
6 the case, okay, so that my client, Mr. Phillips, could have
7 his day in court and I believe when this day is done that
8 y'all will come back with a just verdict of not guilty for my
9 client, Billy Phillips. Thank you.

10 CHARGE ON THE LAW

11 THE COURT: Thank you, Mr. Plexico. Madam Forelady,
12 ladies and gentlemen of the jury, I'm going to ask you to
13 stand and stretch for just one moment. You can be seated.
14 Madam Forelady, ladies and gentlemen of the jury, you've
15 heard all of the evidence. You've heard the closing
16 arguments. It's now my responsibility to charge you the law.
17 You've taken a solemn oath that you would listen to the
18 evidence presented in this case, find out what the truth is
19 and apply it to the law.

20 Y'all have paid very close attention throughout this
21 trial. I've watched you. When the lawyers asked the
22 questions, you looked at them. When the witness answered, you
23 looked at them. Clearly you've been paying attention. But in
24 order for you to fulfill your solemn duty, you have to pay
25 attention to what the law is. I wish there was a good way to

1 do it, an easy way to do. It's sort of like taking medicine.
2 You've just got to perk up, pay attention, and sit on the
3 edge of your seat, because these are important matters. It's
4 important for you. It's important to the State of South
5 Carolina. It's important to the Defendant. Pay very close
6 attention as I charge you the law.

7 Madam Forelady and ladies and gentlemen of the jury, I
8 remind you that during this trial you and I have certain
9 duties to perform. As the trial Judge, it is my
10 responsibility to preside over the trial and I also have the
11 duty to rule on admissibility of evidence. You are to
12 consider only the competent evidence before you. You're to
13 consider only the testimony which has been presented from
14 this witness stand, any exhibits which have been made a part
15 of the record, any stipulations of counsel.

16 I have the additional duty to charge you the law. As the
17 presiding Judge, I am the sole judge of the law and it's your
18 duty as jurors to accept and apply the law as I now state it
19 to you. If you already have an idea as to what the law is or
20 what the law ought to be and it does not agree with what I
21 now tell you the law is, you must abandon that idea because
22 you are sworn to accept the law and apply the law exactly as
23 I state it to you.

24 In every case tried before a jury, the jury becomes the
25 sole and exclusive judge of the facts. The trial Judge cannot

1 intimate, state, comment on, or make any statement to a trial
2 jury about the facts. Since you the jury are the sole judge
3 of the facts, you are not to infer from what I have said in
4 the progress of this trial, in ruling upon the admissibility
5 of evidence or otherwise, or anything that I say now during
6 the course of this instruction to you, that I have an opinion
7 about the facts. The law simply does not allow me to have an
8 opinion about the facts. This is a matter solely for you, the
9 jury, to determine. As jurors, it is your duty to determine
10 the effect, value, weight and truth of the evidence presented
11 during this trial.

12 Ladies and gentlemen of the jury, this indictment
13 charges the Defendant with murder and possession of a weapon
14 during the commission of a violent crime. I remind you that
15 the fact the Defendant was arrested, charged and indicted is
16 not evidence. It's not to be considered by you as evidence of
17 guilt, nor does it create any presumption or inference of
18 guilt. This document is simply the formal written instrument
19 which contains the charges made against the Defendant. It's
20 the formal document by which this case is brought into this
21 Court.

22 Indictments in this case allege two separate offenses,
23 as I mentioned to you; murder and possession of a weapon
24 during the commission of a violent crime. Each indictment
25 charges a separate and distinct offense. You must decide each

1 indictment separately on the evidence and the law applicable
2 to it uninfluenced by your decision as to the other
3 indictment. The Defendant may be convicted or acquitted on
4 any or all of the offenses charged. You'll be asked to write
5 a separate verdict of guilty or not guilty for each
6 indictment.

7 The Defendant has pled not guilty to this indictment and
8 that plea puts the burden on the State to prove the Defendant
9 guilty. A person charged with committing a criminal offense
10 in South Carolina is never required to prove himself
11 innocent. I charge you that is an important rule of law that
12 a Defendant in a criminal trial, no matter what the
13 seriousness of the charge may be, will always be presumed to
14 be innocent of the crime for which the indictment was issued,
15 unless his guilt has been proven by evidence satisfying you
16 of that guilt beyond a reasonable doubt. This presumption of
17 innocence does not end when you begin your deliberations, but
18 it accompanies the Defendant throughout the trial until you
19 reach a verdict of guilt based on the evidence satisfying you
20 of that guilt beyond a reasonable doubt.

21 The presumption of innocence is like a robe of
22 righteousness placed about the shoulders of the Defendant,
23 which remains with the Defendant until it has been stripped
24 from the Defendant by evidence satisfying you of the
25 Defendant's guilt beyond a reasonable doubt. The presumption

1 of innocence is not a mere legal theory, it's not just a
2 legal phrase. It's a substantial right to which every
3 Defendant is entitled unless you, the jury, are satisfied
4 from the evidence of the Defendant's guilt beyond a
5 reasonable doubt.

6 What is reasonable doubt in the law? A reasonable doubt
7 is the kind of doubt that would cause a reasonable person to
8 hesitate to act. The State has the burden of proving the
9 Defendant guilty beyond a reasonable doubt. Some of you who
10 have served in civil cases where you were told that it's only
11 necessary to prove that a fact was more likely true than not
12 true, such as by a greater weight or preponderance of the
13 evidence. In criminal cases, the State's proof must be more
14 powerful than that. It must be beyond a reasonable doubt
15 Proof beyond a reasonable doubt is proof that leaves you
16 firmly convinced of the Defendant's guilt.

17 There are very few things in this world that we know
18 with absolutely certainty. And in criminal cases the law does
19 not require proof that overcomes every possible doubt. If
20 based on your consideration of the evidence you're firmly
21 convinced the Defendant is guilty of the crime charged, you
22 must find the Defendant guilty. If, on the other hand, you
23 think there is a real possibility that the Defendant is not
24 guilty, you must give the Defendant the benefit of the doubt
25 and find him not guilty.

1 There are two types of evidence which are generally
2 presented during a trial, direct evidence and circumstantial
3 evidence. Direct evidence directly proves the existence of a
4 fact and does not require deduction. Circumstantial evidence
5 is proof of a chain of facts and circumstances indicating the
6 existence of a fact. Crimes may be proven by circumstantial
7 evidence. The law makes no distinction between the weight or
8 value to be given to either direct or circumstantial
9 evidence. However, to the extent the State relies on
10 circumstantial evidence, all of the circumstances must be
11 consistent with each other and when taken together point
12 conclusively to the guilt of the accused beyond a reasonable
13 doubt. If these circumstances merely portray the Defendant's
14 behavior as suspicious, the proof has failed. The State has
15 the burden of proving the Defendant guilty beyond a
16 reasonable doubt. This burden rests with the State regardless
17 of whether the State relies on direct evidence,
18 circumstantial evidence, or some combination of the two.

19 Ladies and gentlemen of the jury, a statement alleged to
20 have been made by the Defendant has been admitted into
21 evidence in this case. While the Court has determine that
22 this statement is admissible, I instruct you that you make
23 the ultimate decision of whether or not the Defendant made
24 this statement. If the Defendant did make the statement, you
25 must determine whether the statement was made by the

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1 Defendant voluntarily and of his own free will. This means
2 that the statement was not caused by pressure, force, fear,
3 threat, coercion or intimidation or by hope or a promise of
4 leniency or a reward of any kind. In determining whether the
5 statement was voluntary, you should consider both the
6 characteristics of the Defendant and the details of the
7 questioning. Some of the factors you must consider are: the
8 age of the Defendant, the Defendant's education or lack
9 thereof, the Defendant's mental ability or capacity, the
10 Defendant's IQ or intelligence, the Defendant's background
11 and environment, the place and length of detention, the
12 nature of the questioning, the advice or lack thereof to the
13 Defendant of his constitutional rights, including but not
14 limited to the right to remain silent that any statement
15 could be used against him in a court of law, the right to
16 have a lawyer present, that if he could not afford a lawyer,
17 a lawyer would be appointed to represent him without any cost
18 and that he could stop making the statement at any time. You
19 must carefully consider all the surrounding circumstances
20 before you give any weight to an alleged statement.

21 The State has the burden of proving beyond a reasonable
22 doubt that the alleged statement was voluntary. If you
23 determine it was, you may give the statement any further
24 consideration that you deem proper. You must decide what
25 weight, if any should be given to the alleged statement. If

1 you determine the allege statement was not the free and
2 voluntary statement of the Defendant, you should not consider
3 the statement at all.

4 Ladies and gentlemen of the jury, I instruct you and
5 emphasize that the fact the Defendant did not testify is not
6 a factor to be considered by you in any way in your
7 deliberations and in your consideration on the question of
8 the guilt or the innocence of the Defendant. It must not be
9 considered by you in any manner, whatsoever. A Defendant has
10 the Constitutional right to remain silent and the assertion
11 of this right must not be considered by you in your
12 deliberations. I repeat, under your oath, you're to draw no
13 conclusion whatsoever from the fact that the Defendant in
14 this case did not testify. The fact that this Defendant did
15 not testify should not eve ben discussed in the jury room.
16 Madam Forelady, I'm going to ask that you enforce that rule.
17 There will be no discussion about the fact that the Defendant
18 did not testify in this case. After all, the burden of proof
19 as I have stated to you is on the State. The State is not
20 required -- the Defendant is not required to prove his
21 innocence. The burden of proof remains on the State to prove
22 guilt beyond a reasonable doubt.

23 Necessarily, you must determine the credibility of
24 witnesses who have testified in this case. Credibility simply
25 means believability. It becomes your duty as jurors to

1 analyze and to evaluate the evidence and determine which
2 evidence convinces you of its truth. In determining the
3 believability of the witnesses who have testified in this
4 case, you may believe one witness over several witnesses or
5 several witnesses over one witness. You may believe a part of
6 the testimony of a witness or reject the remaining part of
7 the testimony of that same witness. You may believe the
8 testimony of the witness in its entirety or reject the
9 testimony of a witness in its entirety. You may consider
10 whether any witness has exhibited to you any interest, bias,
11 prejudice or other motive in this case. You may also consider
12 the appearance and manner of the witness on the witness
13 stand, their demeanor. There has been evidence presented that
14 witnesses have made prior statements, which are not
15 consistent with the witnesses present testimony. You may use
16 this evidence to decide whether to believe the witness. You
17 may also use evidence of the earlier contradictory statements
18 to determine the truth of those statements. It is up to you
19 to decide whether to believe the earlier statements or the
20 testimony given at trial. If a witness has shown to have
21 knowingly testified untruthfully concerning any material
22 matter, you may consider this in determining whether to trust
23 the witness' testimony as to other matters. You may reject
24 all the testimony of that witness and give all or part of the
25 testimony the weight you think it deserves.

1 A person who has a past criminal record is competent to
2 testify during a trial. A past record does not affect the
3 ability of that witness to testify. A past record may only be
4 considered by you, if at all, in determining the witness'
5 believability. Remember, you are the sole judges of the facts
6 in a case and of the believability of any and all witnesses.

7 In this case there were allegations of spoilation or
8 destruction of evidence. The State not only has the burden of
9 proof of guilt, but also it has the burden of producing
10 evidence which should establish the innocence of the
11 Defendant. When evidence is lost or destroyed by a party, you
12 may infer that the evidence which was lost or destroyed by
13 that party would have been adverse to that party. If you
14 find, first, that evidence was spoiled or was destroyed and
15 if you further find that the evidence could help establish
16 the innocence of the Defendant, you may then consider those
17 facts in deciding whether or not the State has met its burden
18 of proof.

19 Rules of evidence ordinarily do not permit witnesses to
20 testify to opinions or conclusions. An exception to this rule
21 exists for witnesses we call expert witnesses. A witness who
22 by education and experience has become expert in some art,
23 science, profession or calling, may state an opinion as to
24 relevant and material matter in which the witness claims to
25 be an expert. And may also state the reasons for the opinion.

1 You should consider any expert opinion received in evidence
2 in this case like any other evidence. Give it the weight you
3 think it deserves. If you decide that the opinion of an
4 expert witness is not based on sufficient education and
5 experience or if you conclude that the reasons give in
6 support of an opinion are not sound, or that the opinion is
7 outweighed by other evidence, you may disregard the opinion
8 entirely. An expert witness' testimony is to be given no
9 greater weight than that of other witnesses simply because
10 the witness is an expert. Further, you are not required to
11 accept an expert's opinion, even though it's not
12 contradicted.

13 An issue in this case is the identification of the
14 Defendant as the person who committed the crime charged. The
15 State has the burden of proving identity beyond a reasonable
16 doubt. You must be satisfied beyond a reasonable doubt of the
17 accuracy of identification of a Defendant before you may
18 convict the Defendant. Identification testimony is an
19 expression of belief or impression by the witness. You must
20 determine the accuracy of the identification of the
21 Defendant. You must consider the believability of each
22 identification witness in the same way as any other witness.
23 You may consider whether the witness had an adequate
24 opportunity to observe the Defendant at the time of the
25 offense. This will be affected by things like how long or

1 short of time was available. How far or close the witness
2 was, the lighting conditions, whether the witness had the
3 chance to see or know the person in the past. Once again, I
4 instruct the burden of proof on the state extends to every
5 element of the crime charged and this specifically includes
6 the burden of proving beyond a reasonable doubt identity of
7 the Defendant as the person who committed a crime. If, after
8 examining the testimony you have a reasonable doubt as to the
9 accuracy of identification, you must find the Defendant not
10 guilty.

11 Ladies and gentlemen of the jury, mere presence at the
12 scene is not sufficient to prove someone guilty of a crime.
13 The Defendant's presence where a crime is being committed or
14 mere association with the person who commits a crime, does
15 not make a Defendant an accomplice or an aider or abetter of
16 the person committing the crime. The burden is on the State
17 to prove every element of a crime charged. If you find after
18 reviewing all the evidence that the State has proved that the
19 Defendant was only present at the scene of a crime, and that
20 they have not proved beyond a reasonable doubt any other
21 participation in the crime, then you must find the Defendant
22 not guilty. The law is that proof of an individual being at
23 the scene of the crime is not sufficient to find someone
24 guilty.

25 I'm going to charge you the substantive law with regard

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1 to murder. The Defendant is charged with murder. The State
2 must prove beyond a reasonable doubt that the Defendant
3 killed another person with malice aforethought. Malice is
4 hatred, ill will, hostility towards another person. It is the
5 intentional doing of a wrongful act without just cause or
6 excuse with an intent to inflict an injury or under
7 circumstances that the law would infer an evil intent. Malice
8 aforethought does not require that malice exist for any
9 particular time before the act was committed, but malice must
10 exist in the mind of the Defendant just before and at the
11 time of the act, at the time that the act was committed.
12 Therefore, there must be a combination of a previous evil
13 intent and the act.

14 Malice aforethought may be express or inferred. These
15 terms express and inferred do not mean different kinds of
16 malice but merely the manner in which malice may be shown to
17 exist. This is either by direct evidence or by inference on
18 the facts and circumstances which are proved. Express malice
19 is shown when a person speaks words which express hatred or
20 ill will for another or when the person appeared beforehand
21 to do the act, which was later accomplished. For example,
22 lying in wait for a person or any other acts of preparation
23 going to show that the deed was within the Defendant's mind
24 will be express malice. Malice may be inferred from conduct
25 showing a total disregard for human life.

1 Inferred malice may also arise when the deed is done
2 with a deadly weapon. A deadly weapon is any article,
3 instrument, substance, which is likely to cause death or
4 great bodily harm. Whether the instrument has been used as a
5 deadly weapon depends upon the facts and circumstances of the
6 case. The following are examples of instruments which may be
7 deadly weapons: a pistol, shotgun, rifle, dirk, dagger,
8 knife, slingshot, metal knuckles, razor, gasoline, firebomb,
9 Molotov cocktail and lighter fluid. A gun may be a deadly
10 weapon, even if it is not operating. If the facts are proved
11 beyond a reasonable doubt sufficient to raise an inference of
12 malice to your satisfaction, this inference would be simply
13 an evidentiary factor considered by you along with other
14 evidence. You may give it the weight that you think it should
15 receive.

16 I'm going to charge you the law with regard to
17 possession of a weapon during the commission of a violent
18 crime. The Defendant is charged with possession of a weapon
19 during the commission of or attempt to commit a violent
20 crime. The State must prove beyond a reasonable doubt that
21 the Defendant was in possession of a firearm or visibly
22 displayed what appeared to be a firearm in the commission of
23 a violent crime. A firearm means any machine gun, automatic
24 rifle, revolver, pistol, or any weapon which is designed to
25 or may be readily converted to expel a projectile. In order

1 to find the Defendant guilty of possession of a weapon during
2 the commission of a violent crime, you must first find the
3 Defendant guilty of either committing a violent crime or
4 attempting to commit a violent crime. Ladies and gentlemen of
5 the jury, murder is, indeed, a violent crime according to the
6 South Carolina Code §16-1-6. The State must prove beyond a
7 reasonable doubt that the weapon further advanced or helped
8 in the commission of a crime.

9 Bear with me as I come forward and share the verdict
10 form with you. Madam Forelady, I'm going to ask if you could
11 to stand up as I go over this verdict form with you.

12 MS. SIMMONS: (Complies)

13 THE COURT: I won't sound as loud without this speaker
14 on. All right. The State of South Carolina, County of Jasper,
15 the State of South Carolina and it's got the Defendant. It's
16 a document that's entitled, "Verdict Form". It's got the
17 docket number, the fact that we're in General Sessions Court.
18 There are two separate and distinct charges, the first of
19 which is murder. It says: I: As to the offense of murder, we,
20 the jury, by unanimous consent find the Defendant, and you
21 have two choices, not guilty or guilty. If you find the
22 Defendant not guilty of murder, then discontinue
23 deliberations because if you understood the law as I charged
24 it to you, in order to be convicted of possession of a weapon
25 during the commission of a violent crime, you have to commit

1 a violent crime. So, if you find him not guilty, stop
2 deliberations. Your job is concluded.

3 And the same thing goes with regard to possession of a
4 weapon during the commission of a violent crime. It's got a
5 place for you to mark guilty or not guilty. Your verdict must
6 be unanimous and please notify the bailiff upon reaching a
7 verdict. And I need to mention to you once again, the verdict
8 -- you can have a seat and I'll let you hold onto the verdict
9 form.

10 MS. SIMMONS: Okay. (Complies)

11 THE COURT: The verdict must be unanimous. It can't be
12 six to six, eight to four, eleven to one. Everybody has to
13 agree, ladies and gentlemen of the jury, and Madam Forelady,
14 you are charged with the responsibility of presiding over the
15 deliberation process. That essentially means that you're to
16 ensure that everybody's voice is heard. I'm also going to ask
17 that if anybody would get up and use the restroom, stop
18 deliberations because everybody has to participate in all the
19 deliberation process. Throughout the process, Madam Forelady,
20 if there's a question that develops amongst the jury, I'm
21 going to ask that you reduce that question or concern to
22 writing, give it to the bailiff. If it's something I can help
23 you with, I'll be happy to do that. But I'm going to tell you
24 from the outset that the difficult question in this case is
25 going to be left up to you, the question of fact and I've

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1 explained that's your duty and your responsibility as -- your
2 collective wisdom as the jury to find out what the true facts
3 are. And if there -- I can't answer that. The law doesn't
4 allow me to have an opinion about facts or questions. If
5 there's a question of law, write it down and that's something
6 I can help you with. If, in your mind you can't determine
7 whether it's a factual or legal question, write it down and
8 I'll tell you if I can help you. But I don't anticipate there
9 are going to be any questions. You payed very close attention
10 throughout the trial. You listened to the charge. You have
11 all the tools necessary to resolve this case. I've asked
12 y'all to return to the jury room and do not begin
13 deliberations and, once again, I'm going to ask you to do
14 that, because I'm going to have to talk to these very fine
15 lawyers and determine whether or not they have an objection
16 to the manner in which I've charged the law, whether I've
17 inadvertently misstated something wrong or left something out
18 or put something in that wasn't supposed to be in. We're
19 going to have a discussion about that. If it's necessary to
20 come back out and have another discussion about the law, we
21 will do that. In addition to that, we'll have an opportunity
22 to get together the documentary evidence that you'll have in
23 the jury room that you can consider. And if there is no need
24 for me to bring you back into the courtroom, I will give the
25 documentary evidence to the bailiff and he will tell you to

1 begin deliberations. He'll give you the evidence, maybe some
2 scratch paper and some pens to aid you in your deliberation
3 process. I'm going to ask that you retire to the jury room
4 but do not begin deliberations until we tell you to do so.
5 There's some food there. You can begin eating, but do not
6 begin deliberations until I tell you to do so. I'm going to
7 ask the alternate, Mr. Nathan Fisher -- is that correct?

8 MR. FISHER: Yes, sir.

9 THE COURT: I'm going to ask you to stay with us.
10 Everyone else return to the jury room.

11 (Jury out at 1:13 PM)

12 THE COURT: Mr. Fisher, I want to thank you for your
13 service. As you know, alternates are very important
14 particularly in a criminal case it's imperative that we have
15 twelve people engaged in the deliberation process and it
16 appeared that we were going to have another juror run into
17 some personal difficulties, but that did not come to
18 fruition, but you would have been here to save the day. I
19 know you sort of get the sensation that you've been invited
20 to a dance and didn't get to dance. But nonetheless, you're
21 welcome to stay here with us if you would like, it's an open
22 forum. If you have other things to tend to and are interested
23 in the resolution of this case, you can call the clerk's
24 office. She'll be happy to share the verdict with you. I've
25 got some good news. You've earned a three-year exemption. You

1 just didn't get it. You've earned it. You've spent four days
2 with us here today and thank you so much for your time and
3 your service. Your three-year exemption applies to this
4 courtroom, not federal court, magistrates court, or municipal
5 court. If you're subpoenaed in this court within the next
6 three years, tell them you served this week. You'll be paid
7 handsomely for your service. Madam Clerk, how much do they
8 get paid?

9 THE CLERK: Ten dollars a day, Your Honor. And federal
10 mileage round trip daily.

11 THE COURT: Ten dollars a day. A small token of our
12 appreciation. Do you have any questions?

13 THE JUROR: No, sir.

14 THE COURT: All right. Well, thank you so much. Is this
15 your first time serving on a jury?

16 THE JUROR: Yes, sir.

17 THE COURT: Hopefully, it has been a learning experience.

18 THE JUROR: Yes, sir.

19 THE COURT: I practiced law for twenty years and been on
20 the bench for ten. There's not many cases I don't learn
21 something from just from being exposed to a particular fact
22 situation. Thank you for being here and you're free to leave.
23 Good luck to you.

24 MR. FISCHER: Thank you, sir.

25 THE COURT: And your service is concluded for the week as

1 well. So, you don't have to check back.

2 MR. FISCHER: Okay. Thank you, sir.

3 (The alternate juror was excused)

4 THE COURT: Is there any objection to the jury charge
5 from the State?

6 MS. JONES: No, Your Honor.

7 THE COURT: Any from the Defense?

8 MR. PLEXICO: Your Honor, I would just ask that you
9 charge the voluntariness of a statement, my proposed charged
10 number two because it has the phrase of diminution of rights,
11 which I thought was important and just make that a part of
12 the record. I've made that a part of the Court's record
13 already.

14 THE COURT: You're protected on the record. Anything
15 else?

16 MR. PLEXICO: No, Your Honor.

17 THE COURT: All right. Let's come forward and I'm going
18 to ask that the court reporter assist us in putting all the
19 documentary evidence, which is considerable, in one place.
20 And I'm going to ask you if that's all the documentary
21 evidence.

22 (Attorneys come forward to look at the evidence) -

23 THE COURT: All right. Ms. Jones, is everything that's on
24 that cart in evidence?

25 MS. JONES: Yes, Your Honor.

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1 THE COURT: Is there anything in the cart that's not into
2 evidence?

3 MS. JONES: Nothing in the cart is not in evidence.

4 THE COURT: Mr. Plexico, is everything on the cart in
5 evidence?

6 MR. PLEXICO: I believe so, yes, Your Honor.

7 THE COURT: Well, now's the time to say if it's not.

8 MR. PLEXICO: I don't have any problems with anything.

9 THE COURT: All right. Everything on that cart into
10 evidence, Mr. Plexico?

11 MR. PLEXICO: Yes, Your Honor.

12 THE COURT: Is there anything on the car that's not in
13 evidence?

14 MR. PLEXICO: No, Your Honor.

15 THE COURT: All right. I'm going to ask you to take the
16 documentary evidence to the jury room and tell them to begin
17 deliberations.

18 (Whereupon, the exhibits were delivered to the jury at
19 1:25 PM.)

20 (Whereupon, court stood at recess awaiting the verdict
21 of the jury.)

22 QUESTION FROM THE JURY

23 THE COURT: The question has been posed, please explain
24 the difference in circumstantial evidence in determining a
25 guilty or not guilty verdict. I'm going to charge the law

1 concerning direct and circumstantial evidence and it says,
2 and a guilty without a reasonable doubt verdict. I will
3 charge what is a reasonable doubt.

4 What does the State have to say about that?

5 MS. JONES: Your Honor, the State is comfortable with
6 your charging both.

7 MR. PLEXICO: Yes, but what was the second one?

8 THE COURT: This is what it says, her words, verbatim.
9 Please explain the difference in circumstantial evidence in
10 determining the guilty or not guilty verdict, and a guilty
11 without a reasonable doubt verdict.

12 I think she's asking for a definition of reasonable
13 doubt.

14 MR. PLEXICO: Would you reiterate that they have to --
15 all right. Yes, Your Honor.

16 THE COURT: Very good. We are ready for the jury.

17 (Jury in at 3:28 PM)

18 THE COURT: Madam Forelady, ladies and gentlemen of the
19 jury, I received a note. I'm going to make it a part of the
20 record. It appears as if you have asked that I charge you the
21 difference and how to evaluate direct and circumstantial
22 evidence and I will charge you that. And, I also understand
23 or get the impression that you also want a charge on
24 reasonable doubt. I will define that for you, as well. Pay
25 very close attention. The first one I will address is the

1 reasonable doubt charge.

2 What is reasonable doubt in the law? A reasonable doubt
3 is the kind of doubt that would cause a reasonable person to
4 hesitate to act. The State has the burden of proving the
5 Defendant guilty beyond a reasonable doubt. Some of you who
6 may have served in civil cases where you were told that it's
7 only necessary to prove that a fact is more likely true than
8 not true, such as by a greater weight or preponderance of the
9 evidence. In criminal cases, the State's proof must be more
10 powerful than that. It must be beyond a reasonable doubt.
11 Proof beyond a reasonable doubt is proof that leaves you
12 firmly convinced of the Defendant's guilt.

13 There are very few things in this world that we know
14 with absolutely certainty and in criminal cases the law does
15 not require proof that overcomes every possible doubt. If,
16 based on your consideration of the evidence you're firmly
17 convinced the Defendant is guilty of the crime charged, you
18 must find the Defendant guilty. If, on the other hand, you
19 think there is a real possibility that the Defendant is not
20 guilty, you must give the Defendant the benefit of the doubt
21 and find him not guilty.

22 There are two types of evidence which are generally
23 presented during a trial, direct evidence and circumstantial
24 evidence. Direct evidence directly proves the existence of a
25 fact and does not require deduction. Circumstantial evidence

1 is proof of a chain of facts and circumstances indicating the
2 existence of a fact. Crimes may be proven by circumstantial
3 evidence. The law makes no distinction between the weight or
4 value to be given to either direct or circumstantial
5 evidence. However, to the extent the State relies on
6 circumstantial evidence, all of the circumstances must be
7 consistent with each other and when taken together point
8 conclusively to the guilt of the accused beyond a reasonable
9 doubt. If these circumstances merely portray the Defendant's
10 behavior as suspicious, the proof has failed. The State has
11 the burden of proving the Defendant guilty beyond a
12 reasonable doubt. This burden rests with the State regardless
13 of whether the State relies on direct evidence,
14 circumstantial evidence, or some combination of the two.

15 I'll ask that you return to the jury room and resume
16 deliberations. I'll make this a part of the record.

17 (Jury out at 3:31 PM)

18 VERDICT

19 THE COURT: I understand that the jury has a verdict. If
20 you are here, I understand that you have an interest in this
21 particular trial that's going on, but my job is to preside
22 over the trial and one of my duties is to make sure there are
23 no disruptions in the courtroom. If there is anybody in this
24 courtroom who feels that they cannot control their emotions
25 and have any kind of outburst one way or the other, clearly,

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1 somebody is going to be upset at the result of this
2 particular verdict, but there will be no outbursts, there
3 will be no sighs, there won't be any audible or visual
4 disruptions in this courtroom and I'm going to ask the
5 deputies, there is no reason to wait for me. If somebody acts
6 out or says something or does something, go ahead and take
7 them into custody and we will deal with them accordingly. We
8 will have absolutely no outbursts. Are you ready for the jury
9 to come in, Ms. Jones?

10 MS. JONES: Yes, Your Honor.

11 THE COURT: Anything from the Defense before we bring the
12 jury out?

13 MR. PLEXICO: No, Your Honor. We will stand as they
14 present the verdict of the jury.

15 THE COURT: Very good. We are ready for the jury.

16 (Jury in at 4:10 PM)

17 THE COURT: Madam Forelady, have you reached a verdict?

18 MADAM FORELADY: Yes, Your Honor.

19 THE COURT: Is it unanimous?

20 MADAM FORELADY: Yes, sir.

21 THE COURT: I'm going to ask that you give the clerk the
22 verdict form.

23 (Madam Forelady hands the verdict form to the clerk, who
24 hands it to the judge)

25 THE COURT: The verdict form is in order. If you will

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1 stand as the verdict is read.

2 CLERK OF COURT: State of South Carolina, County of
3 Jasper. The State versus Billy Phillips. Indictment number:
4 2014-GS-27-312 and Indictment number 2014-GS-27-602.

5 The Offense of Murder. As to the offense of murder, we
6 the jury, by unanimous consent, find the Defendant, guilty.

7 Count Two: Possession of a weapon during the commission
8 of a violent crime. As to the offense of possession of a
9 weapon during the commission of a violent crime, we, the
10 jury, by unanimous consent, find the Defendant guilty. Signed
11 by the Foreperson.

12 THE COURT: Any additional request for polling?

13 MR. PLEXICO: Yes, Your Honor. I'd ask that the jury be
14 poled.

15 CLERK OF COURT: When I call your name, will you raise
16 your right hand. Erica Dickenson. Was this your verdict and
17 is it still your verdict?

18 MS. DICKENSON: Yes.

19 CLERK OF COURT: Maurice Lawyer. Was this your verdict
20 and is it still your verdict?

21 MR. LAWYER: Yes.

22 CLERK OF COURT: Thank you. Loretta Boyles, was this your
23 verdict and is it still your verdict?

24 MS. BOYLES: Yes.

25 CLERK OF COURT: Thank you. Tristen Blanton, was this

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1 your verdict and is it still your verdict?

2 MR. BLANTON: Yes.

3 CLERK OF COURT: Thank you. Brenda Simmons, was this your
4 verdict and is it still your verdict?

5 MS. SIMMONS: Yes.

6 CLERK OF COURT: Thank you. Samantha Spence, was this
7 your verdict and is it still your verdict?

8 MS. SIMMONS: Yes.

9 CLERK OF COURT: Thank you. Joshua Keiffer, was this your
10 verdict and is it still your verdict?

11 MR. KEIFFER: Yes, ma'am.

12 CLERK OF COURT: Thank you. Teresa Lambert, was this your
13 verdict and is it still your verdict?

14 MS. LAMBERT: Yes.

15 CLERK OF COURT: Thank you. Audra Dowling, was this your
16 verdict and is it still your verdict?

17 MS. DOWLING: Yes, ma'am.

18 CLERK OF COURT: Thank you. Barbara Layman, was this your
19 verdict and is it still your verdict?

20 MS. LAYMAN: Yes, ma'am.

21 CLERK OF COURT: Thank you. Natasha Aiken, was this your
22 verdict and is it still your verdict?

23 MS. AIKEN: Yes.

24 CLERK OF COURT: Thank you. Vincent Romano, was this your
25 verdict and is it still your verdict?

1 MR. ROMANO: Yes.

2 CLERK OF COURT: Thank you.

3 THE COURT: Madam Forelady, ladies and gentlemen of the
4 jury, you have completed your service for the week. Thank you
5 for your time and your consideration in this matter. I have
6 some good news for you. You have earned a three year
7 exemption. If called upon to serve in this court within the
8 next three years, you can tell them you served this week and
9 you can exercise an exemption if you would like to do so. You
10 will also be paid a certain amount. I think it's \$10.00 a day
11 plus mileage.

12 CLERK OF COURT: Yes, sir.

13 THE COURT: It's hardly compensation for your efforts
14 this week, but it is a small token of our appreciation on
15 behalf of the State of South Carolina. How many of you have
16 never served on a jury before? (Show of hands) Hopefully,
17 it's been a learning experience for you. We appreciate your
18 being here and being here on time. Hopefully, you've realized
19 that we did everything we could to make the most efficient
20 use of your time. We do appreciate your time and patience
21 with us. I always explain to jurors that if you have any
22 questions I will be happy to answer them. Does anybody have
23 any questions? (Indicate no) Very good. One of the things
24 that y'all need to realize is, you know, we are only a breath
25 away from litigation ourselves. We could be sued or find

1 ourselves in a situation where we have to sue someone over a
2 civil matter and you might not realize it, but you are only a
3 breath away from being charged with a crime, and every time I
4 lay my head down on my pillow at night, I thank God that it's
5 a jury that resolves these type things rather than a judge or
6 a professional jury panel and hopefully it's been a learning
7 experience for you. Thank you for your time and
8 consideration. Everyone remain seated as the jury exits the
9 courtroom.

10 (Jury released at 4:16 PM)

11 THE COURT: I will ask that the Defendant come forward
12 and I will hear from the State with regard to sentencing.

13 SENTENCING

14 THE COURT: I see that we have a number of the jury panel
15 who have elected to come back to view the sentencing. Your
16 job in this matter has been discharged with regard to
17 rendering a verdict. It's a public forum and you are
18 certainly welcome to participate and to view the sentencing.

19 I'll be glad to hear from the State with regard to
20 sentencing at this time.

21 MS. JONES: Thank you, Your Honor. Your Honor, I'm not
22 going to go back into the facts. You were here this entire
23 trial. Some things I did want to focus on is Mr. Phillips'
24 prior record. You did hear it prior to trial, but I would
25 like to reiterate it again. It goes back to 1992 with an

1 assault, second degree, which involved intent to cause
2 physical injury with a weapon or instrument. 1993, another
3 armed assault with intent to murder. He has a 1998 petit
4 larceny and obscene language or gestures. A 1999, possession
5 of a forged instrument, third degree. In 2002, felon in
6 possession of a firearm. He has another 2005, felon in
7 possession of a firearm. He was on federal probation for that
8 charge, for that conviction, when he committed this murder
9 back in 2013.

10 Your Honor, I believe Mr. Phillips' prior record shows a
11 progression of violence. He has proven that he cannot be
12 rehabilitated. He has proven to be a violent person and he
13 brought that down from New York into Jasper County. Your
14 Honor, the State believes that, based on the facts and
15 events, the circumstances of this case, and the danger to the
16 community that Mr. Phillips has presented, that a life
17 sentence is appropriate.

18 Family members are present and would like to address
19 Your Honor.

20 THE COURT: Very good.

21 MR. WOODS: How you doing, Your Honor?

22 THE COURT: Yes, sir. Your full name, and you can stand
23 right there and I will ask that any comments to be made, to
24 be made directly to me and not to the Defendant.

25 MR. WOODS: Yes, sir. My name is Deandre Woods, Deandre

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1 Quanta Woods. On behalf of my family, I would like to thank
2 the State of South Carolina, the jurors, and everybody who
3 was in charge of this case, the prosecutor. Pretty much,
4 eight months after my brother was murdered, my mother died of
5 natural causes due to losing one of her child. Now, it's
6 just me and my brother. We got justice. That's all that we
7 wanted. I've been put in the position of my mother's role and
8 here I am today, it's made me stronger than ever. I
9 appreciate the hard work from everybody. Just so you know,
10 Thou shalt not kill, says it in the Bible. Thank you.

11 THE COURT: Very good. Anything else?

12 MS. JONES: No, Your Honor. That is all from the State.

13 THE COURT: Be glad to hear from the Defense at this
14 time.

15 MR. PLEXICO: Thank you, Your Honor. My client is 40
16 years old, Your Honor. He has one child, Brook. Brook is two
17 years old. He did wedding and banquet catering. He was
18 working at the Sea Pines Resort. Even in his old age, Judge,
19 he could still get a job in the restaurant industry. We are
20 asking for a sentence of 30 years in this matter and the
21 other matter to run concurrent, which is a substantial period
22 of time.

23 THE COURT: Mr. Phillips, would you like to say anything?

24 MR. PHILLIPS: I'm too choked up at this time.

25 THE COURT: Take your time. If you would like to say

1 something, now's the time to say it.

2 MR. PHILLIPS: No, sir. I couldn't.

3 THE COURT: Very good. You don't have to say anything,
4 but if the spirit moves you, let me know. How much time is he
5 entitled to credit for?

6 MR. PLEXICO: Four hundred and thirty-five days, Your
7 Honor.

8 THE COURT: Mr. Phillips, on Indictment 2014-GS-27-00312,
9 these are violent offenses. Murder, obviously, is a violent
10 offense, most serious offense, subject to the two and three-
11 strike rule, violent classification that will adversely
12 affect your custody status. As a practical matter, this will
13 be subject to the 85% rule. On Indictment 2014-GS-27-00312,
14 murder, the sentence of the Court is that you will be
15 committed to the State Department of Corrections for a period
16 of 40 years. Sentences to run concurrent, credit for 435
17 days.

18 With regard to Indictment 2014-GS-27-00602, possession
19 of a weapon during a violent crime, the sentence of the Court
20 is that you will be committed to the State Department of
21 Corrections for a period of five years. The sentences to run
22 concurrent, credit for 435 days. Good luck to you.

23 MR. PLEXICO: Thank you, Your Honor.

24 MS. JONES: Thank you, Your Honor.

25 THE COURT: I will be happy to entertain any motions at

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1 this time.

2 MR. PLEXICO: I don't have any post-trial motions at this
3 time, Judge.

4 THE COURT: All right. Very good. Ladies and gentlemen of
5 the jury panel, do you have any questions or concerns?

6 (Negative response) Thank you for your service.

7 POST-TRIAL MOTIONS

8 THE COURT: Mr. Plexico, you are recognized.

9 MR. PLEXICO: Thank you, Your Honor. First, I'd like to
10 renew my motions on 2014-27-312 and 2014-27-389, (verbatim)
11 Your Honor. I'd like to renew my motions for a directed
12 verdict with regard to these matters on the grounds that I
13 believe that the jurors must have, I can only think,
14 misinterpreted whatever the DNA testimony was and that it was
15 referred to sometimes as excluded and sometimes that the
16 State had found his DNA, which I believe the DNA evidence
17 itself was misleading. It did not include my client. I
18 believe the testimony in regards to that matter created a
19 great deal of confusion. I believe the motion that I filed
20 with regard to that, that since it was not determinative of
21 any issue of fact or did not provide any basis to believe any
22 question that was relevant to this case one way or the other
23 and that should have been excluded. I move for a new trial on
24 those grounds, Your Honor.

25 THE COURT: Ms. Jones, be glad to hear from you.

1 MS. JONES: Your Honor, the State feels there was no
2 error in the admission of the DNA evidence as previously
3 stated. The jury looked at all the evidence, overall, and
4 found Mr. Phillips guilty. I feel the verdict should stand
5 and should find no error in the verdict.

6 THE COURT: Let me ask you this question. Ms. Jones, I
7 want to ask you this: Normally, when you think of DNA you get
8 a match or you don't. This is different in that there was a
9 mixed sample there and it says, "Could not exclude them." But
10 the testimony that came from the expert said that the
11 Defendant's DNA was on these items. That very could be that
12 she could make the determination that that was his DNA, but
13 they couldn't have a complete sample and it could not be a
14 complete match. If what she says is correct, then it's
15 certainly admissible, but what do you have to say about that?
16 I mean, because you said it to the jury in closing argument
17 and the expert said that the Defendant's DNA was on the gun
18 and in the pockets.

19 MS. JONES: It was my interpretation of Ms. Gallman's
20 testimony that because of the samples that she had been
21 provided with, a full profile could not be obtained. That was
22 her step number two in the process and step number one was
23 first deciding if it could not be excluded or 100% excluded
24 and she did specify that if it was excluded, as in no DNA, it
25 would have said so.

1 THE COURT: But she went further to say that his DNA was
2 on it.

3 MS. JONES: And I believe that was her conclusion from
4 her results, from her testing.

5 THE COURT: Well, if she's correct then that's all right
6 and I don't have any expert testimony to contradict that,
7 really.

8 MS. JONES: I have nothing to base it on but Ms.
9 Gallman's testimony regarding the analysis she performed.

10 THE COURT: Mr. Plexico, be glad to hear from you.

11 MR. PLEXICO: I believe her testimony was that she could
12 not exclude him from that sample, but she only had partial
13 samples. I never heard her say his DNA was on there.

14 THE COURT: Somebody said that.

15 MR. PLEXICO: During the closing, the Solicitor did,
16 which I don't think reflects what the DNA expert said.

17 MS. JONES: I believe she did say it with regards to his
18 cells, when she gave the explanation of the cells, how they
19 are left behind, that had he not touched it, none of his
20 cells would have been there, but his cells were located on
21 those two items.

22 THE COURT: That's my question, how can you do that if
23 there is not a full profile? Apparently, she said you could,
24 but it seems to be sort of logically inconsistent.

25 MR. PLEXICO: I didn't understand her saying she found

1 cellular structure on them.

2 THE COURT: I assume the record will speak for itself,
3 but it is a very legitimate issue to bring forward. Anything
4 further?

5 MR. PLEXICO: Yes, sir. I'd also like to renew my motion
6 for a directed verdict on those charges on the sufficiency of
7 the evidence. As it was, I don't think that it could give
8 rise to more than a suspicion.

9 THE COURT: That's called circumstantial evidence and
10 they believed it, but at any rate, I will deny the motions
11 for a new trial. You are protected on the record in every
12 respect.

13 MR. PLEXICO: Thank you, Your Honor.

14 THE COURT: Good luck to you.

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

CERTIFICATE

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TWELFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE TRIAL IN THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT IN JASPER COUNTY, SOUTH CAROLINA, SO GIVEN ON JANUARY 11-14, 2016 TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 17TH DAY OF APRIL, 2016.

s/Jo Rice

JO RICE
OFFICIAL COURT REPORTER

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

**APPEAL FROM JASPER COUNTY
Court of General Sessions**

Michael Nettles, Circuit Court Judge

Case No(s): 2014-GS-27-00312, 2015-GS-27-00602

The State,

Respondent.

v.

Billy Phillips,

Appellant.

NOTICE OF APPEAL

Billy Phillips appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Michael Nettles on January 14, 2016.

Date: January 19, 2016

Stephen T. Plexico, Esq.
Stephen T. Plexico, Esq.
14th Circuit Public Defender's
Office for Allendale, Hampton, &
Jasper Counties
P.O. Box 506
Hampton, S.C. 29924
Attorney for Appellant

Other Counsel of Record:
Mary Concannon Jones, Esq.
Lynorr Hiller Musser, Esq.
14th Circuit Solicitor's Office
PO Box 1880
Bluffton, SC 29210
Attorney for Respondent

In the Supreme Court

**APPEAL FROM JASPER COUNTY
Court of General Sessions**

Michael Nettles, Circuit Court Judge

Case No(s).: 2014-GS-27-00312, 2014-GS-27-00602

The State,

Respondent.

v.

Billy Phillips,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the below listed respondents by depositing a copy of it in the United States Mail, postage prepaid, on January 19, 2016 addressed to:

Mary Concannon Jones, Esq.
Lynorr Hiller Musser, Esq.
14th Circuit Solicitor's Office
PO Box 1880
Bluffton, SC 29210

Alan Wilson, Esq.
Attorney General
P.O. Box 11549
Columbia, S.C. 29211

January 19, 2016

Stephen T. Plexico, Esq.
Stephen T. Plexico, Esq.
14th Circuit Public Defender's
Office for Allendale, Hampton, &
Jasper Counties
P.O. Box 506
Hampton, S.C. 29924

COUNTY OF
STATE

Jasper

VS.

Billy Phillips

AKA:

Race: AFRICAN AME Sex: M Age: 42

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

INDICTMENT/CASE#: 2014GS2700312

A/W#: 2014A2710200153

Date of Offense: 4/18/2013

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Mary Jones

100353

Concannon Jones, Mary

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 435 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$	0
§ 14-1-206 (Assessments 107.5 %)		\$	0
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$	0
§ 56-5-2995 (DUI Assessment)	\$12	\$	0
§ 56-1-286 (DUI Breath Test)	\$25	\$	0
Proviso 47.9 (Public Def/Prob)	\$500	\$	0
§ 14-1-212 (Law Enforce. Funding)	\$25	\$	25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$	0
§ 50-21-114(BUI Breath Test Fee)	\$50	\$	0
§ 56-5-2942(2) (Vehicle Assessment) PD	\$40/ea	\$	40.00
Proviso 90.5 (SCCA Surcharge)	\$5	\$	5.00
3% to County (if paid in installments)		\$	5.10
TOTAL		\$	175.10

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: JO Rice

SCCA/217 (03/2011)

Presiding Judge

Judge Code: _____

Sentence Date: 1-14-2016

COUNTY OF Jasper
 STATE VS.
Billy Phillips
 AKA: _____
 Race: AME Sex: _____ Age: 42
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2014GS2700602
 A/W#: 2014A2710200389
 Date of Offense: 4/18/2013
 S.C. Code § : 16-23-0490
 CDR Code #: 0549

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Mary Jones
 Concannon-Jones, Mary

100353
 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 435 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$ <u>0</u>
§ 14-1-206 (Assessments 107.5 %)		\$ <u>0</u>
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u>0</u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u>0</u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u>0</u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>0</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>250.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>0</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ <u>0</u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u>0</u>
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>3.00</u>
3% to County (if paid in installments)		\$ <u>3.96</u>
TOTAL		\$ <u>133.96</u>

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: JO RICE

SCCA/217 (03/2011)

Presiding Judge

Judge Code: _____

Sentence Date: 1-14-2016

650

WITNESSES

D. Williams - SLED

ARREST WARRANT NUMBER

2014A2710200153

ACTION OF GRAND JURY

TRUE BILL ☒

NO BILL

FOREMAN *Wm. C. Coe*

DATE *9-25-2014*

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Braden M. Simon
Foreperson of Petit Jury

Date: *1-14-16*

DOCKET NO. 2014GS2700312

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

September Term 2014

THE STATE

VS.

Billy Phillips

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

INDICTMENT

2014GS2700312

At a Court of General Sessions, convened on September 25, 2014, the Grand Jurors of Jasper County present upon their oath:

Murder / Murder

That in Jasper County on or about May 18, 2013, with malice aforethought, Billy Phillips did kill and murder Darius Woods by means of shooting, and that Darius Woods did die in Jasper County as a proximate result thereof on May 18, 2013; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor

652

WITNESSES

D. Williams - SLED

ARREST WARRANT NUMBER

2014A2710200389

ACTION OF GRAND JURY

TRUE BILL

NO BILL

FOREMAN

DATE

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: 1-14-16

DOCKET NO. 2014GS2700602

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

January Term 2015

THE STATE

vs.

Billy Phillips

Indictment for

Weapons / Possession of weapon during
commission of violent crime

SC Code: 16-23-0490

CDR Code:0549

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

INDICTMENT

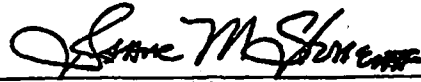
2014GS2700602

At a Court of General Sessions, convened on January 29, 2015, the Grand Jurors of Jasper County present upon their oath:

Weapons / Possession of weapon during commission of violent crime

That in Jasper County, South Carolina, on or about May 18, 201^{AD}~~3~~, the Defendant, Billy Phillips, did possess a weapon or visibly display what appeared to be a weapon during the commission, or attempted commission, of murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF JASPER	)	
	)	Ind. No.: 2014-GS-27-00312
The State of South Carolina,	)	Ind. No.: 2014-GS-27-00602
	)	
Plaintiff,	)	Notice of and Motion to
	)	Exclude Testimony Relating to
v.	)	The Gathering or Analysis
	)	Of Any DNA Samples Relating to
Billy Phillips,	)	The Testing of Decedent's Clothing or the Gun
	)	Found in Close Proximity to Decedent
Defendant.	)	
	)	
	)	
	)	

To: Mary C. Jones, Assistant Solicitor for the Fourteenth Circuit.

The Defendant, Billy Phillips, through his undersigned Attorney, Chief Public Defender, Stephen T. Plexico, will move to exclude any DNA testimony relating to the testing of decedent's clothing or the gun found in close proximity to the decedent on the following grounds.

1. No DNA test identifies the DNA of my client as being present on any of the twelve items tested.
2. DNA tests of two of the twelve items yielded no reliable results at all.
3. DNA tests of eight of the twelve items determined that the defendant's DNA was not present.
4. DNA tests on the two remaining items merely cannot exclude or include my client's DNA as being present on the items.
5. The tests have no probative value and are not relevant.

Therefore, the DNA tests do not "have any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence". SCRE 401.

Evidence that is not relevant is not admissible. SCRE 402.

Further, the presentation of DNA tests that do not exclude or include my client as a suspect, while at the same time presenting evidence that others are excluded, unfairly prejudices my client, confuses the issues and misleads the jury. To present meaningless evidence is a waste of time. All of the foregoing are grounds to exclude even relevant evidence. SCRE 403.

The State has the burden of proof to prove my client guilty beyond a reasonable doubt. The State, in essence, is presenting evidence to a jury that a defendant could not be shown to be not guilty, insinuating that should be held against him, until he, himself, can prove that he is not guilty. To allow this testimony would shift the burden of proof to the defense in contravention of the law. Battle v State 675 S.E. 2d. 736, 382 S.C. 197 (2009). The defendant has no burden to prove anything at trial or present any evidence at all. Art. I Sec. 12 S.C. Const., U.S. Const. Ad. V.

The defense believes that the presentation of this DNA evidence would unduly prejudice the defense in view of the fact that the evidence against my client is only circumstantial in nature, thus enhancing the probability that the effect of the presentation of the DNA would switch the burden of proof to the defense in the minds of the jurors.

Respectfully submitted by: B. Kyle T. Plummer, Esq. on 1-11-16

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of April, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of April, 2017.

RECEIVED

APR 06 2017

SC Court of Appeals