

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Maite Murphy, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

THOMAS ROBERT SHEWTZUK,

APPELLANT

APPELLATE CASE NO. 2016-001957

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT #16 (SURVEILLANCE VIDEO)**

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF DORCHESTER) CASE NO.: 2015-GS-18-0951; 0952;
) 0953; 0954; 0972
 STATE OF SOUTH CAROLINA)
)
 v.) TRANSCRIPT OF RECORD
)
 THOMAS SHEWTZUK)
)
 _____)

ORIGINAL

Monday, September 6, 2016 - Wednesday, September 8, 2016

COMMENCING AT:
 Dorchester County Courthouse
 St. George, South Carolina
 Before The Honorable Maite Murphy, Judge

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 Official Court Reporter

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*Note regarding bench conferences: The backup recordings used to capture the bench conferences were found to be unintelligible. This is due to the background noise that is played over the courtroom's sound system during bench conferences that are held in the presence of a jury. Therefore, these were not included as part of the record as requested.

1 (The proceedings in the trial of this case began
2 Monday, September 6, 2016, at 12:01 p.m.)

3 AST. SOL. JUSTIS: At this time, Your Honor, I believe
4 there's some pretrial motions that the defense has that
5 we're willing to hear at this time.

6 THE COURT: All right. Ms. Sarji?

7 BY MS. SARJI: Thank you, Your Honor. May it please
8 the Court?

9 THE COURT: Yes, ma'am.

10 BY MS. SARJI: At the outset, Judge, and probably the
11 most substantive motion I have to make is a motion to
12 continue this trial or in the alternative to bifurcate the
13 proceedings.

14 THE COURT: All right.

15 BY MS. SARJI: I have submitted to the Court a motion
16 of memorandum that summarizes our position. But basically
17 the gist of my argument is this: Mr. Shewtzuk was 18 years
18 old and six months at the time of this alleged crime. As
19 I'm sure the Court is aware, the case of Aiken versus Byars,
20 which is a South Carolina case, 410 South Carolina 534, it's
21 a 2014 case that specifically indicates that the United
22 States Supreme Court case of Miller versus Alabama is
23 applicable in the State of South Carolina. While I
24 understand, Your Honor, that the black letter law of Aiken
25 versus Byars is specifically enumerates that 17-year-olds

1 are entitled to an individualized sentencing hearing. I
2 believe that Mr. Shewtzuk is a similarly situated
3 individual. I believe that equal protection requires that
4 he also be entitled to the benefit of an Aiken hearing given
5 that he was only 18 at the time of the crime. And as Your
6 Honor is aware, 17-year-olds are defined as adults under
7 South Carolina law. Drawing the line at 18 then constitutes
8 an equal protection violation. As well, Judge, the science
9 behind the decisions in Miller versus Alabama and Roper
10 versus Simmons and Graham versus Florida, which is all
11 aligned -- United States Supreme Court cases that led to the
12 decision in Miller versus Alabama. All of them recognize
13 that the reason that we are treating 17-year-olds as
14 juveniles and treating them differently for purposes of
15 crimes which carry life without parole sentences is that
16 children, juveniles, have less of an ability to appreciate
17 the consequences of their actions. They act more
18 impulsively and that sort of thing. And, Judge, the science
19 behind these rationales is equally applicable to Mr.
20 Shewtzuk.

21 Your Honor, I did contact a developmental psychologist,
22 Lawrence Steinberg, who actually conducted a great many of
23 the studies that were relied upon by the United States
24 Supreme Court in Miller versus Alabama. And he is quoted in
25 those decisions. Mr. -- or Dr. Steinberg rather wanted

1 \$2500 just to do an affidavit for this case. And I felt
2 that given Mr. Shewtzuk's status as an indigent individual,
3 I did not believe that the Court would approve funding for
4 that or that it would be necessary in light of literature
5 that exist on the subject that has been adequately set
6 forth, I believe, in my memorandum.

7 And Judge, what the science shows, and there have been
8 studies done where -- there have been studies done where
9 they're comparing individuals who are between 18 and 21
10 years of age, and they put them into an emotionally
11 stressful situations. And they compare their reactions to
12 individuals who are between 13 and 17 years of age and then
13 22 and above. And what the studies found is that
14 individuals aged 18 to 21 behave more like individuals aged
15 13 to 17, i.e., juveniles, than they do like individuals
16 aged 22 to 25. Not only do the studies indicate that the
17 they behave similarly and emotionally charged situations,
18 but they also found that the diminished capacity that is
19 shown in these individuals in response to negative emotional
20 influences is also parallel by their immature engagement of
21 prefrontal regions in the brain, which is our part of the
22 brain that once it is fully developed is important for
23 overriding predominately emotional reactions.

24 So I cited these studies for you, Your Honor, in hopes
25 that you would recognize that Mr. Shewtzuk being just age 18

1 is in no way different than a 17-year-old in terms of his
2 status as a juvenile with a diminished capacity such that he
3 should be entitled to have a full Aiken versus Byars
4 hearing. And Aiken set out the factors that the Court has
5 to consider: the chronological age and hallmark features of
6 youth, the family and home environment of the individual,
7 the circumstances of the homicide, the incompetencies of
8 youth, and the possibility of rehabilitation. Judge, I
9 think it is a key important fact here that 17-year-olds are
10 classified as adults in South Carolina. And so the courts
11 have recognized that despite that classification as an adult
12 because of the science and because of their development,
13 we're going to treat them differently. But the science says
14 that 18-year-olds are no different than 17-year-olds in that
15 regard. And so I think, again, that it would be an equal
16 protection violation. I think that he is entitled just as a
17 17-year-old is to an Aiken hearing.

18 Judge, I have submitted as part of the packet to you an
19 affidavit from a mitigation specialist named Drucy Glass.
20 She has indicated that particularly given Thomas's
21 background -- he has suffered sexual abuse as a child; his
22 father went to prison when he was just four years old. I'm
23 not sure what the actual conviction was, if it was a
24 voluntary manslaughter or murder, but his father went to
25 prison. His mother was engaged in prostitution. She

1 introduced him to meth. He's previously been committed to
2 William S. Hall, Judge. He has spent time in both Connie
3 Maxwell and John de la Howe. He has got a background that
4 is rife with mitigation. And I believe that it is necessary
5 to allow me either a continuance of the trial in this
6 matter, and this case is just over a year old, Judge; or if
7 you are not inclined to grant a continuance of the trial --
8 and I understand the State has an interest in resolving
9 their cases and I appreciate the efforts that the Solicitor
10 has gone to in putting together this case. I would ask Your
11 Honor for six to ten months in order for a mitigation
12 specialist and a forensic psychologist to get involved in
13 the case. I was unaware of the Aiken v. Byars decision
14 until August of this year, Judge. So just about a month ago
15 I became aware of this decision and aware that this law
16 should apply to my client. And I do believe that in the
17 interest of justice and fairness that a delay in the
18 sentencing portion of Mr. Shewtzuk's case, if there is a
19 guilty verdict, is necessary in order to protect his
20 constitutional rights. The State is not prejudiced by
21 allowing this delay in sentencing. It just gives us a more
22 full and fair opportunity to present to the Court in depth
23 all of the mitigation that I believe exists and it protects
24 his constitutional rights, Judge. And I believe his
25 constitutional rights and his right to have this information

1 presented to the Court in a case where he is faced with life
2 without parole at his young age, it overrides any interest
3 on the State's part in terms of having a sentence resolved
4 more quickly than that, Judge. I don't they suffer any harm
5 by waiting for six months for us to be able to present this
6 fully to the Court. But I would ask the Court just to
7 consider the literature I have included with the motion that
8 I have made. As well as -- it's a law review from Temple Law
9 Review, *When Does a Juvenile Become an Adult? Implications*
10 *for Law and Policy*. That was written this summer of this
11 year, and this is where I pulled the information regarding
12 the studies that have been done. So I would urge the Court
13 to please keep an open mind in considering whether Mr.
14 Shewtzuk is indeed entitled to this kind of in-depth
15 sentencing proceeding.

16 THE COURT: Thank you, Ms. Sarji. Solicitor?

17 AST. SOL. JUSTIS: Your Honor, I would say -- first of
18 all, I would argue that the motion is premature. Mr.
19 Shewtzuk hasn't been convicted at this point. So to
20 discuss his sentencing and when that should take place, I
21 think is premature. It can be discussed at a more
22 appropriate time if and when he's ever convicted of these
23 crimes. But secondly, the Aiken v. Byars case, which was
24 the South Carolina case which came out after the Miller v.
25 Alabama U.S. Supreme Court case, it does not require this

1 mitigation hearing for someone that's 18 or older. It's
2 very specific. The U.S. Supreme Court said a juvenile under
3 the age of 18. Now in South Carolina, a juvenile is defined
4 as someone under the age of 17. But what they did in Aiken
5 v. Byars was we said, well, for this situation, we'll
6 increase it to 18 to match the U.S. Supreme Court case. So
7 that's what they did. They could've at that time bumped it
8 up to 21 or 25 or whatever; they choose not to do that. So
9 in South Carolina in a situation like this, if the person is
10 18 or older, they are not entitled to this mandatory hearing
11 that the Supreme Court has said should happen if they're
12 considered a juvenile. So we would say, you know, he's not
13 really entitled to that. He can provide whatever mitigation
14 he wants, and he'll have an opportunity to do that if and
15 when he is convicted. But to put this off for six months,
16 put sentencing off for six months, does create a burden to
17 the State. It creates a burden to the State in one way in
18 that there is a codefendant now in this case that has been
19 charged with murder and with kidnapping. We can not -- but
20 from the facts of the case that we have, he's not the
21 shooter. We would allege that Mr. Shewtzuk is the shooter.
22 So, therefore, putting off Mr. Shewtzuk's sentencing, puts
23 off any kind of offer or anything I can do in the
24 codefendant's case until we resolve fully Mr. Shewtzuk's
25 case.

1 Secondly, I believe that the victim's family is
2 prejudiced by not getting closure. They will be here this
3 week. Hopefully by the end of the week, we will have a
4 resolution one way or the other. And I believe that if he
5 is convicted that they deserve that closure and that
6 finality in his case to know what is going to happen to him
7 and not have something put off for another six months. That
8 would be the State's position.

9 THE COURT: Thank you, counsel. Ms. Sarji, I certainly
10 understand your position. However, as you stated, the black
11 letter law is very clear and he's not entitled to that. I'm
12 going to respectfully deny your motion for a continuance.
13 In South Carolina pursuant to Section 63-19-20 of the South
14 Carolina Code, a juvenile is a person less than 17 years of
15 age. However, Miller does extend to defendants under 18
16 years of age. And, therefore, the Court, for the purposes
17 of the opinion, basically said under 18. Your client is
18 over 18. So I do not find that that situation is applicable
19 to your client's case. And your motion for continuance is
20 respectfully denied.

21 In regards to presenting mitigation, evidence, at a
22 potential sentencing, I do believe that that matter is
23 premature. Your client has not been convicted. He's
24 certainly entitled to a trial by a jury, which I understand
25 is being called to trial this afternoon. At every

1 sentencing, counsel is entitled to present mitigation,
2 evidence, as well as aggravation, evidence from the State.
3 So certainly nothing is preventing you from doing that. But
4 I think at this point your motion is premature.

5 BY MS. SARJI: Thank you, Your Honor. I'll renew it at
6 the appropriate time.

7 THE COURT: Thank you, ma'am.

8 BY MS. SARJI: Your Honor, the next motion that we
9 would have is with regard to disclosure of Giglio materials.
10 I think that most of the -- I do not have a written motion
11 for you with regard to this subject. But I do think that
12 there is impeachment evidence that exists with regard to a
13 great many of the lay witnesses that the State intends to
14 call. I think that the United States Supreme Court has been
15 clear that that type of evidence, pure impeachment evidence
16 including records of conviction, plea agreements, immunity
17 agreements and the like, fall within the purview of Giglio
18 versus the United States and U.S. versus Bagley, which both
19 are under the umbrella of Brady. And the law requires that
20 Brady material be disclosed to us in time for its effective
21 use at trial. You know, the case is getting called today,
22 Judge. I'm not here asking for it six months early. I'm
23 just asking for it right now so that I have the opportunity
24 to fully examine what there is that exists.

25 THE COURT: Solicitor?

1 the State or to the defense?

2 AST SOL JUSTIS: None from the State, Your Honor.

3 BY MS. SARJI: None, Your Honor. Thank you.

4 THE COURT: All right. Solicitor?

5 AST SOL WARD: Thank you, Your Honor. May it please
6 the Court?

7 THE COURT: Yes, sir.

8 OPENING STATEMENTS

9 AST SOL WARD: "Never mind, about to have a body on it,
10 so I doubt you'll want it." That's the text message that
11 Thomas Shewtzuk sent his cousin 30 minutes prior to shooting
12 the victim Travis Gordon at point-blank range in the head
13 twice. Ladies and gentlemen, as the Judge instructed you,
14 the defendant is charged with one count of murder, three
15 counts of kidnapping, and one count of possession of a
16 weapon during the commission of a violent crime. We'll
17 briefly go over the definitions of these crimes so you have
18 a better understanding of what to look for throughout the
19 trial.

20 Murder is simply defined as the killing of a person
21 with malice aforethought either express or implied. And
22 malice means the wrongful intent to injure another with a
23 wicked or depraved spirit intent on wrongdoing. When they
24 say expressed or implied malice, expressed would be if you
25 stand in front of someone, point a gun at them and say I'm

1 going to shoot and kill you, expressed malice. Implied, you
2 to look at the facts of the case; whether a deadly weapon
3 was used, their actions leading up to the shooting or the
4 murder, or actions after the murder occurred. There's three
5 counts of kidnapping. One count because the victim who is
6 deceased, Travis Gordon; one for who was a clerk, the store
7 clerk, at the gas station this occurred at, Hatel Patel; as
8 well as Mary Miller who was a patron in the gas station at
9 the time this murder took place. And kidnapping is defined
10 as the unlawful seizing, confining, taking away, decoy, or
11 kidnapped of another person without the authority of law by
12 any means necessary. And most people probably think
13 kidnapping is tying someone up, throwing them in the trunk
14 of a car, and taking them away. If you point a gun at
15 someone and tell them I'm going to kill you, if you call 911
16 and you keep them from moving, that's kidnapping.

17 JUROR: I'm sorry.

18 AST SOL WARD: Possession of a weapon during the
19 commission of a violent crime is if a person displays or
20 uses a deadly weapon during a violent crime, which both
21 murder and kidnapping are, the person is guilty of that
22 crime.

23 This case all started because of a girl, Katelynn
24 Dubois. The victim, Travis Gordon, and the defendant both
25 dated her at some point. That is the only connection

1 between the victim, Travis Gordon, and the defendant. On
2 June 12, 2015, we will present witnesses who will testify
3 that the defendant that night, the night before the murder,
4 had a gun; had a black pistol that he was attempting to
5 sell. We'll put it in his hands. The next morning,
6 June 13th, the defendant wakes up. He starts texting people
7 trying to sell the same gun. While he's doing this, he's
8 also in contact with the victim. At some point they meet
9 up. They go together to the gas station that's at the
10 intersection of Dorchester Road and 17-A. When they
11 arrived, they both walk into the store together. A few
12 seconds later, the defendant walks out of the store, goes
13 into the van that they came in together, grabs a gun, comes
14 back in, shoots Travis Gordon in the cheek once and then in
15 the left forehead killing him. He tries to run and get in
16 the van and take off, but he didn't have the keys. So he
17 comes back in, grabs the keys from the victim who is laying
18 on the ground, and at that point, points the gun at the
19 clerk and the patron, Ms. Miller. Tells them I will kill
20 you if you call 911.

21 Law enforcement is called and they begin an
22 investigation. And ultimately their investigation leads to
23 the arrest of Mr. Shewtzuk. And throughout the next few
24 days, we're going to present evidence to you in the form of
25 witness testimony and physical evidence through photos and

1 other evidence. And what that evidence we have to present
2 to you this week is: One, we'll have the defendant's cell
3 phone records. We have the text messages of what he
4 actually was saying to people and his phone call records.
5 Second, when he's at the gas station, he throws a cigarette
6 butt down right in front of the door. The police collect
7 that; it has his DNA on it. Third, the van that was the
8 victim's, they locate. On the passenger side of the van
9 they're able -- law enforcement is able to collect
10 fingerprints. Those fingerprints match the defendant.
11 Fourth, after the defendant shoots Travis Gordon, he calls
12 his dad, David Shewtzuk, and calls his cousin Alex Shewtzuk
13 and confesses to them. And fifth, if that's not enough, we
14 have the surveillance footage from the gas station, and you
15 will be able to see the entire murder take place. From the
16 time they arrive at the gas station, to when he shoots
17 Travis Gordon twice, to the point he leaves. You will watch
18 that video.

19 As the Judge instructed, it is our burden to prove to
20 you that the defendant committed these crimes beyond a
21 reasonable doubt. And there is a saying that you under
22 promise and over perform. But I'm telling you right now
23 after you see all of the evidence and you watch that video,
24 there's going to be zero doubt that the only person that
25 killed Travis Gordon is that man right there. And you will

1 have no choice but to find him guilty.

2 THE COURT: Counsel?

3 BY MS. SARJI: Thank you, Your Honor. May it please
4 the Court?

5 THE COURT: Yes, ma'am.

6 BY MS. SARJI: Ladies and gentlemen, nothing that the
7 solicitor says in opening arguments to y'all is considered
8 evidence. It's all argument; likewise with what I say. So
9 I understand that some of you are becoming upset just based
10 on what the solicitor has told you in his opening statement.
11 And I would just ask you to keep an open mind throughout
12 this trial, to live up to your duties as jurors, which means
13 holding the State accountable to their burden of proving
14 Mr. Shewtzuk guilty beyond a reasonable doubt.

15 Before we came in today for jury selection, I had lunch
16 with a lady from Sudan. And we were talking about her
17 experiences there in another country and how they don't have
18 the same freedoms that we have here. They don't have
19 freedom of religion. They don't have things like jury
20 trials there. And so this is a very, very important and
21 fundamental part of our country. We thank you for your
22 service as jurors. Again, we would just ask you to keep an
23 open mind, to look at the evidence that is presented to you
24 with a critical eye. And at the end of this case, to
25 evaluate it and wait until then to make up your mind about

1 whether Mr. Shewtzuk is innocent or guilty. At this point,
2 he sits before you an innocent man. And until the State has
3 lived up to its burden of proof, he remains an innocent man.
4 Thank you.

5 THE COURT: Thank you, counsel. Ladies and gentlemen,
6 it's almost five o'clock. It's about 4:40. Would counsel
7 please approach.

8 (A bench conference is held off the record and out of
9 the hearing of the jury panel.)

10 THE COURT: You may call your first witness.

11 AST SOL JUSTIS: The State calls **Lillian J.** (Brief
12 pause.) May I approach, Your Honor?

13 THE COURT: Yes, sir.

14 (A bench conference is held off the record and out of
15 the hearing of the jury panel.)

16 THE COURT: Before we get started, if there are any
17 other witnesses in the courtroom, if you would please exit
18 the courtroom at this time. (Brief pause.) You may proceed.

19 AST SOL JUSTIS: May it please the court, Your Honor?

20 THE COURT: Yes, sir.

21 AST SOL JUSTIS: Thank you.

22 **Lillian J.**, after being duly sworn, testified as
23 follows:

24 DIRECT EXAMINATION

25 BY AST SOL JUSTIS:

1 Q. Ms. Judd, how old are you?

2 A. Sixteen.

3 Q. And where do you live?

4 A. Ravenel.

5 Q. And back in June of 2015, did you live in Dorchester
6 County?

7 A. Yes.

8 Q. Let me take you back to last year, 2015; more
9 specifically, Friday June 12, 2015. Do you remember that
10 day?

11 A. I do.

12 Q. And do you remember what you were doing that day?

13 A. I was in the camp and I ended up going to Tommy's
14 house.

15 Q. Okay. And when you say Tommy, are you referring to
16 Thomas Shewtzuk?

17 A. Yes.

18 Q. And what relation was Thomas Shewtzuk to you back in
19 June of 2015?

20 A. My boyfriend.

21 Q. Okay. And what did you when you arrived at Tommy's
22 house?

23 A. We just kind of hung out and I saw him playing with a
24 gun.

25 Q. Can you describe the gun for us?

- 1 A. Black. That's all I really know.
- 2 Q. Was it a pistol? A rifle?
- 3 A. Pistol.
- 4 Q. And did you stay at Tommy's house that day?
- 5 A. No. We ended up getting picked up.
- 6 Q. Okay. And who did you get picked up by?
- 7 A. Some dude named Love.
- 8 Q. Can you describe Love to us?
- 9 A. White, tall, brown hair.
- 10 Q. And when Love picked you up, where did you go from
- 11 there?
- 12 A. To some apartments on Dorchester.
- 13 Q. And who was in the car with you and Tommy?
- 14 A. Love.
- 15 Q. Just Love. When you arrived at the apartment, was
- 16 there anyone else in the apartment?
- 17 A. Yes.
- 18 Q. And who was in the apartment?
- 19 A. Some other dude.
- 20 Q. And can you describe that person?
- 21 A. White, tall, brown hair.
- 22 Q. And what transpired at the apartment?
- 23 A. They were playing around with a gun; messing with
- 24 lasers and flashlights, I think; stuff like that.
- 25 Q. Okay. And how long would you say you stayed at the

1 apartment?

2 A. A few hours.

3 Q. Okay. And how did you eventually leave the apartment?

4 A. My grandmother picked me up.

5 Q. And when your grandmother picked you up, were you by
6 yourself?

7 A. Yes.

8 Q. Did you have an opportunity -- that's Friday -- did you
9 have an opportunity to speak or see Tommy anymore that day?

10 A. Yes.

11 Q. Tell us about that.

12 A. Well, he was texting me. We were really -- we weren't
13 really talking; we were arguing. So I wasn't like . . .

14 Q. Were you arguing texting?

15 A. Yes.

16 Q. And how long did that last?

17 A. A few hours, I think. I don't remember.

18 Q. Was that Friday night?

19 A. Yes.

20 Q. And on Saturday, did you have an opportunity to talk to
21 Tommy on Saturday?

22 A. No.

23 Q. Did you attempt to try to call Tommy?

24 A. Yes.

25 Q. Did you get any response?

Cross Examination of Lillian J. by Ms. Sarji

1 A. No.

2 Q. Did you -- from that Saturday on, did you have an
3 opportunity to talk or see Tommy?

4 A. No.

5 Q. Did you communicate any through any text messages with
6 Tommy after that Friday night?

7 A. He texted my grandmother saying that we were over; but
8 that was about it.

9 Q. Do you recognize the phone number 843-693-4406?

10 A. I do.

11 Q. And what number is that?

12 A. My grandfather's.

13 Q. Is that the number you were texting Tommy on?

14 A. Yes.

15 AST SOL JUSTIS: Beg the Court's indulgence. (Brief
16 pause.) No further questions. Please answer any questions
17 the defense might have for you.

18 THE COURT: Cross examination?

19 BY MS. SARJI: Thank you, Your Honor. Just very
20 briefly.

21 CROSS EXAMINATION

22 BY MS. SARJI:

23 Q. Lillian, that night when y'all were at the Dorchester
24 apartments, you were using Tommy's cell phone to text your
25 grandmother. Is that correct?

1 A. Yes, ma'am.

2 BY MS. SARJI: Thank you. I don't have any further
3 questions.

4 THE COURT: Any redirect?

5 AST SOL JUSTIS: No, Your Honor.

6 THE COURT: You may step down, Ms. Judd. Thank you.

7 AST SOL JUSTIS: May this witness be excused, Your
8 Honor?

9 THE COURT: Any objection?

10 BY MS. SARJI: None, Your Honor.

11 THE COURT: You're excused. Ladies and gentlemen, we
12 gotten through the first witness and it's almost five
13 o'clock. I know most of you don't live right close to the
14 courthouse and you may have to get home or pick up kids and
15 take care of your family business. So I'm going to excuse
16 you at this time. Before I let you go, please remember my
17 instruction to not discuss this case with anyone or allow
18 anyone to discuss this case with you. Again, it includes
19 your family, doing any independent research, or look at the
20 news, or anything of that nature. Because you are to make a
21 determination based solely on the facts and the evidence
22 that you hear in this case during this trial. I'm going to
23 ask you to please return to your jury room, and the bailiffs
24 will show you where you are to report in the morning. But
25 please be here by 9:15 so that we can get started with the

1 JUROR: Thank you.

2 THE COURT: Based on what you're telling me, it sounds
3 like you're okay staying with us.

4 JUROR: Yes, ma'am.

5 THE COURT: And you wouldn't be distracted and you're
6 okay with us having the contact information that would relay
7 the information to you.

8 JUROR: Yes.

9 THE COURT: All right, sir. Thank you.

10 JUROR: Thank you.

11 (Juror number 137, Wayne Starrett, is excused from the
12 witness stand and exits the courtroom at 9:53 a.m.)

13 THE COURT: Anything further from either party on juror
14 number 137?

15 AST. SOL. JUSTIS: No, Your Honor. Nothing from the
16 State.

17 BY MS. SARJI: Nothing, Your Honor. Thank you.

18 THE COURT: We'll mark both of these notes as Court's
19 exhibits. The other two jurors, I will ask them --
20 hopefully they can hear. We'll make sure everybody speaks
21 up. But I will ask them to let us know if they do have a
22 hard time speaking up or if they do want those, the
23 headphones, for further assistance with that.

24 Ms. Sarji, at this point, do you want me to request a
25 any kind of jury instructions that please remember to keep

1 an open mind and not make any decision based on anything you
2 may have heard outside the courtroom? Or do you just want
3 to wait for the jury instructions at the end?

4 BY MS. SARJI: Your Honor, can I have just one moment
5 to confer with my client.

6 THE COURT: Sure.

7 (Court's Exhibits No. 1 and 2, Jury Questions, were
8 marked for identification.)

9 (Brief pause.)

10 BY MS. SARJI: Judge, I think it would be good to go
11 ahead and just let them know not to draw any inferences on
12 anything that they may have heard as we move about, brought
13 up the concerns about the lady in the jury panel yesterday.
14 He was saying things that were inappropriate.

15 THE COURT: And regarding that, just for the record,
16 Ms. Kuwae did say it was -- her reaction was in no way
17 influenced by things she heard outside the courtroom.

18 BY MS. SARJI: Yes, Your Honor.

19 THE COURT: I think we're okay with that. But I'm
20 certainly happy to give an instruction, instructing them to
21 keep an open mind and make their decision based solely on
22 the evidence that is presented in the courtroom and nowhere
23 else.

24 BY MS. SARJI: Yes, Your Honor. Thank you. Out of an
25 abundance of caution, I would ask for that. Thank you.

1 THE COURT: Anything objection to that, Solicitor?

2 AST. SOL. JUSTIS: No, Your Honor.

3 THE COURT: Let's have our jury please.

4 (The jury enters the courtroom at 9:56 a.m.)

5 THE COURT: Good morning, ladies and gentleman of the
6 jury. Before we get started, I understand that there are
7 two jurors that are having a hard time hearing, Mr. Connell.
8 and Ms. Farris. If you have difficulty hearing, let us
9 know. If you need, we have some headphones that are
10 available to amplify the microphones in the courtroom. If
11 you need those, let us know.

12 JUROR: I'd rather have that.

13 THE COURT: Okay.

14 JUROR: Because I was having difficulty yesterday.

15 THE COURT: All right. So we'll get those. And Mr.
16 Connell, are you okay? Or would you like -- you're okay.

17 JUROR: (Affirms.)

18 THE COURT: If at any point you need those, just let us
19 know. Because we want to make sure everybody hears
20 everything.

21 (Brief pause.)

22 THE COURT: You hear okay?

23 JUROR: Oh, that's great.

24 THE COURT: Perfect. Well, obviously this morning
25 we're getting a little bit of a late start. And I just

1 wanted to share with you we had to let one of our jurors be
2 dismissed from the trial of this case. But that in no way
3 is to influence you in any way, shape, or form. I want you
4 to please remember my previous instruction to you that you
5 are to determine the facts in this case based solely on the
6 evidence that you hear in this courtroom. And you are to
7 not be influenced by any outside sources whatsoever. So
8 again, please remember your oath to do so. And we will now
9 resume with the trial of the case. Solicitor, you may call
10 your next witness.

11 AST. SOL. WARD: The State calls Doug Vaughn.

12 DOUGLAS EDWARD VAUGHN, after being duly sworn,
13 testified as follows:

14 AST. SOL. WARD: May it please the Court, Your Honor?

15 THE COURT: Yes, sir. Your witness.

16 AST. SOL. WARD: Thank you.

17 DIRECT EXAMINATION

18 BY AST. SOL. WARD:

19 Q. Mr. Vaughn, where do you currently live?

20 A. In Monks Corner.

21 Q. Okay. And are you currently employed?

22 A. Yes, sir.

23 Q. Where are you working?

24 A. Continental Custom Cabinets.

25 Q. And are you married?

1 A. Yes, I am.

2 Q. Do you have any kids?

3 A. Yes. I have four.

4 Q. Do you know the defendant, Thomas Shewtzuk?

5 A. Yes, I do.

6 Q. And how do you know him?

7 A. He's my cousin.

8 Q. And how often, say last year, would you see him?

9 A. I mean, I'd see him periodically whenever -- I'd
10 probably say maybe once a week, twice a week.

11 Q. I'd like to turn your attention to Friday June 12,
12 2015. Do you recall that day?

13 A. Yes, I do.

14 Q. And did you see the defendant that day?

15 A. Yes, I did.

16 Q. Where did you see him at?

17 A. He stopped by the house and come in and was talking to
18 me.

19 Q. And was he with anyone?

20 A. He had a friend with him that I'd never seen before.

21 Q. Was anyone else at the house with you?

22 A. Me, my wife, and I think one or two of her kids. I
23 can't remember exactly.

24 Q. What did you and the defendant talk about that night?

25 A. He come in and asked if I would be interested in

1 purchasing a pistol from him.

2 Q. Did he say why he was trying to sell the pistol?

3 BY MS. SARJI: Your Honor, I'm going to object to the
4 extent he's seeking to elicit hearsay testimony.

5 AST. SOL. WARD: It's the defendant statement, Your
6 Honor.

7 THE COURT: Approach.

8 (Whereupon, a bench conference is held off the record
9 and out of the hearing of the jury panel.)

10 THE COURT: You may proceed, Solicitor.

11 AST. SOL. WARD: Thank you, Your Honor.

12 Q. Did the defendant tell you why he was trying to sell
13 the gun?

14 A. Pretty much he just mentioned that he needed some money
15 and whatnot. Just trying to get money.

16 Q. Did you actually see the gun that night?

17 A. Yes, sir; I did.

18 Q. Do you recall what type of gun it was?

19 A. Smith & Wesson; I'm pretty sure of.

20 Q. Do you remember the caliber of the gun?

21 A. It was a 40 or 45. I couldn't remember exactly.

22 Q. Did you see if it was loaded or not?

23 A. I did check to make sure it was not loaded when he
24 handed it to me.

25 Q. Did you see -- did he have any bullets with the gun?

Direct Examination of Douglas Vaughn by Ast. Sol. Ward

1 A. I don't recall if he did or not.

2 Q. Did you end up buying the gun from him that night?

3 A. No, sir.

4 Q. Did you see who left with the gun?

5 A. He had left with the gun.

6 Q. It was still in the defendant's possession at the time.

7 A. Yeah. Well, him and his friends.

8 Q. And after that night, did you see the defendant again?

9 A. I think he did stop back by. He borrowed \$20 from me.

10 Q. On the following day on June 13th -- or did you recall
11 speaking with law enforcement a few days later?

12 A. Yes. They came to the house.

13 Q. And before that, had you spoken with anyone about what
14 had happened on June 13th?

15 BY MS. SARJI: Objection, Your Honor. This is clearly
16 trying to elicit double hearsay by anticipating where the
17 Solicitor is going.

18 THE COURT: He just asked him if he spoke to someone.
19 He didn't ask about the content of the conversation.

20 BY MS. SARJI: Thank you.

21 Q. Do you recall speaking with anyone about an incident?

22 A. His father had come by my house and mentioned something
23 about it. That's how I found out.

24 Q. And did you ultimately give a statement to police?

25 A. Yes, I did.

1 AST. SOL. WARD: Thank you. Beg the Court's
2 indulgence.

3 Q. Mr. Vaughn, as you stated, you gave a statement to
4 police?

5 A. Yes, sir.

6 Q. Do you recall in that statement describing what type of
7 bullets were with the gun?

8 A. I really don't. I don't remember describing it. It's
9 been so long ago.

10 Q. Okay.

11 AST. SOL. WARD: May I approach the witness, Your
12 Honor?

13 THE COURT: Yes, sir.

14 Q. I'm going to show you a copy of your statement that you
15 gave to the police if you want to look that over for a
16 moment.

17 A. (Witness complies.)

18 Q. Is that your statement that you gave to police?

19 A. Yes, it is.

20 Q. All right. Does that refresh your recollection of what
21 you ---

22 A. It does a little bit.

23 Q. Okay. And can you now tell me what type of bullets you
24 described as being in the gun?

25 A. It was hollow point.

Cross Examination of Douglas Vaughn by Ms. Sarji

1 Q. Thank you.

2 AST. SOL. WARD: No further questions.

3 THE COURT: Cross examination?

4 CROSS EXAMINATION

5 BY MS. SARJI:

6 Q. Mr. Vaughn, on June 12, 2015, you said that Tommy came
7 to your house with another individual. Is that right?

8 A. Yes, ma'am.

9 Q. And you haven't seen that person before?

10 A. No, ma'am.

11 Q. Did you hear him call Love or referred to by any other
12 type of nickname?

13 A. I really don't recall. But I think he did mention it.
14 It was a nickname that he gave him. It wasn't like a
15 regular name.

16 Q. And was that the nickname Love?

17 A. I'm thinking it was.

18 Q. And at the time, I believe that you just told the
19 Solicitor, at the time when Tommy and Love left your house,
20 you didn't see who had the gun at that point. Is that
21 correct?

22 A. I just knew that they had left with it.

23 BY MS. SARJI: Okay. I don't have any further
24 questions, Judge. Thank you.

25 THE COURT: Any redirect?

1 AST. SOL. WARD: Nothing, Your Honor.

2 THE COURT: You may step down, sir. Thank you. You
3 may call your next witness.

4 AST. SOL. JUSTIS: At this time, the State calls Kallie
5 Vaughn.

6 KALLIE VAUGHN, after being duly sworn, testified as
7 follows:

8 THE COURT: Your witness.

9 AST. SOL. JUSTIS: Thank you, Your Honor. May it
10 please the Court?

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION

13 BY AST. SOL. JUSTIS:

14 Q. Kallie, where do you live?

15 A. Monks Corner.

16 Q. And how old are you?

17 A. Nineteen.

18 Q. And who do you live with?

19 A. My parents.

20 Q. Okay. Do you remember -- do you know Tommy Shewtzuk?

21 A. Yes, sir. That's my cousin.

22 Q. And how long have you known Tommy?

23 A. My whole life.

24 Q. And did you ever have an opportunity to speak with
25 Tommy on the phone?

1 A. Yes.

2 Q. Okay. Do you recall meeting with law enforcement in
3 regards to this case?

4 A. Yes, sir.

5 Q. Do you remember giving a written statement to law
6 enforcement in regards to what you knew about this case?

7 A. Yes, sir.

8 Q. In that written statement, do you remember telling them
9 the phone number you knew for Tommy Shewtzuk?

10 A. Yes, sir.

11 Q. Do you happen remember what the phone number was?

12 A. No, sir.

13 Q. Would it refresh your memory if I showed you your
14 statement?

15 A. Yes, sir.

16 Q. I'm showing you what appears to be your statement. Do
17 you recognize that as the statement you wrote?

18 A. Yes, sir.

19 Q. Okay. Is that your handwriting?

20 A. Yes, sir.

21 Q. How many pages is that statement?

22 A. Three pages.

23 Q. Okay. If you'll focus on page number 2 about halfway
24 down, kind of read through I guess the middle part of that
25 second page. And tell me if that refreshes your memory as

1 to the number you gave law enforcement.

2 A. Yes, sir.

3 Q. Okay. And what number did you give law enforcement for
4 the number you knew to be Tommy's number?

5 A. 843-209-9308.

6 Q. Thank you. Kallie, do you have any direct knowledge
7 when this incident happened? You don't have any direct
8 knowledge of what happened, do you?

9 A. No, sir.

10 Q. You just know what other people told you?

11 A. Yes, sir.

12 Q. At any time in the recent past, the last few months,
13 have you had an opportunity to speak with Tommy Shewtzuk?

14 A. Yes, sir.

15 Q. And when you spoke to Tommy, what did you all talk
16 about?

17 A. We just talked mostly about family, how his mom was
18 doing and . . .

19 Q. Okay. Did you talk at all about anything regarding
20 this case?

21 A. Not really.

22 Q. Okay. Well, by not really, what do you mean?

23 A. Well, just someone had known that he had got a face
24 tattoo and told him someone thought he got a tear drop. And
25 he's like ---

1 BY MS. SARJI: Your Honor, I'm going to object. I
2 believe that what she is saying is hearsay and is possibly
3 objectionable. May we approach?

4 THE COURT: Yes, please.

5 (Whereupon, a bench conference is held off the record
6 and out of the hearing of the jury panel.)

7 Q. Kallie, I'm going to withdraw that question. Who was
8 with you when you went to see Tommy?

9 A. I went the first time by myself and then Katelynn came
10 the second time.

11 Q. Okay.

12 AST. SOL. JUSTIS: Thank you. No further questions.
13 Please answer any questions the defense might have.

14 THE COURT: Cross examination?

15 BY MS. SARJI: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MS. SARJI:

18 Q. Kallie, do you own your own cell phone?

19 A. Yes, ma'am.

20 Q. And do you ever let your friends use your cell phone?

21 A. Sometimes.

22 Q. And have you ever know Tommy to let his friends use his
23 cell phone?

24 A. Yeah.

25 BY MS. SARJI: Those are all the questions I have for

1 you. Thank you.

2 THE COURT: Anything further, Solicitor?

3 AST. SOL. JUSTIS: Briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY AST. SOL. JUSTIS:

6 Q. What friends did you see use Tommy's cell phone?

7 A. I'm not exactly sure. I mean, I've used his phone
8 before.

9 Q. So you've used his phone before. But do you know if
10 anyone else has used his phone before?

11 A. I mean, I'm not for sure, for sure.

12 Q. Okay. So when you answered that he lets people use his
13 phone, you meant he lets you use his phone?

14 A. Well, he's let people use it. I haven't seen them. I
15 don't recall like who.

16 Q. So you remember other people using the phone, but you
17 don't remember who. Is that a fair statement?

18 A. Yes, sir.

19 AST. SOL. JUSTIS: Okay. Thank you.

20 THE COURT: You may step down, ma'am. Thank you. You
21 may call your next witness.

22 AST. SOL. JUSTIS: The State calls Katelynn Dubois.

23 KATELYNN DUBOIS, after being duly sworn, testified as
24 follows:

25 THE COURT: Your witness.

Direct Examination of Katelynn Dubois by Ast. Sol. Justis

1 AST. SOL. JUSTIS: Thank you, Your Honor. May it
2 please the court?

3 DIRECT EXAMINATION

4 BY AST. SOL. JUSTIS:

5 Q. Katelynn, could you tell the jury where you live.

6 A. 276 -- I live with my grandmother.

7 Q. And do you know the defendant, Tommy Shewtzuk?

8 A. Yes.

9 Q. And how do you know Tommy?

10 A. I was in a relationship with him for four months.

11 Q. Okay. And did you know the victim, Travis Gordon?

12 A. Yes, I did.

13 Q. And do you know Travis?

14 A. I was with him for a year.

15 Q. And did you date Travis before or after Tommy?

16 A. Before.

17 Q. Going back to June of 2015, were you dating either one
18 of those individuals at that time?

19 A. No, I was not.

20 Q. Would it be a fair statement to say that you had dated
21 both of them previous to that?

22 A. Yes.

23 Q. Let me turn back to Friday, June 12, 2015. Do you
24 remember that date?

25 A. Yes.

1 Q. What do you remember you were doing on that date? That
2 evening, more specifically.

3 A. What was the date? I'm sorry.

4 Q. June 12th. It was a Friday evening.

5 A. I was at a pool party with Thomas's mother.

6 Q. And at some point that evening, did you have the
7 opportunity to see Thomas?

8 A. Yes.

9 Q. And could you tell us about that? What you saw that
10 evening.

11 A. He was at his mother's house showing off a handgun to
12 his mother.

13 Q. Could you see what the gun looked like?

14 A. Not from the distance that I was. But I knew it was a
15 gun and it was black.

16 Q. Okay. And was anybody with Tommy that night?

17 A. He had a friend with him. It was a guy; he was white.
18 I don't know who he was.

19 Q. You had never met that person before?

20 A. No.

21 Q. Did Tommy leave with that individual that night?

22 A. Yes, sir.

23 Q. Did you have an opportunity that evening to speak or
24 see Travis Gordan, the victim in the case?

25 A. I believe we were texting on and off that night.

1 Q. And do you remember -- do you remember when the last
2 time was you either talked or texted to Travis Gordan?

3 A. The last text message I received from him was around
4 2:30 in the morning.

5 Q. Now let's kind of move to the next day, Saturday, June
6 13th. Did you have an opportunity to talk with Travis or
7 Tommy that day?

8 A. I did not get to speak with Travis. And I recall
9 texting Thomas.

10 Q. Okay. And when you say you didn't get a chance to
11 speak with Travis, did you attempt to try to talk to Travis
12 that day?

13 A. I did.

14 Q. Okay. And how did you do that?

15 A. I was texting his cell phone.

16 Q. And did you get any response?

17 A. No, I did not.

18 Q. Okay. What about Tommy? You stated that you texted
19 Tommy. Did you get a response from Tommy?

20 A. No.

21 Q. At some point on Saturday, did you become aware of what
22 had happened?

23 A. Yes, sir.

24 Q. Subsequent to finding out what had happened, did you
25 have an opportunity to speak with law enforcement?

1 A. Yes, I did.

2 Q. Okay. And did you give a statement to law enforcement?

3 A. Yes, I did.

4 Q. Could you kind of tell us the circumstances around
5 giving that statement. Where did it happen? When did it
6 happen? What do you remember?

7 A. Well, I believe it was pretty late at night. And I
8 believe it was here in Dorchester County. I wrote a
9 statement on the night that I saw Thomas.

10 Q. Did you ever tell anybody that Travis had either beat
11 you or done things to you that you didn't like?

12 A. No, sir.

13 Q. Did you ever say that about Tommy?

14 A. Yes.

15 Q. And who did you tell that to?

16 A. My family members mainly.

17 Q. Anyone else you can recall?

18 A. No, sir.

19 Q. At the time back in June 12 -- 13th of 2015, at that
20 time, was Travis working anywhere?

21 A. I believe he just got a job at Google.

22 Q. What about Tommy? Are you aware if he was working
23 anywhere?

24 BY MS. SARJI: Objection, Your Honor. Relevance.

25 AST. SOL. JUSTIS: May we approach?

1 THE COURT: Yes, sir.

2 (Whereupon, a bench conference is held off the record
3 and out of the hearing of the jury panel.)

4 THE COURT: You may proceed.

5 AST. SOL. JUSTIS: Thank you, Your Honor.

6 Q. Katelynn, did you have an opportunity to see Tommy in
7 the last several months and meet with him?

8 A. Yes, I did.

9 Q. And who was with you when you did that?

10 A. Kallie Vaughn.

11 Q. And did he say anything specific to this case? Any of
12 the facts of this case.

13 A. All I remember is he was telling me that Travis came
14 and picked him up and he explained to me that he was messed
15 up on Xanax. And when he's on it, that he's very paranoid
16 and sketchy. And Travis was swerving the vehicle. And that
17 is really all I can remember about the . . .

18 Q. Okay. Do you happen to remember what phone number
19 Tommy used back then?

20 A. I do not.

21 Q. Would it refresh your memory if I showed it to you?
22 Would you recognize it if you saw the number?

23 A. I am not really sure if I would.

24 Q. Okay.

25 AST. SOL. JUSTIS: Beg the Court's indulgence.

1 Q. You testified that you dated both Travis and Tommy at
2 separate times. Did Tommy and Travis -- were they friends?

3 A. No.

4 Q. Did you ever talk to one about the other?

5 A. I would speak to Travis about Thomas.

6 Q. What about Thomas? Would you speak to Thomas about
7 Travis?

8 A. I don't recall if I ever really did like that.

9 AST. SOL. JUSTIS: No further questions. Please answer
10 any questions Ms. Sarji may have.

11 THE COURT: Cross examination?

12 BY MS. SARJI: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MS. SARJI:

15 Q. Katelynn, you said that you dated both Travis and
16 Tommy. Is that right?

17 A. Yes, ma'am.

18 Q. And you indicated in your cross examination -- or in
19 your testimony when the Solicitor was asking you questions
20 that you had dated Travis prior to dating Tommy. Is that
21 right?

22 A. Yes.

23 Q. But you kept talking to both of them during the whole
24 time that you were dating each. Is that right?

25 A. I did not know Thomas until a month after my one year

1 with Travis.

2 Q. Okay. So during the time that you were dating Tommy,
3 you had already dated Travis. Is that right?

4 A. Yes.

5 Q. And so during the time that you were dating Tommy,
6 you're also talking to Travis. Is that correct?

7 A. Yes.

8 Q. And then after you were dating Tommy, you're back with
9 Travis. Is that right?

10 A. I was just speaking with Travis, yes.

11 Q. And this person that you were just speaking with at
12 that point, you're texting all night with him on Friday,
13 June 13 -- June 12th. Is that right?

14 A. Yes. Sorry.

15 Q. And in fact you said that this person that you're not
16 dating is telling you he loves you at 2:00 o'clock in the
17 morning. Is that right?

18 A. Correct.

19 Q. And that y'all always would spend Saturday's together.
20 Is that right?

21 A. Correct.

22 Q. And you were telling him at that point, because it had
23 to be at that point, you were telling him things that you
24 say that Tommy was doing to you. Is that right?

25 A. It depends on what you mean by what Thomas was doing to

1 me.

2 Q. Okay. Well, what you testified to and when the
3 Solicitor was asking you questions is that you were telling
4 Travis that Tommy was putting his hands on you?

5 A. Not exactly. Not with the putting his hands on me, no.
6 He never put his hands on me.

7 Q. Okay. So after you dated Tommy then you're telling
8 Travis things that aren't nice about Tommy. Is that fair to
9 say?

10 A. I believe so, yes.

11 Q. And in fact you were also telling Tommy things that
12 weren't nice about Travis. Isn't that right?

13 A. No.

14 Q. During the time that you were dating Tommy, you were
15 telling Tommy things that Travis had done to you when you
16 were dating him previously. Is that correct?

17 A. No. Because Travis has never done anything to me.

18 Q. What you just testified to the Solicitor is that you
19 couldn't recall whether you had said anything like that.
20 Isn't that true?

21 A. Yes.

22 Q. That is what you just said, right?

23 A. Yes.

24 Q. In fact you were trying to play both of these boys
25 against each other. Isn't that right?

1 A. No.

2 Q. You were trying to stir things up between them. Is
3 that right?

4 A. I was not.

5 Q. You weren't trying to start a fight?

6 A. No.

7 Q. You were still talking to Tommy after you started
8 talking to Travis again. Is that correct?

9 A. No.

10 Q. So when you told the police on June 13, 2015, that you
11 had last talked to Tommy around noon that day, was that a
12 lie?

13 A. No.

14 Q. So was it a lie just now when you said that you weren't
15 still talking to Tommy?

16 A. I wasn't speaking to him like that; like, constantly.
17 That was the first time that I had spoken to him since I
18 had broken up -- since we had broken up.

19 Q. Okay. So when I asked you just now -- and remember
20 you're under oath. You swore to tell the truth and the
21 whole truth when you came in here today. Do you remember
22 that?

23 A. Yes.

24 Q. And you're how old now?

25 A. Eighteen.

1 Q. Okay. So you know what it means to tell the whole
2 truth, right? Is that a yes?

3 A. Yes.

4 Q. And so when you just said that you were not still
5 talking to Tommy after you started talking to Travis again,
6 that wasn't the whole truth. Was it?

7 A. I mean, I spoke to him one time the day that he showed
8 up to his mother's house.

9 Q. Well, that was actually on June 12, 2015. Is that
10 right?

11 A. Yes.

12 Q. And you actually told the police that you hadn't spoken
13 to Tommy that night. Isn't that right?

14 A. No.

15 BY MS. SARJI: Court's indulgence, Your Honor.

16 (Brief pause.)

17 Q. You didn't tell Detective Adam Smith on June 13, 2015,
18 that you did not speak to Tommy on June 12th?

19 A. I didn't speak to him face-to-face. I spoke to him
20 through text message.

21 Q. Okay. Again, it's really important that when I'm
22 asking the questions, if you don't understand what I'm
23 asking you, I need for you to tell me that so I can put it
24 in a different way. Because what you just said was that you
25 did talk to Tommy the day before on June 12th. But you told

Cross Examination of Katelynn Dubois by Ms. Sarji

1 the police something different. Now you're saying that you
2 did. So I'm trying to get it straight. You talked to him
3 on June 12, 2015. Is that right?

4 A. Yes. I had texted him.

5 Q. But you told the police that you hadn't. Is that
6 right?

7 A. I don't recall saying that. I wrote it in my
8 statement.

9 THE COURT: Ms. Sarji, maybe when you ask, ask the
10 difference between did you speak to him face-to-face or
11 text. I think there's a confusion here regarding your
12 questions.

13 BY MS. SARJI: Okay.

14 Q. You told the detectives that you didn't speak to Tommy
15 on June 12, 2015. Is that right?

16 A. I wrote I spoke to him through text message.

17 Q. You told Detective Adam Smith, who I think is the
18 Detective -- you've seen this man before, haven't you? This
19 is Detective --

20 BY MS. SARJI: You're Detective Smith, right?

21 DETECTIVE SMITH: Correct.

22 Q. So you've seen him before, yes?

23 A. Yes.

24 Q. And when you went to the police department on June 13,
25 2015, this is the man that you talked to, right?

1 A. Yes.

2 Q. And you told him everything that you felt like you
3 needed to tell him, right?

4 A. Correct.

5 Q. And you told him what you say is the truth. Is that
6 right?

7 A. Yes.

8 Q. So when you told him that you didn't speak to Tommy --
9 speak to Tommy on June 12, 2015, at that time, was that the
10 truth?

11 A. Yes. I did not speak to him.

12 Q. Okay. But you were having contact with him?

13 A. Correct.

14 Q. Through text messaging?

15 A. Yes.

16 Q. During the same time that you're were also talking to
17 Travis, communicating with Travis?

18 A. Yes.

19 Q. Both of these individuals you had been romantically
20 involved with in the past?

21 A. Correct.

22 Q. And you were how old when you were dating Travis?

23 A. I was 15.

24 Q. And how old was he?

25 A. Twenty.

1 Q. You were aware that Travis and Tommy would Facebook
2 message each other. Is that right?

3 A. I don't believe so. I don't ever recall them Facebook
4 messaging each other that I know of.

5 Q. When you saw him on June 12, 2015, at his mother's
6 house, and you were over at his mother's house, yes?

7 A. Yes, ma'am.

8 Q. He was with another guy. Is that right?

9 A. Yes, ma'am.

10 Q. Had you seen that guy before?

11 A. No.

12 Q. Do you know -- did you hear him referred to by a
13 nickname or otherwise that night?

14 A. No; not that I can remember.

15 Q. You don't know whether his nickname was Love?

16 A. I don't know if that was that guy or not. I just know
17 that somebody went by Love that was apparently with Thomas.
18 But I didn't know if it was that guy.

19 BY MS. SARJI: Courts indulgence, Your Honor.

20 Q. Katelynn, you have a cell phone, don't you?

21 A. Correct.

22 Q. And you let other people use your cell phone at times.
23 Is that right?

24 A. Yes.

25 BY MS. SARJI: Thank you. I don't have anything

1 nothing further, Judge.

2 THE COURT: Any redirect?

3 AST. SOL. JUSTIS: Briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY AST. SOL. JUSTIS:

6 Q. Katelynn, when you met with law enforcement you wrote a
7 statement. Is that correct?

8 A. Yes, sir.

9 Q. And do you remember telling law enforcement that you
10 saw Tommy last night?

11 A. Correct.

12 Q. Which would be Friday night. But when you were at this
13 pool party, did you actually speak to him at the pool party?

14 A. No, sir.

15 Q. So you didn't speak to him, but you did see him?

16 A. Yes, sir.

17 Q. And to your knowledge, you never -- did you text him or
18 not that night?

19 A. I did text him that night.

20 Q. Okay. Do you remember what you said to him?

21 A. I think I said it was good to see him.

22 Q. Okay. So you remember saying in the text saying it was
23 good to see you?

24 A. Correct.

25 Q. Are you referring to seeing him at this pool party?

1 A. Yes.

2 AST. SOL. JUSTIS: No further questions.

3 THE COURT: You may step down, ma'am. Thank you. You
4 may call your next witness.

5 AST. SOL. WARD: George Floyd.

6 GEORGE FLOYD, after being duly sworn, testified as
7 follows:

8 THE COURT: Your witnesses.

9 AST. SOL. WARD: Thank you, Your Honor. May it please
10 the Court?

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION

13 BY AST. SOL. WARD:

14 Q. Mr. Floyd, can you tell the jury where you are
15 employed?

16 A. Verizon Wireless.

17 Q. And what is your job title?

18 A. I'm a senior legal analysts.

19 Q. And what are some of your job duties?

20 A. I travel throughout the United States and I represent
21 Verizon Wireless in criminal a civil cases as a custodial
22 record or expert witness.

23 Q. And could you tell the jury what type of records are
24 recorded and collected by Verizon?

25 A. Yes. Verizon captures call logs, calls placed to a

1 phone or received by a phone, text messaging, transactions,
2 text message contents, picture messaging, and data.

3 Q. And where are those -- where are those records kept?

4 A. They are kept in the normal course of business for
5 billing purposes and also to monitor our network.

6 Q. And how are you able to locate records?

7 A. We have a law enforcement resource team. They work
8 with the team that stores the records. So any time that a
9 subpoena is or a warrant is listed or requested to receive
10 records, my team requests the records and we bring them to
11 court.

12 Q. And how long are, let's say, phone call records kept in
13 the ordinary course of business?

14 A. Usually about three to five years.

15 Q. And how long are the content of text messages kept in
16 the ordinary course of business?

17 A. Text contents are usually kept for about three to five
18 days.

19 Q. And when I say text content, can you explain that to
20 the jury?

21 A. Yes. Text contents are the actual text messages; the
22 words that show up in the text messages.

23 Q. And were you subpoenaed to bring particular records
24 here today for this case?

25 A. Yes, I was.

1 Q. And do you recall what the subpoena target number was?

2 A. Yes, I have it here. One moment. It is 843-209-9308.

3 Q. And for that target number, were you given a range of
4 dates for records to provide?

5 A. Yes, I was.

6 Q. And what were those dates?

7 A. One second. It's May 17, 2015, through June 15, 2015.

8 Q. And what all records were you able to obtain?

9 A. We have call logs, which again is the transaction
10 between two phones, phone calls originating or calls placed
11 to a phone, the calls received to a phone. We have the
12 actual location of the cell sites; text message logs, which
13 is who sent the text message and where text message was sent
14 to and from. We actually have the text content, which is
15 the words again in the text messages as well.

16 AST. SOL. WARD: May I approach the witness?

17 THE COURT: Yes, sir.

18 (Brief pause.)

19 BY MS. SARJI: Judge, may we approach?

20 THE COURT: Yes, ma'am.

21 (Whereupon, a bench conference is held off the record
22 and out of the hearing of the jury panel.)

23 THE COURT: You may proceed.

24 AST. SOL. WARD: Thank you, Your Honor.

25 Q. Mr. Floyd, I'm going to show you what's now been marked

1 as State's Exhibit No. 42 for identification purposes. Are
2 those the records from the target number that you were
3 subpoenaed for today?

4 A. Yes, they are.

5 Q. And with that target number, were you able to get
6 account provider information? Or subscriber information?
7 I'm sorry.

8 A. Yes, I was.

9 Q. Okay. And who was the name on that account?

10 A. It's David, D-a-v-i-d, Shewtzuk. That's
11 S-h-e-w-t-z-u-k.

12 Q. I think that's David Shewtzuk.

13 A. Shewtzuk. Sorry about that.

14 Q. That's all right. And are those records that you have,
15 are those certified copies?

16 A. Yes, they are.

17 Q. All right. And were those records kept in the
18 ordinary -- normal and ordinary course of business?

19 A. Yes, they were.

20 Q. Okay.

21 AST. SOL. WARD: At this time, Your Honor, the State
22 would like to admit Exhibit 42 into evidence.

23 THE COURT: Any objections?

24 BY MS. SARJI: No objections as to these records being
25 the records from the target number.

1 THE COURT: Correct.

2 BY MS. SARJI: Thank you.

3 (Whereupon, State's Exhibit No. 42, Phone Records, was
4 received into evidence.)

5 Q. I'm now showing you what's been marked as State's
6 Exhibit 41 for identification purposes. Do you recognize
7 that?

8 A. Yes, I do.

9 Q. And what is that?

10 A. This is a summary of the records versus combing through
11 this entire large group of records. This is basically a
12 summary of text message content, call logs, and things of
13 that nature.

14 Q. Okay. And you say those are accurate records from the
15 larger compilation?

16 A. Yes, they are.

17 Q. Okay. Thank you. And what the call records -- when
18 the call records are kept, are you able to see the date and
19 time? And what information is kept on the call records?

20 A. There is the tower number, the date, the time, the
21 duration of the call, who the call was -- the target number,
22 and who the call was placed from and to and vice versa.

23 AST. SOL. WARD: One moment, Your Honor.

24 THE COURT: Yes, sir.

25 Q. Just a couple more questions. How are the text

1 messages kept when they are recorded?

2 A. Text messages, again, the contents of the text message,
3 which means the words, they're kept three to five days.

4 Basically, because there are so much text messages coming
5 through that we had to delete it to preserve our system.

6 And those text messages are kept and upon a subpoena, we can
7 send them out. Then we also have the text message logs

8 which is going to show the text message transaction. They
9 will show the target number and then to whom the text

10 messages were sent and received from and vice versa.

11 Q. And when you provide copies of those records, are they
12 in chronological order?

13 A. We try to put them in chronological order as much as
14 possible, but sometimes they're not.

15 Q. Okay. So it's not going to show your first text
16 message sent and then the next and the next one. It could

17 all ---

18 A. Jumbled up.

19 Q. --- jumbled up?

20 A. Yes.

21 Q. Okay.

22 AST. SOL. WARD: Thank you. No further questions.

23 THE COURT: Cross examination?

24 BY MS. SARJI: Thank you, Your Honor.

25 CROSS EXAMINATION

1 BY MS. SARJI:

2 Q. Mr. Floyd, you said that you were requested to provide
3 records from the day of May 17th through June 15th. Is that
4 correct?

5 A. That is correct.

6 Q. And do y'all are normally provide records -- I mean, I
7 couldn't just call you up and say, hey, Mr. Floyd, I really
8 want to know what my daughter has been texting on my phone.
9 Can you please give me the records of her text messages? I
10 couldn't ---

11 A. It has to be submitted through a subpoena.

12 Q. Through a subpoena?

13 A. Yes.

14 Q. So are the subpoenas that you get, do you also get
15 provided with copies of search warrants or anything like
16 that? Or this is just a subpoena that you had received in
17 this case?

18 A. In most cases, or some cases I should say, we also get
19 a copy of the subpoena and search warrants as well.

20 Q. Okay. But this is something that only, you know, law
21 enforcement could get these records and that kind of thing.
22 Is that right?

23 A. Law enforcement, attorneys; customers can also request
24 it if they issue a -- if they represent themselves and pay
25 the fees for a subpoena as well.

1 Q. Okay. And so the subscriber on this account or the
2 person who actually got the account, got the phone, was
3 David Shewtzuk. Is that right?

4 A. Yes. That's the name that was listed.

5 Q. It wasn't Thomas Shewtzuk. Is that correct?

6 A. That name was not listed.

7 Q. And the subpoena that you received you said included
8 the date from May 17th forward. Is that correct?

9 A. That is correct.

10 Q. So when you went back and looked through these records,
11 did you pull them from May 17th forward?

12 A. I didn't pull the records. I only printed copies of
13 the records. And that's the first date that I saw when I
14 just reviewed the records from the record I was looking at.

15 Q. Was from May 17, 2015 forward?

16 A. Correct.

17 BY MS. SARJI: Your Honor, I believe there's an issue
18 of law that needs to be taken up outside the presence of the
19 jury.

20 THE COURT: Ladies and gentlemen of the jury, we're
21 going to take just a very brief recess. About time for our
22 morning break anyway. Again, please remember by instruction
23 not to discuss this case amongst yourselves. Thank you.

24 (The jury exits the courtroom at 10:49 a.m.)

25 THE COURT: Yes, ma'am.

1 fine. If you do, that's fine by me too.

2 BY MS. SARJI: I just need a minute to look at it,
3 Judge.

4 THE COURT: That's fine. Let's take a brief recess and
5 let me know when you're ready.

6 BY MS. SARJI: Thank you.

7 THE COURT: Sir, you can step down. But please don't
8 discuss your testimony with anyone at this time. Thank you.

9 (A brief recess was taken at 10:59 a.m. The
10 proceedings resume at 11:19 a.m.)

11 THE COURT: All right. Ms. Sarji, have you had an
12 opportunity to review the records?

13 BY MS. SARJI: Yes, Your Honor. I had the opportunity
14 to do a very cursory scan of the records, and I do
15 appreciate the Court's indulgence in allowing me the
16 opportunity to look at them. Having done so, Judge, I think
17 that it is apparent that Ms. Katelynn Dubois who was just on
18 the stand -- I'm sorry. I hope I'm getting her last name
19 right. Yes, Katelynn Dubois. And, again, her testimony is
20 sort of central to part of our theory in the case. We have
21 clear evidence now that she was lying about not continuing
22 to talk to my client because these are phone records where
23 she was still having contact with him in May. In fact, the
24 phone was only set up May the 3rd, 2015, for this phone
25 number. So for her to know this number, you know, when she

1 says after they broke up, and then she denies, you know,
2 talking to him except for the night before on June the 12th
3 of 2015. And I now have evidence, clear evidence in these
4 records, that in May, the end of May and early June, she's
5 having communications with him. And so she's very clearly
6 perjured herself repeatedly. And I would like to have her
7 brought back to court. I don't have her under subpoena
8 because it's the State's witness. I want to have her
9 brought back to court, sequestered. And I think the Court
10 needs to examine what her testimony was and look at these
11 records and make a determination about whether to charge her
12 with perjury.

13 I asked her several times, and we even went to the
14 point of you clarifying for her. And I then phrased it more
15 broadly in terms of communication. I think it's her
16 credibility is really important because she's sitting in
17 front of the jury telling them that, "Oh yes, I was telling
18 them that Tommy was doing all this bad stuff. But, no, I
19 wasn't telling Tommy that Travis was doing all this bad
20 stuff. And I wasn't even still talking to Tommy." You
21 know, I now have evidence that she was. Judge, this is a
22 very serious case. My client is on trial for, you know,
23 murder and faces potential life without parole. And this
24 girl in what she's saying and doing is very important in
25 this case.

1 THE COURT: All right. Solicitor?

2 AST. SOL. JUSTIS: I'm assuming Ms. Sarji would like
3 those records in, first of all. So I assume she wants those
4 records. So we can just add them, you know, to the exhibit
5 that has already been in, because he kind of testified to
6 those dates anyways. So we'll just keep those in. As far
7 as Ms. Dubois's testimony, you know, I think over lunch we
8 can probably pull that and see exactly what she was asked
9 and what answer she gave. You know, obviously, if it's what
10 Ms. Sarji is saying, then we'll, you know, make that
11 determination, what we need to do from that point. If it
12 isn't, then, you know, I don't think we call her back yet
13 until we can actually pull the testimony and make sure that
14 she was -- because some of it, and I might not have been
15 fully paying attention. I know at one point she asked did
16 you talk to her Friday -- did you talk to him Friday night.
17 And she was saying, you know, you told police you didn't
18 talk to him Friday night, which is true. She saw him Friday
19 night, but she didn't talk to him. Now, if she asked the
20 question, I don't doubt she probably asked the question, had
21 you been talking to him previous? You know, she asked that
22 question and she said no, and if there's phone records that
23 prove she had, then I think she probably needs to be
24 recalled at some point do be able to explain that. You
25 know, because she might have an explanation. It might be

1 that somebody else used her phone, just like other people
2 used Mr. Shewtzuk's phone, allegedly. Maybe someone else
3 used her phone. I don't know.

4 THE COURT: Why don't we do this, let's move on with
5 the testimony. I certainly understand your objection at
6 this point, Ms. Sarji. And I understand your need to review
7 the records and potentially question her again regarding her
8 previous testimony. What we can do during the lunch break
9 is review the testimony. Do you have real time, Madam Court
10 Reporter?

11 COURT REPORTER: I do. But I'll pull the audio. It's
12 easy to pull.

13 THE COURT: Okay. So we can pull the audio and that
14 will allow both parties an opportunity to review that
15 testimony. If you would like to have her recalled through
16 the State as their witness again but for further
17 impeachment. As far as me questioning her for potential
18 charges, that's outside of my purview. I would certainly
19 refer that to law enforcement should that become a necessary
20 component of this case. All right. Let's move on and call
21 your next witness, please. Well, let's bring our jury out.

22 BY MS. SARJI: Your Honor, one thing just very quickly.
23 When he says he assumes I want the records in, again, I will
24 consent I don't have any objection to just the numbers, you
25 know, logs that are coming in. I reserve my objection as to

1 the actual text messages themselves that they have for the
2 period from June 10th to 18th, as well as to the exhibit
3 that they have prepared. I have not raised an objection
4 with regard to the records coming in solely at this point
5 for the purpose that they are the records that were pulled
6 from this target number for those dates. I just want to
7 make that clear on the record.

8 THE COURT: And that was Exhibit No. 42. Number 41,
9 apparently, the summary records, has just identified and has
10 not been offered as an exhibit at this point.

11 BY MS. SARJI: Thank you, Judge.

12 AST. SOL. JUSTIS: Yeah, Mr. Floyd was actually still
13 on the stand and we need to finish this.

14 THE COURT: Right. Come on up, Mr. Floyd.

15 (Witness resumes stand.)

16 (The jury enters the courtroom at 11:28 a.m.)

17 THE COURT: Welcome back, ladies and gentlemen of the
18 jury. Mr. Connell, we brought some earphones for you just
19 in case you need them.

20 JUROR: Okay.

21 THE COURT: Thank you, sir. You may proceed with the
22 testimony?

23 BY MS. SARJI: Thank you, Your Honor.

24 CROSS EXAMINATION (RESUMING)

25 BY MS. SARJI:

1 Q. And, Mr. Floyd, I think that when you and I were
2 talking last that you were saying that the name on this on
3 this particular account was David Shewtzuk. Is that right?

4 A. That is correct.

5 Q. And you don't know who he may have given the phone to?

6 A. No, I do not.

7 Q. And in the records that you have brought in, you can't
8 say who's using the phone at any given time?

9 A. No, I cannot.

10 Q. And you don't have any records that you have right now
11 with regard to numbers that are being called or texted to.

12 Is that right? I mean, you don't have any more information
13 about who's on either of the phone, just what the telephone
14 numbers are.

15 A. That is correct. We cannot see who is using the
16 phones.

17 Q. Okay.

18 BY MS. SARJI: I don't have any further questions.
19 Thank you, Judge.

20 THE COURT: Andy redirect?

21 AST. SOL. WARD: Yes. Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY AST. SOL. WARD:

24 Q. You stated that you received a search warrant for this
25 target number. Is that correct?

1 A. That is correct.

2 Q. Okay. And what were dates on the search warrant that
3 we were trying to collect?

4 A. It said June 1st, 2015, to present.

5 Q. Okay. And in your testimony you stated in Exhibit 42
6 all these records are a compilation of what dates?

7 A. I initially said May 17th through June 17th, 2015.

8 Q. Okay. Could you explain why there's a month period
9 instead of just in the search warrant?

10 A. Yes. The two that is used to compile the records, they
11 are sent to a 30-day date range when you search for the
12 records.

13 Q. Okay. And, again, just to clarify, as far as text
14 message content, we only have what window to get the actual
15 content?

16 A. Three to five days.

17 AST. SOL. JUSTIS: Thank you. No further questions.

18 THE COURT: You may step down, sir. Thank you. You
19 may call your next witness.

20 AST. SOL. JUSTIS: Mary Jane Miller.

21 MARY JANE MILLER, after being duly sworn, testified as
22 follows:

23 THE COURT: Your witness.

24 AST. SOL. JUSTIS: Thank you, Your Honor. May it
25 please the Court?

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION

3 BY AST. SOL. JUSTIS:

4 Q. Good morning, Ms. Miller.

5 A. Good morning.

6 Q. Could you tell the jury where you live?

7 A. In Summerville.

8 Q. And how long have you lived in Summerville?

9 A. Two years. I've only been -- I've been down from
10 Cincinnati. I moved down here two years ago to be with my
11 daughter.

12 Q. And let me take you back to June 13 of 2015.

13 A. Yes, sir.

14 Q. Do remember that day?

15 A. Yes, sir; I do.

16 Q. And what were you doing that day?

17 A. We was getting the grass cut and we ran out of gas. So
18 I said I'll go get some gas at the gas station at the
19 corner. So I took the can and went up there. And I left
20 the gas can sitting outside and I went inside to tell the
21 clerk I wanted to get some gas and give her my card. And I
22 was waiting, you know, for her to take my card. And then
23 all of a sudden there was a commotion. And I heard somebody
24 say, a gentleman say, call 911. And I thought, oh, it's hot
25 out; somebody must've got sick and passed out. The next

1 thing I knew, this gentleman was running in the door and he
2 had a gun and he says, "I'll teach you to mess with me."
3 Boom, boom. The young man fell to the floor. I just stood
4 there. I was in shock. I remember putting up my hands and
5 saying, "Please don't shoot me." But everything else, I
6 don't remember anything, you know. I guess my mind just
7 went blank.

8 Q. So where were you standing in relation to the person
9 that got shot?

10 A. Say this is the counter, and I reached over. I was an
11 arm's-length right there. And when that young man got shot,
12 I just looked. And then I remember the two gun shot, you
13 know. And he dropped to the floor. I even looked over, but
14 then the shooter, he ran out the door. And I just, you
15 know, and I walked to the other side. And I said, "Somebody
16 please call 911." They said we already did. I guess -- I
17 remember walking to the door. I guess I was gonna look to
18 see if I could get a license plate or something. But that's
19 all.

20 Q. And did you have an opportunity to talk to law
21 enforcement that day?

22 A. Yes, sir; I did.

23 Q. And did you give a written statement to law enforcement
24 that day?

25 A. Yes, sir; I did.

1 AST. SOL. JUSTIS: Beg the Court's indulgence.

2 Q. Ms. Mary, I'm going to show you two exhibits, Exhibit
3 No. 1 and Exhibit No. 2. Can you take a look at those two
4 and tell me what they appear to be?

5 A. This is the front where that's the door where I would
6 walk in, and the counter was there. There was something
7 over here but I was paying attention. I was just going to
8 the counter so I could get my gas. This here -- there's an
9 officer walking out. This is where my car is sitting. You
10 can still see my gas can sitting right there that I was
11 going to fill that and go back home. But after the
12 shooting, I was just in shock. I was standing right inside
13 of there.

14 Q. So are those -- do they seem to represent the gas
15 station?

16 A. Oh, yes. Yeah, they're very clear pictures. You can
17 see. I can see my car and, you know, and everything right
18 there.

19 Q. And these are fair and accurate representations of what
20 it looked like on that day?

21 A. Oh, yes. Yes. Yes.

22 AST. SOL. JUSTIS: At this time, Your Honor, the State
23 would offer State's 1 and 2 into evidence.

24 THE COURT: Any objection?

25 BY MS. SARJI: No objection.

Direct Examination of Mary Miller by Ast. Sol. Justis

1 THE COURT: They're in.

2 (State's Exhibits No. 1 and 2, Photographs, were
3 received into evidence.)

4 Q. And I'm going to show you State's Exhibit 2 that you've
5 already looked at. And, actually, Ms. Miller, it's actually
6 going to show up if you look right in front of you.

7 A. Okay. Thank you.

8 Q. And let me zoom in a little bit for you. Actually, if
9 you touch that screen, you can actually write on it. Can
10 you show us -- you testified about the gas can. Where's
11 that?

12 A. Right here.

13 Q. Okay. That was your gas can?

14 A. Yes, sir.

15 Q. And where is the door that you walked into?

16 A. Right over here where that group is. It's kind of in
17 the shade. You know, it's right in here. There's a door
18 right there. And that's where I went in to the counter.

19 THE COURT: Do you want to get the jurors' monitors up?

20 (Brief pause.)

21 Q. Okay. Now, Ms. Miller, I'm also going to show you
22 what's been marked as State's Exhibit 4. Tell me if you
23 recognize what that appears to be a photograph of.

24 A. Yes; this is a counter. I think I was standing right
25 here. Right there, that's the counter. I remember going in

1 and going right to the counter; or it could have been maybe
2 this one over here. Wherever it is, the cash register was
3 there because I was going to give the lady my card so I can
4 pay for the gas.

5 Q. Okay. And is that a fair and accurate representation
6 of what the counter area looks like at that gas station?

7 A. Yes. Yes.

8 AST. SOL. JUSTIS: State would offer State's 4 into
9 evidence.

10 THE COURT: Any objection?

11 BY MS. SARJI: No objection, Judge.

12 THE COURT: It's in.

13 (State's Exhibit No. 4, Photograph, was received into
14 evidence.)

15 AST. SOL. JUSTIS: May I publish for the jury, Your
16 Honor?

17 THE COURT: Yes, sir.

18 Q. So you can you just kind of draw a line like where the
19 counter is.

20 A. I would -- it's right here. I don't know if there was
21 two -- I think there was two sides, but I'm not sure.

22 Q. Okay. All right.

23 AST. SOL. JUSTIS: Beg the Court's indulgence.

24 Q. All right. Ms. Miller, I'm going to show you two other
25 exhibits, Exhibit 35 and Exhibit 36. And if you can just

1 identify the individuals that you seen in these photographs.

2 A. No. This here, I don't know. I don't recall seeing
3 anybody.

4 Q. Okay.

5 A. There I am right there. But I don't know what I'm
6 doing. I don't know what -- I was going up to the counter,
7 I guess. I don't remember seeing him, you know.

8 Q. Okay.

9 A. And this here. See here? I don't know what -- that's
10 me and I'm waiting there and pay. And then that's where the
11 defendant -- I mean, the shooter came in. I'd seen the gun.

12 BY MS. SARJI: Your Honor, I would object.

13 A. I'm here. You know, against this -- I turn my back ---

14 THE COURT: Hold on one second, Ms. Miller. She
15 corrected herself. She said the shooter.

16 BY MS. SARJI: Okay.

17 THE WITNESS: I'm sorry.

18 Q. Okay. But you can say that that's you in those
19 pictures?

20 A. Oh, yes. That's definitely me.

21 Q. Okay.

22 AST. SOL. JUSTIS: Thank you. That's all I need.

23 Okay, Ms. Miller, I don't have any other questions for you.
24 If you can answer any questions Ms. Sarji might have for
25 you.

1 THE WITNESS: Yes, I will.

2 THE COURT: Cross examination?

3 BY MS. SARJI: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MS. SARJI:

6 Q. Ms. Miller, you actually talked to the police that day,
7 didn't you?

8 A. Yes, ma'am. I gave the officer when she came up, I
9 gave her a statement.

10 Q. Okay. And so you gave her a statement and then she
11 wrote it down for you. Is that right?

12 A. Yes, she did. Because I told her I have arthritis in
13 my hands. And some days I can't write very good. As she
14 took what I had said.

15 Q. And then she asked you to look at what she had written,
16 right?

17 A. Yes. Yes.

18 Q. And after you looked at it and made sure that is what
19 you said, then you signed your name on it. Do you remember
20 that?

21 A. Yes, ma'am. Yes, ma'am.

22 Q. And they also went through and they were asking you
23 questions. And they would ask you a question and then you,
24 yourself, would write down the answer. Do you remember
25 that?

1 A. I remember going -- another detective came and got me
2 and took me into his car and was asking me questions. And I
3 had to check on that because he asked me what kind of a gun,
4 and I said I don't know. I don't know nothing about, you
5 know, firearms. And he showed me his. And I said, yeah, it
6 was small like that.

7 Q. Okay.

8 A. And I tried to answer everything I could to the best --
9 because I think -- I was, like, maybe in shock.

10 Q. Yes, ma'am. And so what you were trying to do at that
11 point was to answer the questions as best you could?

12 A. Yes, ma'am.

13 Q. And they had you reduce your answers to writing. Is
14 that correct?

15 A. Yes. Yes.

16 Q. And so when you were talking to the officers that day,
17 you actually said to the female -- I'm guessing it was the
18 female who did the first statement that she wrote out?

19 A. Yes, ma'am. Yes.

20 Q. The handwriting is a lot neater. I think that's how I
21 can tell it was -- and it says on here you said, "I heard
22 don't mess with me. I'm not sure who from."

23 A. No. No. Well, I was there. My back was -- and I
24 heard this person say call 911. And then I just kind of
25 glanced around because like I said I thought maybe, you

1 know, it was the heat. And then all of a sudden this young
2 man ran in.

3 Q. Okay. But the question that I asked you was you told
4 the lady officer that day, "I heard don't mess with me. I'm
5 not sure who from."

6 A. No. Well ---

7 Q. Okay. What I would like to do ---

8 THE COURT: Ma'am.

9 BY MS. SARJI: I'm sorry.

10 THE COURT: Ms. Sarji, you can let her answer yes, no,
11 and then she can explain her answer.

12 BY MS. SARJI: Certainly.

13 THE COURT: Let her finish her answer.

14 A. Okay. Well, I didn't know because all I knew there was
15 two people having a conversation. My back was there and I
16 was just turned a little bit and I couldn't -- because like
17 I said, I don't know. And I said I heard him say, "Don't
18 mess with me." Something like that. And then boom, boom.

19 Q. Okay. And so what I would like to show you is a copy
20 of what I'm going to have marked, I guess, as Defendant's 1
21 for identification purposes only. And so I've had this
22 marked as Defendant's Exhibit 1. And I'm going to ask you
23 if that's your signature right there on the bottom?

24 A. Yes, ma'am. It is.

25 Q. Okay. And so this would be -- is this the statement

1 that the lady officer was writing down for you? Yes or no?

2 Is this the statement ---

3 A. Yes, this is the statement.

4 Q. And then you reviewed it and you signed your name on
5 it. Is that right?

6 A. Yes.

7 Q. And you were being -- it was the same day, correct?

8 A. Yes. Yes.

9 Q. And you were being as -- you were being truthful with
10 her and telling her everything right then. Is that right?

11 A. Yes.

12 Q. And what you said on that day is, "Don't mess with me..
13 I'm not sure who from."

14 A. Okay. I heard this conversation behind me.

15 Q. Yes, ma'am.

16 A. You know, and I don't know how else to explain to it to
17 you ---

18 Q. No, no, no. And I understand what you're saying is
19 that you had your back to them when this was said. I'm just
20 trying to verify because I think -- and maybe I heard you
21 wrong. I felt like what you said when you were talking to
22 the Solicitor a minute ago was you thought it was the
23 shooter who said that. But in your statement here that you
24 did that day you said I don't know who said that.

25 A. Well, what I meant I didn't see the person that said

1 call 911 because my back was to them. The next thing when I
2 turned that -- I guess it was. I'm just guessing it was the
3 defendant there. He ---

4 BY MS. SARJI: Your Honor, I'm ---

5 A. Well, I don't know who it was. But common sense tells
6 you the guy standing there with a gun.

7 BY MS. SARJI: Your Honor, I'm going to ---

8 THE COURT: Ms. Miller -- Ms. Miller, you can't make
9 assumptions. You can only answer the questions that are
10 asked.

11 THE WITNESS: Okay.

12 THE COURT: And you have not been asked that question.
13 Please just answer only the question that is asked.

14 THE WITNESS: Okay. I'm sorry.

15 BY THE COURT: Please strike that former answer from
16 the record.

17 Q. And the question that I asked you was, that day, when
18 you were talking to the police officer and she wrote down
19 what you were saying, and you reviewed it to make sure it
20 was right, and then you signed your name on it because you
21 had reviewed it. What you said that day was that you heard
22 that statement and then you said, "I don't know who from."
23 And that's what you said and that's what you signed. Is
24 that correct?

25 A. Right.

1 Q. Thank you. Now, you also said that day that you
2 wouldn't be able to identify the kid if you saw him.

3 A. No. Because I -- I was in shock. I don't know what
4 the young man looked like. All I seen was the gun and -- I
5 thought he was wearing a white t-shirt and black pants.
6 That's all I know.

7 BY MS. SARJI: Thank you. I don't have anything
8 further.

9 THE COURT: Any redirect?

10 AST. SOL. JUSTIS: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 AST. SOL. JUSTIS:

13 Q. So, Ms. Miller, was the gun pointed in your direction?

14 A. Yeah. He was -- I'm here and he's over there. And
15 he's this way and he turns and that's when I put my hand up
16 and I said, "Please don't shoot me." Because I thought I
17 was going to get shot.

18 Q. Were you scared?

19 A. Yes.

20 AST. SOL. JUSTIS: Thank you. No further questions.

21 THE COURT: You may step down, ma'am. Thank you. You
22 may call your next witness.

23 AST. SOL. WARD: Johdie Lee.

24 JOHDIE LEE, after being duly sworn, testified as
25 follows:

1 THE COURT: Your witness.

2 AST. SOL. WARD: Thank you, Your Honor. May it please
3 the Court?

4 THE COURT: Yes, sir.

5 DIRECT EXAMINATION

6 AST. SOL. WARD:

7 Q. Ms. Lee, do you live in the Summerville area?

8 A. Yes, sir.

9 Q. And are you married?

10 A. Yes, sir.

11 Q. Do you have children?

12 A. Yes, sir.

13 Q. And are you currently employed?

14 A. Yes, sir.

15 Q. Where do you work?

16 A. Miller Conway.

17 Q. Okay. I want to turn your attention back to June 13th
18 of 2015. Do you recall that day?

19 A. Yes, sir.

20 Q. What were you doing?

21 A. Going to the store to get a Gatorade.

22 Q. And when you say store?

23 A. A gas station.

24 Q. Okay. And do you recall where that gas station is
25 located?

Direct Examination of Johdie Lee by Ast. Sol. Ward

1 A. It's on 17-A on Dorchester Road.

2 Q. Okay. And did you go inside the store?

3 A. Yes, sir.

4 Q. Can you tell the jury what you recall happening once
5 you were inside the store?

6 A. I was reaching for some Gatorade and I heard two shots
7 ring out. Then I turned around and saw it. So that's . . .

8 Q. Sorry. Continue, if you have anything.

9 A. That was it.

10 Q. Okay. I'm going to show you what's been marked as
11 State's Exhibit 5.

12 AST. SOL. WARD: May I approach the witness?

13 THE COURT: Yes, sir.

14 Q. Do you recognize that?

15 A. Yes.

16 Q. And what is it a picture of?

17 A. It's the inside of a gas station.

18 Q. And is that a fair and accurate representation of what
19 the gas station looked like that day?

20 A. Yes, sir.

21 AST. SOL. WARD: As this time, Your Honor, we'd ask
22 State's Exhibit 5 be admitted into evidence.

23 THE COURT: Any objection?

24 BY MS. SARJI: No objection.

25 THE COURT: It's in.

1

2

(State's Exhibit No. 5, Photograph, was received into evidence.)

3

4

AST. SOL. WARD: May I publish, Your Honor?

5

THE COURT: Yes, sir.

6

7

8

9

Q. I'm showing you State's Exhibit 5. If you're able to, could you -- and you can touch that screen right there and circle and it'll show up on the screen -- where you were located.

10

A. I was down this aisle.

11

Q. Okay.

12

A. I'm pretty sure.

13

14

Q. Were you able to hear anything while you were in there besides the gun shots?

15

16

17

18

19

A. I don't recall that, no. I didn't hear any yelling or anything. I heard as it was -- well, I heard a woman yell as it was going down and then I heard after the shots the shooter yell at the woman saying, "I'll come back and kill you if you say anything you --," cussword.

20

21

Q. Okay. Thank you. And when you were outside before you went into the store, did you see any vehicles pull in?

22

23

A. Yes. I was sitting in my vehicle and I saw -- I saw them pull in.

24

25

Q. Okay. And do you recall what type of vehicle that was?

A. It was a Ford Windstar.

1 Q. Was that a van?

2 A. Yes.

3 Q. And do you recall anything strange about the vehicle?

4 A. Nothing strange about the vehicle. The kid just looked
5 terrified. His eyes were as big as saucers.

6 Q. And when you say kid, can you describe what that person
7 looked like?

8 A. He was mixed African-American, light skin, young.

9 Q. Thank you. And after you heard the shots, what did you
10 do?

11 A. I ducked and then crawled out.

12 Q. Okay. And at that point, were you still at the scene
13 when police arrived?

14 A. Yes.

15 Q. And were you able to give police a statement that day?

16 A. Yes, sir.

17 Q. Thank you.

18 AST. SOL. WARD: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 Q. Just one more question. You say saw a Ford Windstar
21 pull up. Do you recall who was driving the van?

22 A. The victim.

23 Q. Is that the person you describe as being a light
24 African-American?

25 A. Yes.

1 AST. SOL. WARD: Thank you. No further questions.

2 THE COURT: Cross examination?

3 BY MS. SARJI: Court's indulgence, Your Honor.

4 CROSS EXAMINATION

5 BY MS. SARJI:

6 Q. I'm sorry, Ms. Lee. I think I may have -- I think I
7 may have a family court case with your boss. Your name is
8 just ringing a bell to me. You say that you saw -- you
9 specifically said that this is a Ford Winstar van. Is that
10 right?

11 A. Yes.

12 Q. You're positive of that. Is that correct?

13 A. Yes.

14 Q. And you indicated that when you were inside the store
15 you were actually towards the back of the store. Is that
16 right?

17 A. Right.

18 Q. And you were getting a Gatorade. Is that correct?

19 A. Yes.

20 Q. And you -- actually, you weren't facing in the
21 direction of the counter at the time that you heard the
22 gunshots. Is that right?

23 A. Correct.

24 Q. Okay. And just for clarity's sake because she is
25 taking down everything, if you can wait until I finish

1 asking before you answer so that it is a clear response.

2 And so at the time that you heard this, you weren't looking
3 in the same direction. Is that right?

4 A. Correct.

5 Q. And so at that point, you didn't -- and you said that
6 when you heard these shots, that you went down on the
7 ground. Is that right?

8 A. When I heard the first shot, I did turn around. I
9 heard the second shot and then I went down on the ground.
10 Because I thought it was fireworks.

11 Q. Okay. You didn't tell the police that you heard
12 anything prior to hearing the pop. Is that right?

13 A. Correct.

14 BY MS. SARJI: I don't have any further questions,
15 Judge.

16 THE COURT: Any redirect?

17 AST. SOL. WARD: Nothing, Your Honor.

18 THE COURT: You may step down, Ms. Lee. Thank you.
19 You may call your next witness.

20 AST. SOL. WARD: The State would call Jacob Biddle.

21 JACOB BIDDLE, after being duly sworn, testified as
22 follows:

23 THE COURT: Your witness.

24 AST. SOL. WARD: Thank you, Your Honor. May it please
25 the Court?

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION

3 BY AST. SOL. WARD:

4 Q. Good morning, Mr. Biddle.

5 A. Good morning.

6 Q. Where do you currently live?

7 A. Mount Pleasant.

8 Q. And are you currently employed?

9 A. Yes.

10 Q. Are you married?

11 A. No.

12 Q. I want to turn your attention to June 13th of 2015. Do
13 you recall that day?

14 A. I do.

15 Q. What were you doing earlier in the day?

16 A. We were meeting some friends at the gas station before
17 heading to the Edisto, to the river.

18 Q. And how many people were you with?

19 A. Four of us total, including me.

20 Q. And where were you located at the gas station?

21 A. We were standing at the end of the gas station
22 underneath like a sign, opposite of where the entrance was
23 to the store.

24 Q. And can you tell the jury what you remember seeing
25 while you were out there?

1 A. There were cars coming and going. We were standing
2 over there because my friend wanted to smoke a cigarette so
3 we standing away from the gas pumps. And we saw a van pull
4 up and then didn't think anything of it. And then we heard
5 two pops. And my buddy said it's probably just fireworks.
6 And then a couple of seconds later, someone in black pants
7 and a black tank top ran out pointing a gun. So I just said
8 run, and we ran around to the back side of the building.
9 And then got to like a dumpster and then we saw the van pull
10 out and they went and did like a u-turn and went the other
11 direction towards the Edisto.

12 Q. Okay. I'm showing you what's been marked as State's
13 Exhibit 2. Could you tell us where you were located
14 compared -- in this picture?

15 A. We would have been to the right out of the view of this
16 picture. There's like a sign on the side of the building.

17 Q. Okay. I'm showing you was been marked as State's
18 Exhibit 3 for identification purposes. Do you recognize
19 that photo?

20 A. Yep. We were standing right underneath that pizza
21 sign.

22 Q. Is that a fair and accurate representation of where
23 you're standing, what it looked like?

24 A. Yeah.

25 AST. SOL. WARD: This time, Your Honor, the State would

1 ask for Exhibit 3 to be admitted into evidence.

2 THE COURT: Any objection?

3 BY MS. SARJI: I'm sorry. Can I see it real quick? I
4 just want to make sure which one it is.

5 AST. SOL. WARD: Sorry.

6 BY MS. SARJI: No, that's okay. No objection, Judge.

7 THE COURT: It's in.

8 (State's Exhibit No. '3, Photograph, was received into
9 evidence.)

10 AST. SOL. WARD: May I publish, Your Honor?

11 THE COURT: Yes, sir.

12 Q. So you're saying this was that corner you were standing
13 on?

14 A. Correct.

15 Q. Okay. Again, I'm going to show you State's Exhibit 2.
16 Do you recall what door you saw this person run out of?

17 A. So the van would've been parked right where those -- in
18 front of that ice machine, I guess. And we were standing --
19 pointed in the same direction as this police car here. He
20 came out of that door and tried to get in the van.

21 Q. And where you were standing, could you describe what
22 the person looked like?

23 A. Yeah. He was a white guy with -- wearing black pants
24 and a black tank top. That's about it.

25 Q. And the gun he was holding, was it a rifle? Pistol?

1 A. It was a black handgun.

2 Q. Okay. I'm just gonna show you what's been marked as
3 State's Exhibit 37 for identification purposes. Do you see
4 the person that you described wearing the clothing that you
5 described?

6 A. Yes. He's holding the gun.

7 Q. Thank you.

8 AST. SOL. WARD: Nothing further. Please answer any
9 questions that the defense may have.

10 THE COURT: Cross examination?

11 BY MS. SARJI: None, Your Honor. Thank you.

12 THE COURT: You may step down, Mr. Biddle. Thank you.

13 AST. SOL. JUSTIS: May Mr. Biddle be excused?

14 THE COURT: Any objection?

15 BY MS. SARJI: No objection, Judge.

16 THE COURT: You are free to go. You may call your next
17 witness.

18 BY MS. SARJI: Your Honor, can I have just a personal
19 comfort break really quickly. I need to go to the lady's
20 room.

21 THE COURT: Sure. Do y'all want to approach real
22 quick.

23 (A bench conference is held out of the hearing of the
24 jury panel and the court reporter. See note in index.)

25 THE COURT: Ladies and gentlemen of the jury, do you

1 need a brief recess? Everybody good?

2 (No response.)

3 THE COURT: Okay. We'll hold tight for just one
4 minute.

5 (Brief pause.)

6 THE COURT: Call your next witness.

7 AST. SOL. JUSTIS: The State calls Kiritkumar Mehta.

8 KIRITKUMAR MEHTA, after being duly sworn, testified as
9 follows:

10 THE COURT: Your witness.

11 AST. SOL. JUSTIS: Thank you.

12 DIRECT EXAMINATION

13 BY AST. SOL. JUSTIS:

14 Q. Good afternoon, Mr. Mehta.

15 A. Good afternoon.

16 Q. Could you tell the jury where you work?

17 A. 2703 Summerville stores.

18 Q. Okay. And what's your position at the store?

19 A. I am the owner of the stores.

20 Q. And did you have an opportunity to meet with law
21 enforcement back in June of 2015?

22 A. Correct.

23 Q. And why did you meet with law enforcement?

24 A. They called me because what was happening at one of my
25 stores. Next thing I knew -- I jump in my truck and I come

1 to the store straight.

2 Q. Okay. And when you got to the store, did you have an
3 opportunity to meet with law enforcement?

4 A. Correct.

5 Q. And when you met with law enforcement, did you have an
6 opportunity to show them any surveillance videos from the
7 store?

8 A. Yes, correct.

9 Q. And after showing law enforcement those videos, what
10 did you do?

11 A. I go in stores and open my office and allowed them to
12 look at the videos and make a copy of that.

13 Q. Okay. And can you tell us a little bit about the video
14 system that you have at that store, that you had at the
15 store at that time.

16 A. Yes. We had a video live on that time. Yes; correct.

17 Q. Okay. And on these videos, were there any sound on
18 these videos?

19 A. No. No sound. I don't think so.

20 Q. So it was just video recording?

21 A. Correct.

22 Q. And were you able to give a copy of that to law
23 enforcement that day?

24 A. Yes, correct.

25 Q. And I'm showing you what's been marked as State's

1 Exhibit 16. If you could take a look at State's Exhibit 16.
2 You can open up the envelope. And if look at the contents
3 in there, if you can explain what that is.

4 A. Yeah. This is the -- for this one and this one
5 records.

6 Q. Okay. Is that what you recorded the video onto?

7 A. Yes.

8 Q. And then after you recorded the video onto that
9 ScanDisk, what did you do with that ScanDisk?

10 A. Just give it to the -- in my office and one to the
11 officer.

12 Q. Okay. So police collected that from you that day?

13 A. Yes. Yes, sir. Yes, sir.

14 Q. Okay. And were you with police when they viewed the
15 video?

16 A. Oh, yes.

17 Q. Okay. And who actually, like, saved it on this disk?

18 A. Myself and my manager Mr. Al Patel (ph).

19 Q. Okay.

20 AST. SOL. JUSTIS: At this time, Your Honor, the State
21 would offer -- nevermind. We'll hold off on that. All
22 right. No further questions. Please answer any questions
23 Ms. Sarji might have for you.

24 THE COURT: Cross examination?

25 BY MS. SARJI: None, Your Honor. Thank you.

1 THE COURT: You may step down, sir. Thank you. You
2 may call your next witness.

3 AST. SOL. JUSTIS: May we approach real quick?

4 THE COURT: Certainly.

5 (A bench conference is held out of the hearing of the
6 jury panel and the court reporter. See note in index.)

7 THE COURT: Ladies and gentlemen of the jury, it's a
8 little bit after noon. So it's a good time for us to take
9 our lunch break. If you would please be back in your jury
10 room ran about 1:15, or let's say about 1:20. That should
11 give you enough time to go out, grab something to eat, and
12 come back and park and get back into the jury room. We'll
13 be back with you then to resume the trial. Again, please
14 remember my instructions not to discuss this case with
15 anyone or allow anyone to discuss the case with you. And
16 that includes information amongst yourselves. Have a nice
17 lunch.

18 (The jury exits the courtroom at 12:11 p.m.)

19 THE COURT: So counsel, at this point if you both want
20 to talk to the next witness to make sure that you're
21 satisfied, if we need to proffer her testimony, then we can
22 do that right before we begin. Again, but just let me know.
23 But we'll be at recess until about 1:20. That should give
24 y'all enough time.

25 BY MS. SARJI: Thank you, Judge.

1 BY MS. SARJI: Certainly, Judge. The only other issue
2 is Defendant's Exhibit No. 1, which was just the written
3 statement of Mary Jane Miller, I neglected to actually move
4 it into evidence. I understand that Mr. Justis has no
5 objection to this coming into evidence.

6 THE COURT: Is that correct?

7 AST. SOL. JUSTIS: That's correct, Your Honor.

8 THE COURT: All right. It's in.

9 BY MS. SARJI: Thank you, Judge.

10 (Defendant's Exhibit No. 1, A Statement, was received
11 into evidence.)

12 THE COURT: Let's have our jury, please.

13 (The jury enters the courtroom at 1:34 p.m.)

14 THE COURT: Welcome back, ladies and gentlemen of the
15 jury. I hope that you had a nice lunch. We're now ready to
16 proceed with the trial of this case. You may call your next
17 witness.

18 AST. SOL. WARD: State calls Lieutenant Martin Villa.

19 MARTIN JOSEPH VILLA, after being duly sworn, testified
20 as follows:

21 THE COURT: Your witness.

22 AST. SOL. JUSTIS: Thank you, Your Honor. May it
23 please the Court?

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION

1 BY AST. SOL. WARD:

2 Q. Lieutenant Villa, where are you currently employed?

3 A. Dorchester County Sheriff's Office.

4 Q. And how long have you worked there?

5 A. Twenty-seven plus years.

6 Q. And what is your current rank?

7 A. I'm a lieutenant.

8 Q. And what are some of your job duties?

9 A. I plan, supervise, coordinate all of the activities for
10 uniform patrol, Team One.

11 Q. And I'd like to turn your attention back to June 13th
12 of 2015. Were you on duty that day?

13 A. Yes, sir.

14 Q. And can you tell us how you first become involved in
15 this case?

16 A. Broadcast came over the police channel from the
17 Dorchester County dispatch that a man had been shot and was
18 on the ground at the Quick Mart food store at Highway 17-A
19 and Dorchester Road.

20 Q. And what county is that gas station located in?

21 A. It's in Dorchester County.

22 Q. Okay. And about how long did you arrive after hearing
23 from dispatch?

24 A. I would say about two to three minutes.

25 Q. And what was the first thing you did when you arrived?

1 A. I put on my protective gloves, went through the double
2 doors of the store and saw the victim lying on the ground.

3 Q. And then after that, what did you do next?

4 A. I checked the victim to see if he had a pulse in his
5 carotid artery, which he did not. There was the clerk and
6 some other people were the store; I got them out of the
7 store through the single doors -- single door.

8 Q. Was the single door on the back side of the store?

9 A. Yes, sir. The double doors, where the gas station is,
10 the double doors are on the gasoline side of the station.
11 And the diesel pumps are where the single door is. Complete
12 opposite sides of the store.

13 Q. All right. And once you were able to escort them out,
14 what did you do?

15 A. I spoke with two of the people that worked there at the
16 store. And they were speaking a language that I couldn't
17 understand. And I asked her if she spoke English. And she
18 said no; she spoke Hindi.

19 Q. Okay. Do you recall that female's name?

20 A. Ms. Patel.

21 Q. Okay. Were you able to -- or how did you secure the
22 scene?

23 A. As my deputies were arriving, once I got everybody out
24 of the store, my deputies were arriving. I just had them --
25 there's three entrances that go into the store. I had them

1 block that and then use crime scene tape around the store.

2 Q. You stated that you attempted to speak with Ms. Patel,
3 correct?

4 A. Yes, sir.

5 Q. All right. And you say there's a language barrier.
6 Were you able to get her with someone later to give a
7 statement?

8 A. Not that I can -- I can't recall; no, sir. I asked the
9 dispatcher to find me a translator that spoke Hindi.

10 Q. Okay. And after doing that, did you have any other
11 involvement?

12 A. No, sir. Just secured the scene until the detectives
13 arrived.

14 AST. SOL. WARD: Beg the Court's indulgence. (Brief
15 pause.) Nothing further. Please answer any questions
16 defense may have.

17 THE COURT: Cross examination?

18 BY MS. SARJI: None, Your Honor. Thank you.

19 THE COURT: You may step down, Lieutenant. Thank you.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: You may call your next witness.

22 AST. SOL. WARD: Sergeant Joli Gabrielli.

23 JOLI TUMBLESTON, after being duly sworn, testified as
24 follows:

25 THE COURT: Your witness.

1 AST. SOL. WARD: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY AST. SOL. WARD:

4 Q. Sergeant Tumbleston, just for the record, I believe I
5 actually called you by Gabrielli. Is that?

6 A. Maiden name.

7 Q. Maiden name; okay. I'm sorry. So it's Ms. Tumbleston?

8 A. Correct.

9 Q. Okay. Where are you currently employed?

10 A. Dorchester County Sheriff's Office.

11 Q. And how long have you been employed there?

12 A. Approximately 17 years.

13 Q. And what is your current rank?

14 A. Patrol Sergeant.

15 Q. And what are some of your duties as a patrol sergeant?

16 A. I answer calls for service. I also supervise some of
17 the deputies on our shift. I proof reports, assist deputies
18 on calls.

19 Q. Okay.

20 A. Sort of that nature.

21 Q. All right. I'd like to turn your attention to June
22 13th of 2015. Were you on duty that day?

23 A. I was.

24 Q. And could you tell the jury how you first became
25 involved in this case.

1 A. That call came out through the radio by dispatch saying
2 that they received a call at 2703 Highway 17 South, which is
3 the Quick Food Mart that there had been a shooting and that
4 there was a man down on the ground inside the store.

5 Q. The addressing gas station you went to, what county is
6 that located in?

7 A. It's in Dorchester County.

8 Q. And about how long did you arrive after receiving
9 dispatch?

10 A. I'm not quite sure. It was within a few minutes.

11 Q. Okay. And what was the first thing you did when you
12 arrived?

13 A. When I first arrived on-scene, I saw that there were
14 some deputies with some statement forms with some witnesses.
15 I provided them with some pens and then I went over to
16 Lieutenant Villa and helped secure the area with the crime
17 scene tape with Sergeant Thomas.

18 Q. Okay. Did you attempt to speak with any of the
19 witnesses or patrons that were there?

20 A. I did not.

21 Q. Okay. After helping secure the crime scene, what did
22 you do next?

23 A. Once I was outside, we received a call that there was a
24 firefighter who saw a minivan in an area on Old Beach Hill
25 Road, which is in Dorchester County near Thompson Boulevard,

1 that looked like it didn't belong there. So I responded
2 there with some other deputies. We cleared the minivan to
3 make sure that nobody was inside of it. And I notified the
4 lieutenant over detectives, which was Lieutenant Dickson.

5 Q. And did that van -- were you able to observe anything
6 in the van?

7 A. I was. I saw an ID, what appeared to be an ID card up
8 in the front with the name Travis Gordon on it.

9 Q. Okay.

10 AST. SOL. WARD: One moment, Your Honor.

11 Q. Once you called the van in and the location, did you
12 wait for anyone else to arrive at the van?

13 A. I did. I had backup deputies with me.

14 Q. Okay. And did crime scene come to the van?

15 A. They did, but I believe I was already gone when they
16 got there. I believe Sergeant Carson, if I can reflect back
17 -- I'm sorry. Detective Melendez (ph) is who responded to
18 where I was.

19 Q. Okay. And the van was secured and no one had touched
20 it until crime scene was there?

21 A. Correct.

22 AST. SOL. WARD: Thank you. No further questions.

23 THE COURT: Cross examination?

24 BY MS. SARJI: Thank you, Your Honor.

25 CROSS EXAMINATION

1 BY MS. SARJI:

2 Q. The van that you located, that wasn't the Ford
3 Windstar, was it?

4 A. I can't recall.

5 BY MS. SARJI: I don't have any other questions, Judge.
6 Thank you.

7 THE COURT: Redirect?

8 AST. SOL. WARD: Nothing, Your Honor.

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

11 AST. SOL. JUSTIS: At this time the State calls
12 Detective Jeff Scott.

13 JEFF SCOTT, after being duly sworn, testified as
14 follows:

15 THE COURT: Your witness.

16 AST. SOL. JUSTIS: Thank you, Your Honor. May it
17 please the Court?

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION

20 BY AST. SOL. JUSTIS:

21 Q. Good afternoon, Detective.

22 A. Good afternoon.

23 Q. Could you tell the jury where you work?

24 A. I'm employed with Dorchester County Sheriff's Office.

25 Q. And what's your duties there?

1 A. I'm currently a deputy assigned to the crime scene
2 division within the Dorchester County Sheriff's Office.

3 Q. And how long have you worked for the Dorchester County
4 Sheriff's Office?

5 A. I worked for Dorchester County since February of 2013.

6 Q. Okay. And did you work in law enforcement prior to
7 that?

8 A. Yes, sir; I did.

9 Q. And where did you work?

10 A. I worked for the Colleton County Sheriff's Office.

11 Q. And how long did you work there?

12 A. I graduated the Academy August 8, 2003.

13 Q. And have you been continuously employed in law
14 enforcement since then?

15 A. Yes, sir; I have.

16 Q. Did you have an opportunity to respond to a scene back
17 in June of 2015?

18 A. Yes, sir; I did.

19 Q. And where did you respond to?

20 A. I responded to 2703 Highway 17-A, which was the Quick
21 Food Mart, the BP at the corner of Dorchester Road and
22 Highway 17-A.

23 Q. And when you first arrived at the BP, what did you do
24 first?

25 A. The first thing I did when I arrived on scene is what I

1 generally do, which is meet with responding law enforcement
2 officers and detectives to get a debriefing of what they had
3 when they arrived on scene. And from that point, I
4 determined what methods that I'll use to continuously
5 process and look for potential pieces of evidence.

6 Q. And when you arrived at that scene, which was located
7 -- where was it located?

8 A. It was 2703 Highway 17-A. It's the Quick Food Mart.
9 It's located in Summerville which is also located here in
10 Dorchester County.

11 Q. And when you arrived there and were briefed by
12 officers, what did you do first?

13 A. Once I concluded with the briefing and I was advised a
14 search warrant was on the way for the business, the interior
15 of the business, I began taking my overall photographs,
16 which is what I do on any crime scene. What that entails is
17 me taking a picture of a photo card that has the date and
18 time on it, my name, and the OC (ph). At that point, I
19 start taking a 360-degree overall view of the business as it
20 stood when I first arrived on scene, which is taking the
21 exterior pictures. Basically, a completely unmolested scene
22 as it was when responding officers got there.

23 Q. Okay. Let me show you -- let me show you State's 1, 2
24 and 3, which I believe are already in evidence. Could you
25 just briefly tell us with those pictures depict.

1 A. Yes, sir. I am familiar with these photographs.

2 Q. And who took those photographs?

3 A. I took these photographs.

4 Q. Okay. And what do those photographs depict?

5 A. These photographs depict the scene as it was when I
6 arrived. You'll notice the business as well as you'll
7 notice a couple of vehicles sitting out in front of the
8 store, one of them being a marked patrol car with his blue
9 lights on. And then the other one being of the corner of
10 the store which has two cameras located on the front corner
11 -- or excuse me, the rear corner. This is the scene at the
12 Quick Food Mart on 2703 Highway 17-A.

13 Q. As you were taking these photographs of the outside of
14 the store, did you notice any unusual -- anything unusual or
15 any potential items of evidence?

16 A. Yes, sir; I did.

17 Q. And what did you observe?

18 A. Located in the front of the door were three partially
19 smoked cigarette butts and also a -- it looked like a key
20 chain of some sort located by trashcan in front of the
21 doorway.

22 Q. And did you photograph those items?

23 A. Yes, sir. Those items were photographed.

24 Q. And after photographing or before photographing those
25 items, what do you do to those items?

1 A. Before the items were photographed, again, like I
2 initially stated, we photograph a completely unmolested
3 scene meaning as it was when we got there. And at that
4 point, once we have the scene photographed as it was when we
5 found it within what we placed out what's called photo
6 placards. Which are yellow placards with black numbers
7 written on them, shaped in a triangle with an L on the front
8 marked the scale. It's common practice is we take the photo
9 placards and we put them next to any potential pieces of
10 evidence. In this particular case, I marked the three
11 partially smoked cigarette butts as well as the key chain
12 using photo placards numbers 1 through 4.

13 AST. SOL. JUSTIS: Beg the Court's indulgence.

14 Q. I'm showing you what's been marked as State's 6, 7, 8,
15 9, 10, and 11. Take a look at those photographs and tell me
16 what those show.

17 A. State's 6, 7, 8, 9, 10 and 11 are potential pieces of
18 evidence. Again, these are the three partially smoked
19 cigarette butts as well as the key chain which were located
20 in front of the business of the Quick Food Mart. Located to
21 the right of the door, you'll see placard number 1 and 2.
22 Photo placard 1 and 2 which marked partially smoked
23 cigarette butts. To the left of the door, facing the door,
24 near the trashcan is placard number 3, which shows a
25 partially smoked cigarette butt; as well as placard number 4

1 placed were placed in the same area, which is a key chain of
2 some sort.

3 Q. And who took those photographs?

4 A. I did.

5 Q. Are they an accurate and fair representation of what
6 you observed that day?

7 A. Yes, sir; they are.

8 AST. SOL. JUSTIS: At this time the State would offer
9 State's 6, 7, 8, 9, 10 and 11 into evidence.

10 THE COURT: Any objection?

11 BY MS. SARJI: No objection.

12 THE COURT: All right. They're in.

13 (State's Exhibits No. 6 through 11, Photographs, were
14 received into evidence.)

15 AST. SOL. JUSTIS: Permission to publish, Your Honor?

16 THE COURT: Yes, sir.

17 Q. I'm showing you what's been marked as State's 6.
18 Detective, could you tell us what we're looking at in that
19 photograph?

20 A. One moment, please. Sorry. Yes, you'll notice in this
21 particular photograph in the placards that I previously
22 stated to you, the photo placards, you'll see down at the
23 right-hand side you'll see photo placard number 1, 2. And
24 over to the left, you'll see photo placard number 3. Again,
25 as I stated, these are marking potential pieces of evidence

1 which are the three partially smoked cigarette butts.
2 You'll notice in placard number 2, you'll notice that the
3 cigarette butt is approximately 6 inches away from the photo
4 placard. The reason for this is when I originally placed
5 the photo placard down, it was pretty windy that day, and it
6 actually blew the cigarette butt away from the photo
7 placard. So rather than pick it up and replace it, I just
8 elected to photograph it as it was as you see it in the
9 picture. Again, this is the Quick Food Mart. You can see
10 in the middle to the top right, partially the legs of the
11 deceased on the other side of the glass in the doorway right
12 there as well.

13 Q. Thank you. I'm showing you what's been marked as
14 State's 7. Can you tell us what that is a picture of?

15 A. Again, as previously stated, this is a photo placard.
16 This is photo placard number 1. You can tell by the number
17 on the left of the photo placard. And this is the L-scale
18 that I was talking about which we use to mark potential
19 pieces of evidence to scale. Again, this is a partially
20 smoked cigarette butt, which is photo placard number 1.

21 Q. State's 8?

22 A. State's 8 is just, again, it's a close-up of photo
23 placard number 2. As I stated, it's approximately 6 inches
24 away due to the wind conditions and the environment change,
25 which is why I elected to take this photograph as is rather

1 than to remove the evidence and place it back in the photo
2 placard.

3 Q. Showing you State's 9.

4 A. Same thing, photo placard number 3, State's 9. This is
5 the one that is to the left of the door by the trash can, in
6 the corner of the trash can, the wall. Again, you see a
7 partially smoked cigarette butt.

8 Q. And on that cigarette butt, what's to the right of that
9 cigarette butt?

10 A. What's to the right of that is the -- are you referring
11 to the red? Are you talking about the true right or are you
12 talking about the right?

13 Q. That's this right here.

14 A. Okay. That's the ash from the cigarette butt.

15 Q. Did you notice any ash on the other two cigarette
16 butts?

17 A. There was no ash on the other two cigarette butts.

18 Q. State's 10?

19 A. State's 10, again, photo placard number 4. This is
20 depicting the key chain. You'll notice in State's -- in
21 this particular photograph, you'll notice that the cigarette
22 butt is no longer there. The reason for that is once we
23 were done taking the photographs, rather than to become a
24 confusion of which one is photo placard number 4, which one
25 is photo placard number 3, photo placards 1 through 3 were

1 collected. And then number 4 was placed down to identify
2 the key chain and it was subsequently photographed as you
3 see it in this particular picture.

4 Q. Finally, State's 11?

5 A. Again, photo placard number 4. You'll notice on the
6 top left, kind of in the middle to the left of the photo
7 placard, you'll notice that key chain that I was just
8 referring to.

9 Q. And is that a straw on the right of that placard?

10 A. Yes, sir. It appears to be some type of plastic. It
11 deemed to have no evidentiary value.

12 Q. After photographing and collecting those items that
13 were outside of the store, where did your investigation take
14 you next?

15 A. Once we concluded the exterior processing, we then
16 moved to the interior of the store.

17 Q. And what did you observe when you entered the interior
18 of the store?

19 A. Immediately upon entering the store, the Quick Food
20 Mart, the first thing you noticed was a deceased male laying
21 on the floor with his feet facing the door in a puddle of
22 reddish substance which appeared to be blood; kind of a
23 large pool of it. That was the immediate thing that we
24 noticed as soon as we walked inside.

25 Q. And did you take photographs inside the store?

1 A. Yes, sir; we did.

2 AST. SOL. JUSTIS: Beg the Court's indulgence.

3 Q. Detective, I'm showing you what's been marked as
4 State's 4, 12, 13, 14, and 15. Will you please take a look
5 at these photographs and tell us if you recognize those?

6 A. (Brief pause.) Yes, sir; I do.

7 Q. And did you take those photographs?

8 A. Yes, sir; I did.

9 Q. And generally, what do they depict?

10 A. The photographs handed to me by the State depict the
11 store as it was observed on the 13th of last year at Quick
12 Food Mart. Again, this is an accurate representation of the
13 store as it was when I found it.

14 Q. And those are photographs of the interior of the store?

15 A. That is correct.

16 AST. SOL. JUSTIS: At this time the State would offer
17 -- 4 is already in evidence; 12, 13, 14 and 15 into
18 evidence.

19 THE COURT: Any objection?

20 BY MS. SARJI: No objection, Judge.

21 THE COURT: All right. They're in.

22 (State's Exhibits No. 12 through 15, Photographs, were
23 received into evidence.)

24 AST. SOL. JUSTIS: May I publish for the jury, Your
25 Honor?

1 THE COURT: Yes, sir; you may.

2 Q. I'm showing you what's been marked as State's 4. Can
3 you tell us with that depicts?

4 A. State's number 4 is a photograph of the interior of the
5 store where the -- this is the counter area. If you were to
6 walk into the store to and make an immediate left, you would
7 be facing the counter where you would pay for your items
8 that you purchase from the store. It depicts -- obviously,
9 you see a rug is in kind of disarray in this particular
10 photograph.

11 Q. Okay. I'm showing you what's been marked as State's
12 12. Can you tell us with that depicts?

13 A. Certainly. State's number 12, you'll notice again,
14 photo placard; this one is number 5. You'll notice at the
15 front of the photo placard -- you'll notice right there that
16 in front of this photo placard, that kind of silver-ish
17 looking object, that's actually spent shell casing. And
18 this was immediately as soon as you walk through the door
19 looking on the right-hand side at the base of the doorframe.

20 Q. State's 13?

21 A. This is a close-up of the photo placard number 5 which
22 is of the spent cartridge casing that we just talked about a
23 second ago located just inside the door.

24 Q. State's 14?

25 A. State's 14 is photo placard number 7. To kind of

1 orientate you, if you were to go into the store and make an
2 immediate left and that's the counter where you pay for your
3 gas and your food items, if you were to continue down toward
4 the other side of the store, there's kind of like a little
5 deli counter right here. This is photo placard number 7,
6 which is located in front of the deli counter. Photo
7 placard number 7 was a spent cartridge casing, which I
8 believe we have a close-up of where he just came in.

9 Q. State's 15?

10 A. Again, photo placard number 7 [sic], you'll notice a
11 spent cartridge casing.

12 Q. Did you collect these items?

13 A. Yes, sir. They were collected.

14 AST. SOL. JUSTIS: Beg the Court's indulgence.

15 Q. Detective, I'm showing you what's been marked as
16 State's 40. Can you tell us what this is?

17 A. Absolutely. (Brief pause.) This is a crime scene
18 sketch that was done by me. I'm familiar with this. Part
19 of it has been cut off on the right and the left-hand side.
20 But this is a true and accurate representation of the crime
21 scene sketch that I did.

22 Q. Okay. And what is that crime scene -- crime scene
23 sketch depict?

24 A. This crime scene sketch depicts the incident location
25 as it was on the 13th of last year at the Quick Food Mart.

Direct Examination of Jeff Scott by Ast. Sol. Justis

1 In this particular sketch, you'll notice that there are
2 displaying two counters. Basically, the photographs that
3 you saw, this more or less just orientate you to the big
4 picture from the sketch that I was able to do from the
5 photographs that I was able to obtain. This shows the
6 deceased male lying on the floor as well as a few spent
7 cartridge casings and the measurements that we had taken
8 that morning -- or that afternoon.

9 AST. SOL. JUSTIS: At this time, the State offer
10 State's 40 into evidence.

11 THE COURT: Any objection?

12 BY MS. SARJI: No objection.

13 THE COURT: It's in.

14 (State's Exhibit No. 40, Crime Scene Sketch, was
15 received into evidence.)

16 AST. SOL. JUSTIS: Request to publish?

17 THE COURT: Yes, sir; you may.

18 Q. And if you could, Detective, could you just kind of
19 orientate us to where the front door is in this picture.

20 A. Absolutely. As you notice in the previous photographs,
21 we had the photo placards 1 through 4 outside of that door,
22 and photo placard number 5 just inside the door, that would
23 be this door right here as you come inside the store, that
24 would be the door that we classify as the front door in this
25 particular case.

1 Q. And could you highlight where the two spent cartridges
2 were found?

3 A. You'll notice that there is a five right here and
4 there's a seven right here. Number 5, again, being a spent
5 cartridge casing. That's photo placard number 5. Photo
6 placard number 7 is being a spent cartridge casing at the
7 top left.

8 Q. Thank you. During your investigation were you able to
9 attempt to collect any fingerprints from this crime scene?

10 A. Yes, sir; we did.

11 Q. And how many prints did you collect from that crime
12 scene?

13 A. I'm not sure of the exact number. It was several.
14 There were several print cards lifted from the front of the
15 building at the incident location.

16 Q. Did you also attempt to collect any other kind of
17 evidence?

18 A. From that? Yes, sir; we did. From the incident
19 location, we took what's commonly called a DNA swab or touch
20 DNA swab. Which is basically a cotton-tip applicator; once
21 in sterile water it will use to obtain any kind of touch
22 DNA. And I believe we did this on the door handle as well
23 as the counter.

24 Q. And these items, like the fingerprints and the touch
25 DNA swabs, what do you do with them after you collect those?

1 A. Those particular items are then packaged and sent to
2 State Law Enforcement Division or SLED for further
3 processing. The latent print cards were then sent to the
4 latent examiner located within Dorchester County Sheriff's
5 Office for further processing.

6 Q. So you didn't process them any further?

7 A. No, sir.

8 Q. Earlier you testified to the various cigarette butts
9 that were located.

10 A. Correct.

11 Q. Did you collect those?

12 A. Yes, sir. They were all collected.

13 Q. I'm showing you what's been marked as State's 18. Can
14 you tell us what this appears to be?

15 A. State's 18 appears to be a partially smoked cigarette butt
16 from photo placard number 3.

17 Q. And when you collected it, how do you preserve it or
18 how do you . . .

19 A. Once the swab is collected, it's placed into a dry
20 chamber and it's allowed to dry. And then it's placed into
21 an envelope and it's sealed, initialed and dated. And once
22 it gets placed into the paper envelope, again placed into a
23 plastic bag which is then heat-sealed, and my initials and
24 the date that I can see were placed on that bag. And then
25 it is sent to SLED for further processing.

1 Q. So is Exhibit 18 the cigarette butt you collected?

2 A. Without opening the envelope and looking at it, I can
3 tell you that the placard or the evidence tag looking on the
4 outside indicates it is a partially smoked cigarette butt
5 from photo placard number 3.

6 Q. And when you collect these items from the actual crime
7 scene, and you put them in some sort of packaging, what do
8 you do with them at that point?

9 A. Again, they are sent to the State Law Enforcement
10 Division for further processing.

11 Q. Okay. In between that time, are they stored anywhere?

12 A. Yes, sir. They're stored in our evidence locker.

13 Q. And who has access to that?

14 A. Only crime scene personnel.

15 Q. Is there a log kept of that? Of all the evidence
16 that's put into the evidence room.

17 A. Yes, sir; there is.

18 Q. And to your knowledge, until it got to the State Law
19 Enforcement Division for further testing, to your knowledge,
20 was this item tampered with in anyway?

21 A. To my knowledge, no.

22 Q. Did you have an opportunity to review any surveillance
23 video from the store that day?

24 A. Yes, sir; I did.

25 Q. And who did you -- where did you observe that video?

1 A. I observed it in the office of the store at the
2 incident location with I believe it was one of the managers
3 and one of the store personnel.

4 Q. And were you able to collect a copy of that video?

5 A. Yes, sir. I believe it was a ScanDisk thumb drive, if
6 you're familiar with a thumb drive, flash drive, where the
7 video on it was provided to me.

8 Q. I'm showing you what's been marked as State's 16. Will
9 you take a look at that and tell us if you recognize that.

10 A. Yes, sir; I do.

11 Q. And what does that appear to be?

12 A. This appears to be a 16 gig ScanDisk memory stick. And
13 I noticed to be true because this is my handwriting on the
14 front of the envelope as well as these are my initials, and
15 the date that I sealed this particular piece of evidence
16 inside of this envelope.

17 Q. So that is the disk you collected from the store on
18 that particular day?

19 A. That is correct.

20 Q. Has this been in your possession since that day?

21 A. Yes, sir; it has been.

22 AST. SOL. JUSTIS: At this time, the State would offer
23 State's 16 into evidence.

24 THE COURT: Any objection?

25 BY MS. SARJI: We would renew our previous objection

1 regarding the video.

2 THE COURT: Yes, ma'am. And the Court's ruling is the
3 same that the exhibit is corroborative and generally
4 establishing the elements of the offense. And the Court
5 finds that the probative value outweighs the prejudicial
6 effect.

7 BY MS. SARJI: Your Honor, with all due respect, I would
8 like to preserve for the record the fact that you have not
9 viewed the video and so it would be difficult for you
10 to determine whether the probative value is outweighed by its
11 prejudicial effect.

12 THE COURT: I've been provided from counsel a detailed
13 description. But I'm happy to take a break and review it
14 very quickly.

15 BY MS. SARJI: Yes, Your Honor. I'd appreciate that.

16 THE COURT: Ladies and gentlemen, let's take a brief
17 recess. Please do not discuss this case.

18 (The jury exits the courtroom at 2:11 p.m.)

19 AST. SOL. JUSTIS: Your Honor, I had the victim's
20 family leave. If there's anyone else that doesn't wish to
21 view it, they might want to leave at this time.

22 THE COURT: Ladies and gentlemen of the gallery, if
23 there's anyone that would not obviously not care to see this
24 video, if you would please leave at this moment.

25 AST. SOL. JUSTIS: Your Honor, there's actually two

1 camera angles. Each one, once shows a further -- shows the
2 van coming and you can actually see the people get out of
3 the van, come in the store. And then there's a closer-up
4 where you essentially see the victim and the defendant.
5 It's just a closer view. It is our intention to show both
6 of those. They last just a few seconds each.

7 THE COURT: Yes, sir.

8 BY MS. SARJI: And, Your Honor, our position is just
9 that the State -- the State's interest in getting this
10 evidence before the jury would be equally served by still
11 shots that would be much less prejudicial and inflammatory.
12 And I would think they already got still shots prepared that
13 show the same things that this video does. Thank you.

14 THE COURT: You may proceed.

15 (Video played at 2:13 p.m.)

16 THE COURT: I've had an opportunity to review for the
17 record the videotape in question. It is as verbally
18 described to me. The Court finds that the evidence is
19 highly probative. It's corroborative in the material in
20 establishing the elements of the defense as charged. And
21 the probative value does outweigh the prejudicial effect and
22 it's coming in.

23 BY MS. SARJI: Thank you, Your Honor.

24 THE COURT: Let's have the jury back.

25 (The jury enters the courtroom at 2:17 p.m.)

1 AST. SOL. JUSTIS: May it please the Court, Your Honor?

2 THE COURT: Yes, sir.

3 AST. SOL. JUSTIS: At this time, we offer State's

4 Exhibit 16 into evidence.

5 BY MS. SARJI: Same objection.

6 THE COURT: Subject to your objection, it's admitted.

7 AST. SOL. JUSTIS: Thank you, Your Honor.

8 (State's Exhibit No. 16, Video, was received into
9 evidence.)

10 Q. Detective, did you have an opportunity to investigate
11 any other crime scene or potential items of evidence in this
12 case?

13 A. Yes, sir; I did.

14 Q. And what was that?

15 A. A search warrant was done on the van. I believe it was
16 a Kia Sedona minivan. It was done the following Monday
17 which was facilitated at our crime scene office in a garage
18 or garage at the Dorchester County Sheriff's Office.

19 Q. And when you executed that search warrant of the
20 minivan, were there any items of evidence you were able to
21 collect from it?

22 A. Yes, sir; there was.

23 Q. And could you tell us -- tell us what items you
24 collected from the van?

25 A. Certainly. From the van, which again the search

1 warrant was executed on the 15th which is a Monday. We
2 located -- I apologize -- 17 latent print cards from all
3 over the exterior and interior of the van. Also numerous
4 swabs were taken from the interior of DNA. As again, I
5 testified to a little while ago, the touch DNA swabs taken
6 from the interior, exterior. Also as Samsung T-Mobile cell
7 phone; a Samsung AT&T cell phone; a phone charger; one pair
8 of HyFlex gloves; two empty, I believe it was Mariana (ph)
9 honey bar wrappers; and one wooden stick.

10 AST. SOL. JUSTIS: Beg the Court's indulgence.

11 Q. I'm showing you what's been marked as State's Exhibit
12 21. Do you recognize these?

13 A. Yes, sir; I do.

14 Q. And what do they appear to be?

15 A. State's 21 are two latent print cards. They were taken
16 from the Kia Sedona van. One was taken from the passenger
17 side front door, and the other one was taken from the
18 passenger side rear door. And these are again, latent lifts
19 from those two areas.

20 Q. And who collected these latent lifts?

21 A. I did.

22 AST. SOL. JUSTIS: At this time, the State would offer
23 State's 21 into evidence.

24 BY MS. SARJI: No objection.

25 THE COURT: All right. It's in.

1 (State's Exhibit No. 21, Latent Print Cards, was
2 received into evidence.)

3 Q. And all the other items you mentioned that you
4 collected, what happened to those items? Where did they go
5 after you collected them?

6 A. Again, the swabs were put into a drying chamber and
7 allowed to dry. And then they were packaged and sent off to
8 the State Law Enforcement Division. The latent print cards
9 were then submitted to the latent processor in the latent
10 division within the Dorchester County Sheriff's Office. And
11 the other items were taken into our lab for further
12 processing.

13 Q. Let me fast-forward a little bit to June 18th of 2015.
14 You had an opportunity to execute a search warrant for the
15 defendant's DNA on that date?

16 A. Yes, sir; we did.

17 Q. And could you explain a little bit about how you
18 executed that search warrant?

19 A. Once we got a search warrant for the DNA from
20 Mr. Shewtzuk, I believe he was being brought into our annex
21 which is located in Dorchester County Sheriff's Office in
22 the, then, was the detention part of the annex. I was made
23 aware that he was down there. We got a search warrant to
24 obtain buccal swabs. Which all a buccal swabs are is a
25 cotton-tip applicator, place them inside and run along the

1 cheek well and then you secure them and then allow them to
2 dry and package them. And then they are sent off to SLED
3 for comparison. That is what we did on June 18th of 2015.

4 Q. I'm showing you what's been marked at State's 17.

5 Would you take a look at this item and explain what that is?

6 A. According to the evidence tag, these are buccal swabs
7 from Thomas Shewtzuk.

8 Q. Okay. And how can you tell they're the buccal swabs
9 from Thomas Shewtzuk?

10 A. Without opening the envelope and examining them, I can
11 tell because this is my handwriting on top of the envelope
12 that has the DCS case number. Also I can tell by an
13 evidence tag that's located on the front of the envelope
14 which indicates the buccal swabs from Thomas Shewtzuk.

15 Q. And would these have been in your exclusive possession
16 until they went to the state lab for further processing?

17 A. Yes, sir; that's true.

18 AST. SOL. JUSTIS: Beg the Court's indulgence.

19 Q. When you went to get Mr. Shewtzuk's buccal swabs, did
20 you have the opportunity to take any other photographs that
21 day?

22 A. Yes, sir; we did.

23 Q. And what photographs did you take?

24 A. We took photographs of Mr. Shewtzuk's tattoos.

25 Q. Okay. I'm going to show you what's been marked as

1 State's 25, 26, 27, 28, 29, 30, 31, 32 and 33. Can you take
2 a look at these photographs and just tell me if you
3 recognize those photographs?

4 A. One moment, please. (Brief pause.) Yes, sir. I do
5 recognize these photographs.

6 Q. Did you take those photographs?

7 A. Yes, sir; I did.

8 Q. And generally speaking, what do all of these
9 photographs depict?

10 A. The photographs depict Mr. Shewtzuk's tattoos as they
11 were observed the day that they were taken, which was on the
12 18th of June 2015 at the DCS Annex.

13 AST. SOL. JUSTIS: Detective, I have no further
14 questions for you. Please answer any questions Ms. Sarji
15 might have for you.

16 THE COURT: Cross examination?

17 BY MS. SARJI: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MS. SARJI:

20 Q. You say it was a Kia Sedona minivan that you ended up
21 processing. Is that right?

22 A. Yes, ma'am.

23 Q. And you didn't do any actual fingerprint comparison or
24 anything like that.. Is that correct?

25 A. No, ma'am. I did not.

1 Q. So your role in this has been just to sort of gather
2 the things that you found around at the store and the
3 minivan. And then you said that they remained in your
4 exclusive possession until they were taken to SLED. Is that
5 correct?

6 A. They remained in the evidence locker which is located
7 at the Dorchester County Sheriff's Office. They didn't
8 exclusively remain in my desk, but they were locked behind a
9 secured door.

10 Q. So when we talked about -- for just a second ago, we
11 were talking about Exhibit Number 17, which would've been
12 the buccal swabs. Is that how you pronounce it?

13 A. The pronunciation varies. Some say buccal. Some
14 people say buccal. I've always know it to be buccal swabs.

15 Q. Okay. And so you testified a moment ago to the
16 Solicitor that those had remained in your exclusive
17 possession until they were taken to SLED. Is that correct?

18 A. Well, by exclusive possession, because I am a crime
19 tech, those items remained exclusively within the crime
20 scene evidence locker which I have a key to as well as the
21 other crime scene techs.

22 Q. So it was in the crime scene locker the whole time. Is
23 that

24 A. That's correct.

25 Q. Okay. And there are numerous people that have keys to

1 that. Is that right?

2 A. Not numerous. There are only a handful.

3 Q. More than one?

4 A. More than one, but not numerous.

5 Q. Okay.

6 BY MS. SARJI: Thank you. I don't have any further
7 questions.

8 THE COURT: Any redirect?

9 AST. SOL. JUSTIS: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY AST. SOL. JUSTIS:

12 Q. And yourself and who other -- who are some of the other
13 people that would potentially have keys to this evidence
14 locker?

15 A. At the time we had some different personnel. And it
16 would have been myself, my lieutenant, Craig Legates (ph),
17 Sergeant Derrick Sarrow, Sergeant Stephanie Stover, Corporal
18 Brandenburg and myself at the time.

19 Q. So other crime scene personal?

20 A. Just other crime scene personnel.

21 Q. And when you take those -- when these things are sent
22 off, obviously they have to leave the evidence room at some
23 point to be tested?

24 A. Correct.

25 Q. And when they leave, who typically takes it to SLED?

1 A. Usually, a crime scene tech will take them.

2 Q. And what's the standard procedure if they were to get a
3 piece of evidence out of the evidence room and it appears it
4 had been tampered with. What do you do with that evidence?

5 A. That evidence is generally discarded. We make notes
6 indicating that the evidence appeared to be tampered with.
7 My time at the Sheriff's office, that's never happened.. So
8 I'm not sure of the exact protocol. But off the top of my
9 head I would say that's probably what it was because you
10 can't have tampered with evidence or evidence that appear to
11 be tampered being used to possibly convict someone.

12 AST. SOL. JUSTIS: Thank you. No further questions.

13 BY MS. SARJI: Your Honor, just briefly. Something
14 that he said that I believe is a new issue for ---

15 THE COURT: Very briefly.

16 RECROSS EXAMINATION

17 BY MS. SARJI:

18 Q. Were you at Colleton County Sheriff's Office prior to
19 being at Dorchester County, weren't you?

20 A. Yes, ma'am.

21 Q. And when did you move over to Dorchester County?

22 A. When did I begin working with Dorchester County
23 Sheriff's Office?

24 Q. Yes, sir.

25 A. February of 2013.

1 Q. So were you with Colleton County crime scene when they
2 had some problems with their evidence down there?

3 A. I'm not aware of when they had evidence issues in crime
4 scene with Colleton County. So I'm not going to say yes or
5 no because I'm not aware of any issues that were had. If
6 you can give me kind of an exact year, date specification,
7 then maybe I can clarify that and maybe I can answer that.
8 But at this time, I'm not going to answer that question.

9 Q. Sure. I'll be happy to. It's going to take me just
10 one second. (Brief pause.)

11 BY MS. SARJI: Court's indulgence, Your Honor.

12 Q. So in Colleton County you would've still been there in
13 November of 2012. Is that right?

14 A. That is correct.

15 Q. Were you working in crime scene at that point in
16 Colleton County?

17 A. Crime scene -- Colleton County does not have a crime
18 scene division. They have a general investigation division.
19 In other words, their detectives were the crime scene techs.
20 Yes, I was working for criminal investigation division as a
21 detective/crime scene tech. But, however, I was not an
22 evidence tech. I did not have access to the evidence
23 locker. We had an evidence tech. Her name was Detective
24 Jodi Taylor. And we had a co-evidence tech, and I don't
25 remember who was at the time, but it was not me. I did not

1 have access to evidence once it was secure.

2 Q. But while you were employed at Colleton County,
3 certainly, there was a problem with evidence being tampered
4 with in Colleton County.

5 A. I'm not aware of any issues. I mean, if you have an
6 article or if you have an investigative report from SLED
7 showing where there was some tampering with evidence then
8 maybe I can talk about it. But I was never directly
9 involved in any investigation nor was I implemented in any
10 tampering of evidence nor am I even aware of this issue
11 happening.

12 Q. You don't recall an incident where Colleton County ---

13 AST. SOL. JUSTIS: Objection, Your Honor. I think he's
14 asked -- he's answered the question. He's not aware of any
15 ---

16 THE COURT: Sustained. It's been asked and answered
17 and your attempt to use extrinsic evidence.

18 BY MS. SARJI: But he said ---

19 THE COURT: Let's move on, counsel.

20 BY MS. SARJI: No further questions, Judge.

21 Q. Well, did you actually, physically take this up to
22 SLED? The evidence box.

23 A. I did not. One of the other crime scene techs I
24 believe did.

25 Q. Okay. And so it was not in your exclusive possession

1 until it went to SLED. Is that correct?

2 A. It was located within the crime scene division, again,
3 in the evidence locker. And once it was taken to SLED, it
4 was secured in the evidence tech's vehicle and taken to
5 SLED.

6 Q. Thank you.

7 BY MS. SARJI: Thank you. No further questions, Judge.

8 THE COURT: You may step down, sir. Thank you.

9 THE WITNESS: Thank you, Judge.

10 THE COURT: You may call your next witness.

11 AST. SOL. WARD: The State will call Agent Lillian
12 Gallman.

13 LILLY SMALLS GALLMAN, after being duly sworn, testified
14 as follows:

15 AST. SOL. WARD: May it please the Court, Your Honor?

16 THE COURT: Yes, sir. Your witness.

17 AST. SOL. WARD: Thank you.

18 DIRECT EXAMINATION

19 BY AST. SOL. WARD:

20 Q. Agent Gallman, where are you currently employed?

21 A. I'm employed at the South Carolina Law Enforcement
22 Division -- excuse me -- Division.

23 Q. And what is your job title there?

24 A. I'm employed as a forensic DNA analyst.

25 Q. And how long have you worked with SLED?

1 A. Since January of 1990; 26 years.

2 Q. And could you tell us what some of your duties and
3 responsibilities are as a DNA analyst?

4 A. As I stated, I'm employed as a forensic DNA analyst.
5 My job is to receive evidence, to determine whether I have a
6 match between the evidence and known standards that are
7 submitted to us. When I say known standards, it could be
8 the blood or buccal swabs, which are swabs from the inside
9 of a person's mouth. And so I can compare the evidence and
10 the standards after I develop a DNA profile from both to
11 determine whether there's a match or that there isn't a
12 match between those items.

13 Q. And could you tell us a little bit about your
14 educational background.

15 A. I have a degree in biology from the University of South
16 Carolina. Once I receive my degree, I continued working at
17 the University of South Carolina in the area of genetics
18 where I did cloning and sequencing of DNA. As I stated, I
19 start working with the South Carolina Law Enforcement
20 Division in January of 1990 as a forensic DNA analyst.
21 During that time, I attended the FBI DNA typing schools.
22 I've attended the South Carolina Criminal Justice Academy
23 and I have also taken advanced courses in genetics and in
24 forensic science. I've also been trained by serologists,
25 which is the area where you determine body fluids so that I

1 could be capable of doing the job that I do.

2 Q. And besides all of that, do you have any other
3 certifications?

4 A. Yes. Each year we are expected to do continuing
5 education courses or meetings to keep abreast of what's
6 going on in the area of DNA.

7 Q. And have you ever been qualified as an expert in
8 forensic DNA analysis before?

9 A. Yes, I have.

10 Q. Approximately how many times?

11 A. Approximately 60.

12 AST. SOL. WARD: At this time, Your Honor, the State
13 would moved to have Agent Lilly Gallman qualified as an
14 expert in forensic DNA analysis.

15 THE COURT: Any voir dire?

16 BY MS. SARJI: None, Your Honor.

17 THE COURT: The Court finds that she is qualified.

18 AST. SOL. WARD: Thank you, Your Honor.

19 Q. Agent Gallman, could you explain to the jury what DNA
20 is?

21 A. DNA is considered to be the blueprint of the body.
22 Each person's DNA is different except for identical twins.
23 And since your DNA is different, we are able to determine
24 matches between DNA and evidence. DNA stands for
25 deoxyribonucleic acid; just a long word so they just say

1 DNA. Now pretty much everyone has heard about DNA. The
2 purpose of -- our purpose in forensic is to utilize the
3 information that's developed from a profile in order to tell
4 whether evidence or matches or does not match an individual.

5 Q. Where's DNA found in humans?

6 A. DNA is found in every part of your body. Your DNA is
7 the same from your skin cells, your blood cells. So if we
8 have DNA from a person's skin cells, we're able -- found at
9 a crime scene -- we're able to match that with a standard
10 that's taken -- a known standard that's taken from that
11 individual. So everybody's DNA is different except for
12 identical twins, as I stated. But all of your DNA is the
13 same in your body.

14 Q. And does your lab, laboratory, have protocols you
15 follow to ensure there's no contamination?

16 A. Yes, we do. We have a protocol. And withing this
17 protocol, we have what's known as reagent blanks or negative
18 controls. And they are followed through with each sample in
19 order to make sure that everything is done properly. And
20 there's not any outside contamination within the sample.

21 Q. And were you able to receive evidence in this case?

22 A. Yes, I did.

23 Q. Okay.

24 BY MS. SARJI: Your Honor, we would object to
25 discussion of evidence because I don't believe a complete

1 chain of custody has been established.

2 THE COURT: You can establish that.

3 AST. SOL. WARD: Pardon?

4 THE COURT: You haven't asked the question yet.

5 BY MS. SARJI: He hasn't even established who took it
6 from Dorchester County to SLED.

7 AST. SOL. WARD: We don't have to provide a full, every
8 person that's handled this evidence as long as we can show,
9 you know, the majority of the chain and they can identify it
10 and say it was secured.

11 THE COURT: You may proceed.

12 AST. SOL. WARD: Thank you.

13 Q. First I'm going to show you what's been marked as
14 State's Exhibit 17 for identification purposes. Do you
15 recognize that?

16 A. Yes, I do. There's a date and initials with my chicken
17 scratch on the side here that shows it was in my custody.

18 Q. Okay. And can you explain what would have happened to
19 that evidence? Once it's delivered to SLED, how does it get
20 to you?

21 A. Whenever evidence is brought to SLED, it doesn't come
22 in a heat sealed pouch like this. What we would receive is
23 what you see as this envelope that's on the inside, would
24 come to SLED. The envelope is then placed inside this heat
25 sealed pouch. And it is sealed and then initialed by the

1 submitting agent at the time. So this particular item came
2 to SLED and it was sealed on June 23, 2015. It's also given
3 a SLED case number. In this particular case, it's L157902.
4 And it's also given a SLED item number. And also, as you
5 can see here, we have what agency that it came from. So it
6 was sealed here. And then once it comes to me, I break the
7 seal. Not break the seal; I open the package because you do
8 not break that particular seal. And then I remove the
9 evidence and then I do my work on it.

10 Q. And when you received that item right there item 17,
11 was it completely sealed at that time?

12 A. Yes, it was. It was sealed here. This was not here.
13 I did all of this right here. It was sealed. If it was not
14 sealed properly then we would backtrack; go back to the
15 login area and find out why this was not sealed. Was there
16 a problem with it not being sealed before I proceed with my
17 testing.

18 Q. And the bag didn't appear to be tampered with when you
19 received it?

20 A. No, it did not.

21 Q. Okay. And do you recall the date you received Exhibit
22 17?

23 A. Based on -- I received it on 7-1-2016 from Doris
24 Shelbourne (ph), who is in login.

25 Q. Okay. And once you received it, what would have been

1 the first thing you did?

2 A. The first thing I did would be to check and see if it
3 was sealed properly. And then I would proceed with my
4 testing.

5 Q. And what was that item -- what is that item actually?

6 A. This item is listed as being buccal swabs from Thomas
7 Robert -- I hope I'm saying right.

8 Q. Shewtzuk, I think.

9 A. Shewtzuk. Okay, Shewtzuk.

10 Q. All right. And could you explain how you tested that
11 piece of evidence?

12 A. As I stated, this is called a buccal swab which is
13 basically when you take -- it looks like a q-tip. And you
14 swab the inside of the person's mouth and then you let it
15 air dry and then it's packaged up. When I receive it and I
16 open it, what I would do is take a cutting from that swab
17 and then I would extract the DNA from it to develop a DNA
18 profile.

19 Q. And were you able to extract DNA from that piece of
20 evidence?

21 A. Yes, I was.

22 Q. Were you able to retain -- obtain results for that
23 test?

24 A. Yes, I was. I was able to develop a DNA profile from
25 this item.

1 Q. Okay. And would that item be considered the known
2 standard?

3 A. Yes. Like I stated, the known standard could be a
4 buccal swab from the inside of a person's mouth or from the
5 blood of a person. We use this as a known standard.

6 Q. Okay. And once you were finished testing that item,
7 what would you have done with it?

8 A. I would then seal it; the date of the sealing and my
9 initials. And then this item would be returned to the login
10 area to whoever the submitting agent to pick up and bring
11 back to their county or the sheriff's department.

12 Q. Okay. And does that item appear to be tampered with or
13 is it in the same condition as when you were finished with
14 it?

15 A. It's in the same condition.

16 AST. SOL. WARD: At this time, Your Honor, the State
17 would ask for Exhibit 17 to admitted into evidence.

18 THE COURT: Any objection?

19 BY MS. SARJI: Yes, Your Honor. We would renew our
20 previous objection with regard to the chain. I can cite
21 some case law for the Court. If you would prefer me to do
22 that outside the presence of the jury, I'm happy to do that,
23 or I can argue it now.

24 THE COURT: You can come up to the sidebar.

25 BY MS. SARJI: Yes, Your Honor. I would just ask that

1 the court reporter please take down what we're saying at the
2 sidebar.

3 THE COURT: We have a recording, Ms. Sarji. That's not
4 necessary.

5 BY MS. SARJI: Okay. Thank you. As long as it's being
6 made part of the record.

7 (*The following bench conference was held out of the
8 hearing of the jury and court reporter. See note on
9 index page.)

10 THE COURT: You may move on, Solicitor.

11 AST. SOL. WARD: Okay. I just want to make sure. So
12 Exhibit 17 is now admitted into evidence?

13 THE COURT: It is.

14 AST. SOL. WARD: Thank you, Your Honor.

15 (State's Exhibit No. 17, Buccal Swab, was received
16 into evidence.)

17 Q. I'm going to show you what's been marked as State's
18 Exhibit 18 for identification purposes. Do you recognize
19 that item?

20 A. This is SLED item number 12, which is a cigarette butt
21 that was submitted for DNA analysis.

22 Q. Okay. And when you received that item, was it sealed
23 properly?

24 A. Yes, it was.

25 Q. And how are you able to tell that?

1 A. Well, the first thing is that I check -- there was only
2 one seal on the pouch at all. And that was the one at the
3 top that was sealed by Stephanie Spellbourne. Because
4 that's listed on our chain as the person that sealed it.
5 And then the next time when it was opened, it was opened by
6 me. And then I sealed it and dated it and initialed it.

7 Q. And were you able to test that item?

8 A. Yes, I was.

9 Q. And were you able to develop a DNA profile from that?

10 A. Yes, I was.

11 Q. And once you did that, what were you able to do with --
12 were you able to compare that item with the known standard?

13 A. Yes. I compared it to the known standard from the
14 subject and also from the victim. And this particular item
15 matched the known standard from the subject.

16 Q. Okay. And could you kind of explain how you come to
17 that conclusion?

18 A. I developed a DNA profile from the evidence and then I
19 also developed a DNA profile from the known standards that
20 were submitted to me. We look at 16 different areas on the
21 chromosome. And part of your DNA comes from your mother and
22 part from your father. So you have a DNA profile. And I
23 compared to DNA profile developed from the evidence to the
24 DNA profile developed from the known standards from the
25 victim and the subject. And it did not match the victim; it

1 matched the subject.

2 Q. And from those results, are you able to calculate an
3 estimate for the rarity of that match?

4 A. Yes, sir. I'm going to read from my report. It states
5 that the DNA profile developed from item number 12, this is
6 the cigarette butt, matches the DNA profile of Thomas
7 Shew -- excuse me. I'm sorry -- saying it wrong. But from
8 the subject and has been entered into the Combined DNA Index
9 System. That means CODIS. The probability of randomly
10 selecting an unrelated individual having a DNA profile
11 matching this item is a proximally one and 960 quadrillion.

12 Q. And, first, what is CODIS?

13 A. It is a database where we store information from DNA
14 profiles from individuals who come into the lab; DNA profile
15 coming into the lab.

16 Q. And I don't know if there's a way simplifying. What
17 does the matching one and 960 quadrillion -- is there a way
18 to simplify that explanation?

19 A. That's a one with 15 zeros.

20 Q. Okay. Can you explain that probability? I guess, what
21 that would mean as far as finding someone else that could
22 match the DNA on the cigarette?

23 A. Okay. What it means is that since we look at 16
24 different areas on the chromosome, each one of those areas
25 are independent of each other. So each one of those areas

1 have a frequency of that event in any given population:
2 Caucasian, black, Hispanic population. So what we're able
3 to do, you take the frequency from one low side area on the
4 chromosome and you multiply it against each one of the 16
5 low side. And then you have a frequency of that event. And
6 what we do, we look at how frequent it is in the Caucasian
7 database? How frequent is it in the African-American
8 database or the Hispanic database? We use the most
9 conservative of those databases to report our numbers. So
10 the very first thing you're going to do is determine whether
11 you have a match or do not have a match. If you have a
12 match, we are required to apply a frequency of that event in
13 a given population.

14 Q. So you're able to say there was a match between these
15 two for the subject, the known standard and the cigarette
16 butt, correct?

17 A. Yes.

18 Q. All right. And that the rarity of selecting someone
19 else is 960 quadrillion. Is that correct?

20 A. That's correct.

21 Q. Okay. Were you provided any other items to test
22 against the known standards?

23 A. Yes, I was.

24 Q. And were you able to compare those with the known
25 standards? The other items you were provided.

1 A. Yes. I sent quite a few other items to compare to the
2 known standards. I got swabs from the van, from the van,
3 and also the cigarette butt as we mentioned. The other
4 items that I was able to get a usable DNA profile was item
5 number -- SLED item number 10, which is a swab from the
6 inside driver compartment of the van. And that matched the
7 victim, Travis Gordon.

8 Q. Okay. And looking at SLED item number 11 is stated as
9 being a swab from the steering wheel, the rearview mirror,
10 and shifter in the van. Is that correct?

11 A. That's correct.

12 Q. Okay. And can you explain the results that you were
13 able to obtain from that item.

14 A. I'm reading from my report. It says due to the limited
15 information obtained, the partial DNA profile developed from
16 item 11 is not suitable for interpretation. Item number 11,
17 I did not generate -- enough DNA was not there in order to
18 generate a usable profile to be able to do an interpretation
19 as to whether anyone, not just the standards that I was
20 given, was there.

21 Q. Okay. And items 4 and 5 were also tested. Four was,
22 looks to be, a swab from the rear passenger seat and from
23 the front passenger seat in the van. Could you explain
24 those results?

25 A. I'm reading from my report again. The DNA obtained

1 from items 4 and 5 are mixtures of at least two individuals.
2 Due to the inability to calculate a statistic, no comparison
3 would be offered. Based on our protocol, if we're not able
4 to calculate a statistic, give you a number behind a sample,
5 then we do not offer a comparison.

6 Q. Okay. I'm sorry; I forgot to do this earlier. Item 18
7 that you have in front of you, or my Exhibit 18, which is a
8 cigarette butt, once you completed testing with that item,
9 what would you have done with it?

10 A. The same as what I would do with the item number 13. I
11 would seal it, date it, initial it, return it to the login
12 area to be sent back to the submitting agency.

13 Q. And does that item look to be in the same condition as
14 it was when you were finished with it?

15 A. Yes. It's still only two seals on it.

16 AST. SOL. WARD: At this time, Your Honor, the State
17 would move State's Exhibit 18 into evidence.

18 THE COURT: Subject to your previous objection?

19 BY MS. SARJI: Thank you, Your Honor.

20 THE COURT: It's in.

21 AST. SOL. WARD: Thank you, Your Honor.

22 (State's Exhibit No. 18, Cigarette Butt, was received:
23 into evidence.)

24 AST. SOL. WARD: One moment, Your Honor. (Brief pause.)
25 Not further questions. Please answer any the defense may

1 have.

2 THE COURT: Cross examination?

3 BY MS. SARJI: None, Your Honor. Thank you.

4 THE COURT: You may step down, ma'am. Thank you. You
5 may call your next witness.

6 AST. SOL. WARD: The State would call Detective Brad
7 Mullis.

8 BRADLEY MULLIS, after being duly sworn, testified as
9 follows:

10 THE COURT: Your witness.

11 AST. SOL. WARD: Thank you, Your Honor. May it please
12 the Court?

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION:

15 BY AST. SOL. WARD:

16 Q. Detective Mullis, where are you currently employed?

17 A. The Dorchester County Sheriff's Office.

18 Q. And what is your current rank there?

19 A. I hold the rank of Sergeant.

20 Q. And what are your current duties?

21 A. I'm currently assigned as a supervisor with the
22 Dorchester County Crime Scene Unit.

23 Q. And how long have you worked with the Sheriff's office?

24 A. Eight years.

25 Q. Do you have any prior law enforcement experience prior

1 to that?

2 A. I have a total of 12 years of law enforcement service.

3 Q. All right. And could you tell us what training you
4 have as far as for law enforcement?

5 A. I was certified as a law enforcement officer in 2004.
6 I've obtained my associate's in criminal justice degree in
7 2014. When I moved to the crime scene unit in 2012, I took
8 advanced training in forensics. I currently have over 500
9 training hours of forensic scenarios of latent print
10 examination, crime scene processing, and blood stain pattern
11 analysis.

12 Q. What is your educational background?

13 A. I have an associate's in criminal justice.

14 Q. Okay. And as far as fingerprint and palm print
15 analysis, could you tell us what training you have in that?

16 A. In latent fingerprinting examination, I have taken
17 advanced training and over 200 hours in latent
18 fingerprinting examination.

19 Q. And have you taken any tests for . . .

20 A. The Dorchester County Sheriff's Office sends off for a
21 comp exam every year. I've taken a total of two in the past
22 year; currently on my third yearly to make sure I'm
23 competent as an examiner.

24 Q. And have you passed those previous tests?

25 A. I have. I made a hundred percent on my conclusions.

1 Q. And do you currently have any certifications held in
2 fingerprint analysis?

3 A. April of this year, I took a test with the South
4 Carolina Law Enforcement Division where I was certified to
5 operate the South Carolina Automated Fingerprint
6 Identification System.

7 Q. And are you currently working on any other
8 certifications?

9 A. I'm currently studying to pursue a certification with
10 the International Association of Identification. It's one
11 of the oldest forensic organizations.

12 Q. And could you tell us about approximately how many
13 fingerprints, palm prints, have you examined before?

14 A. Since I first started training in 2012, I've examined
15 over 10,000 fingerprints.

16 Q. And have you on those previous occasions been able to
17 identify persons by comparing fingerprints?

18 A. In real casework -- well, when I started doing it full
19 time, I started keeping track. And I've identified no less
20 than 30 latent prints to their non-sources.

21 Q. And again, if they don't match, have you been able to
22 exclude people as well?

23 A. Yes, sir.

24 Q. Okay. Have you ever been qualified as an expert before
25 in fingerprint/palm print analysis?

1 A. No, sir. This would be my first time testifying on
2 latent prints.

3 Q. Okay.

4 AST. SOL. WARD: At this time, Your Honor, the State
5 would move to have Sergeant Mullis declared as an expert in
6 the field of fingerprint and palm print analysis.

7 THE COURT: Any voir dire?

8 BY MS. SARJI: Yes, Your Honor. Thank you.

9 VOIR DIRE EXAMINATION

10 BY MS. SARJI:

11 Q. Detective Mullis, you've testified that you are
12 currently studying to pursue a certification that is offered
13 internationally. Is that correct?

14 A. That's correct.

15 Q. But you haven't taken that test?

16 A. I'm unable to at this time.

17 Q. So you haven't passed that test and you don't hold that
18 certification. Is that correct?

19 A. Yeah.

20 Q. And you testified that you have been certified, I
21 guess, by Dorchester County, which is where you're
22 employed. Is that right?

23 A. Repeat that question, please.

24 Q. You have been certified as a fingerprint examiner by
25 Dorchester County standards. Is that correct?

1 A. I have taken a test to be certified to operate the
2 South Carolina Automated Fingerprint Identification System
3 in Dorchester County. I have to take a test yearly to make
4 sure I'm competent as an examiner to look at fingerprints.

5 Q. Okay. And so when you were saying that you just took a
6 test in April of this year, what test was that?

7 A. It was a six-hour test at the South Carolina Law
8 Enforcement Division where I conducted pattern analysis and
9 also where I compared known prints to unknown prints.

10 Q. And so -- Oh, I'm sorry.

11 A. I'm sorry.

12 Q. I thought you were done.

13 A. I'm done.

14 Q. You're done. Okay; I'm sorry. And so that was just in
15 April of this year that you became qualified to operate a
16 AFIS, the Automated Fingerprint Identification System. Is
17 that correct?

18 A. That's correct.

19 Q. So that's been roughly, I guess, it's September now,
20 it's been roughly four or five months ago. Is that right?

21 A. (Nonverbal response.)

22 Q. Is that a yes?

23 A. Yes, ma'am.

24 Q. And when was it that you performed the review in this
25 case of these fingerprints?

1 A. This would've been last year.

2 Q. Prior to being certified to use AFIS?

3 A. That's correct.

4 Q. And is there a national certification available as well
5 for fingerprint analysis?

6 A. The certification that I am pursuing is not mandatory.
7 It's not mandatory to hold a certification in latent
8 fingerprint examination. It's based on knowledge and
9 experience and the training in the field. I'm actively
10 pursuing it myself as a higher education.

11 Q. So is there no national certification available or
12 there is national certification available?

13 A. It is offered, but you have to meet certain
14 qualifications.

15 Q. And you do not currently meet those qualifications. Is
16 that right?

17 A. I hold the educational requirements. However, I'll
18 have to meet certain courtroom testimony.

19 Q. And so the answer is no, you do not currently hold
20 those qualifications. Is that correct?

21 A. At this time, I do not.

22 Q. And you said that you have studied 10,000 fingerprints.
23 Is that right?

24 A. I've conducted over 10,000 comparisons.

25 Q. And of those, you matched 30?

1 A. That's correct.

2 Q. And do you have anyone within -- anyone that has
3 reviewed, on a national level, that has reviewed the
4 standards that are currently being employed in Dorchester
5 County? Is there any quality control that is done by
6 someone outside of South Carolina?

7 A. I'm not sure I understand the question, ma'am.

8 Q. Okay. So what I'm getting at is this: Is there
9 anybody that comes behind you and looks to see whether or
10 not what you're doing is right?

11 A. When I perform a fingerprint analysis, we use a
12 methodology known as the ACEV methodology. ACEV stands for
13 Analysis Comparison Evaluation and Verification. After a
14 comparison is done, it is sent for peer review.

15 Q. By whom? Who is the peer?

16 A. A secondary examiner at their agency.

17 Q. And did that secondary examiner at your agency review
18 these results?

19 A. A secondary did review this case.

20 Q. Okay. And do they hold the national certifications?

21 A. I was the verifier on this case.

22 Q. So nobody checked your work is what you're saying? On
23 this particular case.

24 A. It is not required; no, ma'am.

25 Q. And there's no quality reviewer to look and see if

1 fingerprint analysis, in general, in Dorchester County is
2 being done according to established standards in the nation?

3 A. Could you repeat that question, please?

4 Q. There is no one that is doing any sort of quality
5 control or review to verify whether Dorchester County
6 Sheriff's Office is currently employing standards that are
7 the accepted standards for fingerprint examination?

8 A. The Dorchester County Sheriff's Office operates under
9 standards of SWGFAST, which is actually currently under
10 review as they are starting a new scientific working group
11 called the OSATS which is a board of personnel or experts in
12 that field that set standards. Currently, the standards are
13 set under SWGFAST and we follow those standards currently.

14 Q. And does somebody come back behind you to check that
15 you're following those standards?

16 A. Only a verifier.

17 Q. Is there somebody outside of Dorchester County -- and
18 I'm just, you know, restaurants get reviewed by health
19 inspectors. And you know, there's oversight. And that's
20 what I'm asking you. From outside of Dorchester County, is
21 there oversight into what you're doing in terms of your
22 standards in the fingerprint analysis?

23 A. I don't know any.

24 Q. Okay.

25 BY MS. SARJI: That's all I have, Your Honor. And I

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1 would object to his qualification as an expert in this
2 field.

3 THE COURT: Any redirect?

4 AST. SOL. WARD: Yes, if you don't mind, Your Honor.

5 REDIRECT VOIR DIRE EXAMINATION

6 BY AST. SOL. WARD:

7 Q. You're saying, as you told me, you're working on a
8 certification for the International -- what was that again?
9 I'm sorry.

10 A. It's the International Association of Identification.

11 Q. Okay. You're working towards that. What are all the
12 steps you would need to be certified?

13 A. Some of the qualifications are education. I have an
14 associate's degree. Some require a bachelor's degree.
15 Since I have an associate's degree it also requires a
16 certain amount of years in latent fingerprint examination,
17 which I do have. However for me to -- I would be able to
18 apply to take test. However, I wouldn't be able to obtain
19 my certification until either one of three things happen:
20 either I testify expert in a criminal case such as today; or
21 I attend a courtroom training in which I am videoed as the
22 qualifications that I'm being asked today; or I apply for
23 the tests and I go in front of experts in the field on a
24 board and they ask me those same questions. And until one
25 of those happens, I can't apply to take the test to obtain.

Ward

1 certification.

2 Q. So if you're qualified here today, you'll be able to go
3 for that certification?

4 A. That is correct.

5 Q. You stated you just became in April certified through
6 AFIS, correct?

7 A. That's correct.

8 Q. Before that, you were still comparing fingerprints.
9 Could you explain the difference between certified in AFIS
10 and just doing comparisons?

11 A. Absolutely. I first started doing comparisons in 2012.
12 And the comparisons I was doing were supervised under a
13 qualified expert in the field of latent fingerprinting
14 examination, which was my current supervisor at the time.
15 I had completed casework for approximately three years under
16 a latent fingerprint examiner. During that course where I
17 was being supervised, I was also taking advanced training
18 classes to further my education in latent fingerprint
19 examination.

20 Q. So at that time you were actually doing, I guess,
21 real-world examinations at the Sheriff's office?

22 A. Yes, sir.

23 Q. Okay. And what does the AFIS certification now allow?

24 A. The South Carolina Automated Fingerprint Identification
25 system is a software computer system. And SLED, the South

Ward

1 Carolina Law Enforcement Division commonly referred to as
2 SLED, I'm not sure if it's mandatory, but they do like you
3 to -- they want to make sure that you are competent to
4 operate the equipment that is in front of you. And they
5 want to test you and that's what they do. They sit you down
6 and you take a pattern identification test and then a
7 comparison test and you have six hours to complete it in,
8 the appropriate time frame to be able to operate it. SLED
9 allows you to operate the South Carolina Automated
10 Fingerprint Identification without certification. However,
11 they prefer you not to enter in unknown prints found at a
12 crime scene in the unsolved database until they know that
13 you're competent that you're putting in the appropriate
14 prints in the system.

15 Q. So is the equipment you use for AFIS the same equipment
16 you would use just to look at fingerprints you have working
17 on a case?

18 A. No, sir.

19 Q. Could you tell us what equipment you would use just
20 working on a case that you would be handling at work?

21 A. If an unknown fingerprint is found at a crime scene and
22 is submitted for analysis, one or two things can occur. If
23 there is currently no one to do a comparison with, we can
24 enter that fingerprint in the South Carolina Automated
25 Fingerprint Identification System. However, in this case,

Redirect Voir Dire Examination of Det. Mullis by Ast. Sol.

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1 we had an individual to do a comparison with, and at the
2 point we could do it one or two ways and both end up
3 occurring. The first is looking through a small little
4 glass, magnification glass, and you're looking at the print
5 to analyze it. We also have a computer system with today's
6 equipment that we scan it in and scale the same fingerprint
7 and do the same thing on a computer screen that keeps the
8 examiner from straining his eye nearly as bad as the whole
9 time -- he's constantly look into the glass all the time.

10 Q. Okay. And you stated in this case you were the
11 verifier. Is that correct?

12 A. That is correct.

13 Q. Okay. So the person before you would have been the
14 original analyst?

15 A. That is correct.

16 Q. All right. And could you explain what your process is
17 that you go through to verify?

18 A. As a verifier, I completely rework the case. After an
19 analysis is made -- I know a conclusion is made, but I don't
20 know the conclusion. I know that in our agency we do a
21 hundred percent verification. So I either know someone was
22 excluded or identified, but I don't know which one. So I
23 take the latent fingerprint, which is an unknown fingerprint
24 that is found at the crime scene, and I take the known
25 standard, commonly referred to as an imprint, and I first

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1 analyze the latent fingerprint that is found at the crime
2 scene to see if it is of value to actually do a comparison
3 with.

4 Q. Okay. And in this case without telling us the results,
5 was your conclusion the same as the original analyst?

6 BY MS. SARJI: Your Honor, I'm going to object. I
7 don't think he's been qualified yet as an expert and we're
8 starting to ask him about his opinion regarding what this
9 testing showed.

10 THE COURT: That's correct. Solicitor, are you moving
11 to have him qualified as an expert at this time?

12 AST. SOL. WARD: Just one more question about voir
13 dire.

14 THE COURT: Yes, sir.

15 Q. As far as accreditation goes, you said it was skip
16 something or what kind of -- can't remember the name now.
17 Sorry. What protocols are you following or does the
18 Sheriff's Office follow?

19 A. We're currently following the standards that were set
20 forth by SWGFAST, which were known as the scientific working
21 group for fingerprint identification. It is a board of
22 experts and they have set standards such as terminology,
23 such as they recommend doing verification on at least
24 identifications. However, Dorchester County goes above and
25 beyond and does a hundred percent verification on

1 identifications and exclusions. And they recommend those
2 standards and we follow those.

3 Q. Okay. SWGFAST is what I was trying to come up with.
4 So do you guys get an accreditation by them or is it just a
5 standard to follow?

6 A. It is just a standard that in the field that should be
7 followed.

8 AST. SOL. WARD: At this time, Your Honor, the State
9 would again move for Sergeant Mullis to be declared an
10 expert in fingerprint and palm print analysis.

11 THE COURT: Same objection?

12 AST. SOL. WARD: Yes, Your Honor. Same argument.
13 Thank you.

14 THE COURT: And the Court finds based on Rule 702 that
15 he does have sufficient knowledge, skill, and experience and
16 training and/or education to assist the trier of fact with
17 this issue. Any deficiencies in education would go to the
18 weight of the evidence and not the admissibility. You may
19 proceed.

20 AST. SOL. WARD: Thank you, Your Honor.

21 DIRECT EXAMINATION CONTINUED

22 BY AST. SOL. WARD:

23 Q. All right. I know we touched on this a little bit.
24 What is an ink print?

25 A. An ink print is commonly referred to as a known. If

1 you ever went out for a job or ever looked for a concealed
2 weapons permit, it is often that you probably got
3 fingerprinted. An ink print is when you take a known
4 standard, the person that's being fingerprinted, and you
5 actually take your fingers and you roll it in the ink. The
6 ink is then -- your finger that the ink that is on it is
7 then transferred to a tempering card, which is referred to
8 as a known standard.

9 Q. And what is a latent print?

10 A. A latent print is a fingerprint that's not usually
11 visible by the naked eye. It requires some kind of
12 developed medium to visualize such as a black powder or
13 something to actually process it to be able to visually see
14 it.

15 Q. And are there different distinguishing characteristics
16 of fingerprints?

17 A. Yes. There are three levels of detail in a latent
18 fingerprint. Level one detail is the pattern flow, and an
19 examiner is looking at how the pattern is. We all have
20 either -- you know, arches or whirl patterns on our fingers,
21 and we also have some of those patterns on our palms. When
22 an examiner looks at level one detail, he's just looking at
23 the pattern flow. He's also looking at some of the level
24 two detail, which is also called minutia. There are five
25 major ridge pass in the level two. Some of those are an

1 ending ridge, which is, to best describe it, is like a line
2 that just ends abruptly and it just stops. If I could, I
3 could draw it out to be able to show you guys.

4 Q. You could just draw on the screen.

5 A. Yes, sir. As you can see, this is a straight line.
6 And where you see the red that separates, those would be
7 considered an ending ridge. Another characteristic would be
8 like this little one at the top, which would be called a
9 short ridge. Another ridge characteristic would just be a
10 dot. And we have those in our latent fingerprinting --
11 latent fingerprints. Another characteristic is called a
12 bifurcation which is consistent with -- it looks like a fork
13 in the road. And this is an individual characteristic; it's
14 called bifurcation. Another characteristic would be
15 consistent with -- it's called an enclosure. I'm not the
16 best artist, but the ridge is in a flow and then it comes
17 out almost look a roundabout, and it goes back into a ridge
18 flow. That's another identifiable characteristic that's
19 also referred to as level two detail.

20 Q. That's fine. How can a person leave fingerprints?

21 A. When their fingerprints are developed, they're formed
22 in ridge units. And on those ridge units, we have a fork.
23 And as we develop, those ridge units fuse together and form
24 these lines like I showed you before. And each one of those
25 ridge units has pores. And between the pores, we sweat.

1 And out of that sweat becomes sweat and oils. And our
2 fingerprints are primarily made up of 99 percent water and
3 the other percent is just solids like salts, amino acids.
4 And when that substance gets on your fingers, it kinds of
5 spreads around. And when we touch a surface, if you have
6 that on there and there's enough when you touch the surface,
7 it is then transferred to that surface.

8 Q. And are there types of surfaces that are more conducive
9 for finding a fingerprint?

10 A. Smooth, nonporous surfaces tend to accept fingerprints
11 really well. But there's also some nonporous surfaces,
12 paper; paper accepts fingerprints very well.

13 Q. And I'm going to show what's been marked as State's
14 Exhibit 21. Do you recognize those items?

15 A. I do.

16 Q. And what are they items of?

17 A. The latent print card that is labeled State's Exhibit
18 21 is a latent print card that was taken by Detective Jay
19 Scott from the passenger side front door. And there's a
20 diagram shows of the door from where it was taken.

21 Q. And is that latent impression number?

22 A. This latent impression card is number 1. And there is
23 a impression mark 1.1 to identify the ridge -- the ridge
24 detail on the card.

25 Q. Is that one of the latent prints that you were able to

Direct Examination Con't of Det. Mullis by Ast. Sol. Ward

1 examine in this case?

2 A. It is.

3 Q. All right. And is that in the same condition as when
4 you reviewed it?

5 A. It is.

6 AST. SOL. WARD: At this time, Your Honor, State would
7 -- well, let me go through the other first. I'm sorry.

8 Q. The other placard that you have, could you describe
9 that?

10 A. It is a latent fingerprint card marked latent print
11 card number 2. It was lifted by Detective Jay Scott from
12 the passenger side rear door. And there's a diagram showing
13 where he lifted it. And there's an impression on the back
14 that is marked 2.1.

15 Q. And is that also a latent print that you examined in
16 this case?

17 A. It is.

18 Q. And is it in the same condition as when you reviewed
19 it?

20 A. It is.

21 AST. SOL. WARD: This time, Your Honor, the State would
22 move Exhibit 21 into evidence.

23 THE COURT: I think 21 is already in.

24 AST. SOL. WARD: Oh, it's already in. Okay.

25 Q. In this case, were you provided a known standard or a

1 inked print in this case?

2 A. I was.

3 Q. I'm showing you what's been marked as State's Exhibit
4 22 for identification purposes. Do you recognize that?

5 A. I do.

6 Q. And what is it?

7 A. This is an inked or known impression from Thomas
8 Shewtzuk.

9 Q. Okay. And is that the same inked print that you used
10 to conduct an analysis in this case?

11 A. It is.

12 Q. Okay. Is it in the same condition as when you reviewed
13 it?

14 A. It is.

15 AST. SOL. WARD: At this time, Your Honor, the State
16 would move Exhibit 22 into evidence.

17 THE COURT: Any objection?

18 BY MS. SARJI: No objection, Judge. Thank you.

19 THE COURT: It's in.

20 (Whereupon, State's Exhibit No. 22, Inked Fingerprint
21 Card, was received into evidence.)

22 Q. Could you kind of go through how you would have
23 examined the latent prints versus the inked print?

24 A. I would have first looked at the latent print and
25 conducted an analysis of it. I would look at the overall

1 ridge flow and see if there is any ridge detail, level two.
2 detail in it, to see if it is of value to even complete a
3 comparison. Once I come to a conclusion that it can move
4 further into the comparison phase, I would then look at the
5 latent.

6 Q. Okay.

7 A. I would then obtain the known prints either provided by
8 detectives or somebody at the Sheriff's Office that provided
9 the known standards. During that time, I would look for a
10 target area within the print that had the level two detail.
11 And I would -- you couldn't pick too many because you have
12 to remember the local two detail which is in the print. And
13 then after I pick that target area within the latent print,
14 I would then transfer it to the known standard and see if I
15 could find that same target area in the known standard. And
16 I would -- after I would either find or not find that level
17 of detail, I could either go forward with finding additional
18 target areas within the unknown print until there is
19 sufficient level of agreeance to come to a conclusion.

20 Q. I'm going to show you what's marked as State's Exhibit
21 23 for identification purposes. Do you recognize that?

22 A. I do.

23 Q. What is that a disc of?

24 A. I completed a chart, a PowerPoint, of the unknown print
25 of latent print card one with the known print provided here

1 in this case, Exhibit 22.

2 Q. Is that a fair and accurate representation of what the
3 actual print cards are?

4 A. Yes.

5 Q. And have you had a chance review that disc?

6 A. I have. I have reviewed it.

7 AST. SOL. WARD: At this time, Your Honor, State would
8 move Exhibit 23 into evidence.

9 THE COURT: Any objection?

10 BY MS. SARJI: No, Your Honor.

11 THE COURT: It's in.

12 AST. SOL. WARD: May we publish?

13 THE COURT: Yes, sir.

14 (Whereupon, State's Exhibit No. 23, Fingerprint CD,
15 was received into evidence.)

16 (Brief pause.)

17 Q. All right. Could you show the jury kind of how you
18 went through the comparison of these two items.

19 A. What you see in front of you before is a scanned image
20 of latent print card one which is Exhibit No. 21. And then
21 that image is on the left. And then you see an additional
22 scanned image of State's Exhibit 22 which is a known
23 impression from Thomas Shewtzuk. And I scanned this image
24 so you can see a more blown up version of it instead of kind
25 of look at it closely with your eyes. The first thing I'd

1 like you to pay attention to when someone goes through the
2 analysis version, if you look on the image to your left, I'd
3 like to bring attention to the actual shape. The shape
4 immediately sticks out and it looks like a hand impression.
5 If you can see the -- look at the shape of the known. In
6 the first analysis phase, I'm looking at the print and I'm
7 looking to see if the print is of value. If you look toward
8 the bottom of the print, even though it's shaved, it gives
9 you an idea of what the print, where it may have come from,
10 which looks like a hand. Even though this area down here,
11 this is of no value for comparison. No examiner is going to
12 be able to make a conclusion based on this area right here.
13 However, if you look at the top portion of the hand, this
14 area is consistent with the left-hand interdigital area of
15 the left palm. I'd like to bring your attention to -- if
16 you look real close, you can see this little V coming at the
17 top. Can we erase some of that? (Clerk complies.)

18 If you can see a little V if I didn't cover it up, this
19 is commonly referred to as the distal transverse crease.
20 And if you look at your hand, the distal transverse crease
21 is at the top of your hand. And it runs between your index
22 and middle finger. Some of it comes up more than others.
23 However, it runs from the top and it runs up to the bottom
24 of your hand. The middle crease is the proximal transverse
25 crease. And in this one, even though it's very hard to see,

1 but it's in here. So it gives you an idea so an examiner
2 can narrow down what he's going to do a comparison with.
3 I'm I going to do a comparison with the left hand? Or am I
4 going to do a comparison with the right hand? Judging by
5 the shape of this print and looking at the transverse -- the
6 distal transverse crease at the top, I can immediately
7 narrow it down by the shape near the location of the hand
8 where I'm going to do a comparison.

9 After I narrow it down, I'm looking in the area that
10 gives a value, which is this area right here. It has a
11 sufficient number of level two details, and it's not too
12 distorted that I wouldn't be able to go on to a comparison
13 phase. And at that time, I would need a known standard,
14 which is also here on the right side of your screen. Can I
15 erase it again? (Clerk complies.) This is the same image
16 to your left. This is just the area that I circled that I
17 said was of value. And the right side is the same
18 impression of the top of that distal transverse crease at
19 the top of the hand, the interdigital part of hand. This is
20 a more zoomed in so you could easily see it a little better.
21 And as you can see, at the top you see a crease with an
22 arrow coming down pointing out this distal transverse
23 crease. So if you didn't know what I was looking at before,
24 you can easily see it now. And I won't go through it all,
25 but if you look at the bottom crease and look at the bottom

1 crease to the right, you will see that this distal
2 transverse crease also forks out and it comes out toward the
3 end of the hand. And if you look at the unknown, which is
4 the image to your left, it's also doing the same thing.
5 However, it's not as good, it is still there. And I
6 wouldn't use that as a comparison point, but I would use
7 that to narrow down my location where I'm going to start to
8 do my comparison..

9 In this particular point, I've had the ability to mark
10 just a couple of level two detail. This particular print, I
11 used over 30 level two detail to make that identification.
12 But if you look -- I'd like to bring to your attention, it
13 will be easier to start with B. If you follow B in the
14 unknown print, and follow it down all the way to the tip of
15 the point, you'll see that the line I referred to earlier is
16 a bifurcation. The ridges are flowing and it forks. And
17 then I'd like to point out the same in the known. You come
18 on down to the tip and you can see where it forks and you
19 come on up. And it comes on up. And it's not pointed out,
20 but if you count one ridge and then two ridges over, you
21 also see these two little -- can you erase that again.
22 (Clerk complies.) You'll see those two little ending ridges
23 coming down and you can finally see it visible right here in
24 this area. And I'd like to draw attention to this. There
25 is a major pattern area in this print, which is delta and

1 it's common to be in your palm. It's common to have several
2 of those, called a delta or a trifurcation. It is a ridge
3 formation in which ridges tend to surround a patterned area
4 and they give you this triangle shape. And it's called a
5 delta or a trifurcation. Can I erase that again? (Clerk
6 complies.)

7 I'd like to bring your attention to B again. We've
8 already pointed out both the bifurcation in the two
9 remaining ridges. And if you count down, you'll see that
10 there is a little dot, and the ending ridge, they're both
11 unknown and the known. And if you count the ridges over,
12 those ridges are going to be the same spatial distances
13 apart with the ending ridge in the dot. Those are level two
14 detail and are unique to this print.

15 I'd like to bring to your attention to D. And if you
16 follow D all the way until it ends, I don't know if you can
17 see it better on which screen, but you'll see an ending
18 ridge. And if you count one ridge up from there, there's
19 another ending ridge. So they look like this. And if you
20 look at D over here, it's an ink print so it's easily seen,
21 you'll see those two ending ridges right here. And those
22 are unique to this print. Can we erase the circles, please.
23 (Clerk complies.) I want to, again, like to bring you to D
24 on both sides. And I brought you to the two remaining
25 ridges that are right there, though look at E. If you count

1 -- if you see where D is touching that ending ridge, count
2 one up and you'll see another ending ridge. And follow that
3 ridge down, you'll see the little ending ridge -- actually,
4 I just covered it up. My fingers are bigger than the
5 screen. You'll see those ending ridges right there, right
6 next to the bifurcation. And the examiner would continue to
7 go on to look at these unique and individual characteristics
8 in the latent print until a conclusion is made.

9 Q. And in this case between the known print and, I believe
10 you said this was print 1.1, how many comparisons were you
11 able to find?

12 A. I was able to agree 30 individual characteristics in
13 each print.

14 Q. And from those characteristics, what was the result
15 that you obtained?

16 A. The latent impression 1.1, which came from the
17 passenger side of the front door, it was identified as the
18 interdigital portion of the left hand of the card bearing
19 the name Thomas Shewtzuk.

20 Q. And for latent print 2, or 2.1 I believe?

21 A. Latent print 2, which also came from passenger side of
22 the rear door, was identified as the interdigital, and then
23 the hypothenar, which is also known as the writer's palm, in
24 the left hand of the card bearing the name Thomas Shewtzuk.

25 Q. And for that one, how many characteristics were you

1. able to identify?

2. A. No less than 22 characteristics agreed.

3. Q. And for any fingerprint comparison, is there a minimum
4. number of characteristics you must be able to identify?

5. A. There is no standard for a minimum number of
6. characteristics to agree. It all depends on the latent
7. print itself. The worse the unknown print is in clarity and
8. distortion, the more individual characteristic the examiner
9. is going to need to make a conclusion for an identification
10. or an exclusion. And the better the print is, the less
11. amount of characteristics he's going to need to make an
12. identification or an exclusion.

13. Q. And in this case, did you receive other latent print
14. cards?

15. A. There were additional print cards with the case.
16. That's correct.

17. Q. And I believe a lot of those stated they lacked
18. sufficient quality and quantity of friction, ridge
19. characteristics. Could you just briefly tell the jury what
20. that means.

21. A. That is correct. If they lack the sufficient quality
22. or quantity, they didn't have enough level two detail, or
23. they were extremely distorted, they were insufficient for a
24. comparison.

25. AST. SOL. WARD: Beg the Court's indulgence. Nothing

1 further. Please answer any questions the Defense may have.

2 THE COURT: Cross examination?

3 BY MS. SARJI: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MS. SARJI:

6 Q. Detective Mullis, did you prepare your own bench notes
7 in this case?

8 A. I did.

9 Q. You did. Where are those?

10 A. I have bench notes just for the chart that I made for
11 us today.

12 Q. Okay. Did you prepare bench notes with regard to the
13 other 33 latents that you had in this case?

14 A. I did not prepare bench note as the verifier of the
15 case.

16 Q. So as the verifier for the case, all you did was take
17 somebody else's work and look at when they said that it
18 resulted in something. Is that right?

19 A. As a verifier, I reworked the case from start to
20 finish, looking at the unknown and knowns and come up to --
21 to make sure our conclusions are the same.

22 Q. Do you engage in blind testing to do that?

23 A. I know that there is a conclusion made. However, I do
24 not know what the conclusion is.

25 Q. So the answer would be no, you don't do blind testing?

1 A. That's correct.

2 Q. And your lab is not accredited by the American Society
3 of Crime Laboratory Directors. Is that correct?

4 A. It is not.

5 Q. And it isn't accredited by A-N-A-B, ANAB. Is that
6 correct?

7 A. It is not.

8 Q. And do you have within your lab a set of written
9 materials that determine your quality assurance program?
10 Have the procedures been written down?

11 A. We do not.

12 Q. So there is no written materials that would address the
13 standard for your processing techniques?

14 A. Currently, we do have policies and procedures when it
15 refers to a crime scene. However, our latent division is
16 fairly new and we started in February. And we are currently
17 discussing policies and procedures for latent print
18 examinations.

19 Q. So the answer would be no?

20 A. That is correct.

21 Q. And your lab has only been in existence since
22 February 2016. Is that correct? Is that what you're
23 saying? That you've only had a latent examination division
24 since February.

25 A. The Dorchester County Sheriff's Office obtained a

1 grant. I'm not sure of the exact time frame, but it was
2 just a couple of years ago. And another examiner was
3 running that until he left our agency. And I took it over
4 at the beginning of this year.

5 Q. So you testified earlier when we were talking about
6 whether or not you were qualified to be an expert and to
7 render an opinion in this case, right? We were talking
8 about that. And you said that you and your laboratory live
9 up to what SWGFAST thinks y'all should be doing. Is that
10 correct?

11 A. That's correct. We try to adhere to those standards.

12 Q. Okay. And yet SWGFAST has indicated that there should
13 be a written and contained set of documents, a quality
14 manual, that dictates what you should be doing in a number
15 of areas. Is that right?

16 A. That is correct. It is recommended that policies and
17 procedures are set forth.

18 Q. And yet, y'all don't live up to that standard.

19 A. We currently do not have those policies and procedures
20 in place, but we are currently working on them.

21 Q. So the answer would be no? Y'all don't live up to that
22 standard?

23 A. That's correct.

24 Q. With regard to competency testing in your lab, you
25 testified a moment ago that there's no blind testing with

1 regard to the quality assurance portion of it. What about
2 with regard to just proficiency testing? Do you engage in
3 any blind proficiency testing?

4 A. In our competency test, it is put together by a third
5 party. Collaborative Testing Services, they make the test.
6 The test is sent to our agency where the test is completed
7 and then it is sent back to that agency for grading.

8 Q. So is the answer yes or no?

9 A. I'm not sure I understand your question.

10 Q. Well, I'm not sure that I understood your answer, which
11 is why I was asking. When I asked if you engaged in blind
12 proficiency testing, you said a whole bunch of stuff. So
13 I'm just asking for a yes or no answer to that question.

14 A. In proficiency testing, I complete the examination and
15 it's sent off for testing services to grade. I don't know
16 if that answer -- can be answered.

17 Q. Okay. Would you consider that to be external
18 proficiency testing?

19 A. Correct.

20 Q. You don't have any written policy in place regarding
21 evidence handling procedures. Is that right?

22 A. We do have policies regarding evidence procedures at
23 the Sheriff's Office.

24 Q. With regard to the latent fingerprints?

25 A. Latent fingerprints falls under as evidence, but it

Cross Examination of Det. Mullis by Ms. Sarji

1 doesn't guide us on how an examination should go.

2 Q. You indicated a moment ago that -- so you're also not
3 accredited by the American Association for Laboratory
4 Accreditation in your latent fingerprint lab. Is that
5 right?

6 A. We are not.

7 Q. You don't have -- when you were talking about the
8 comparison in this case, you were not able to simply look at
9 what was taken from the van and look at Mr. Shewtzuk's palm
10 print and see from that a match. Is that right? You had to
11 do some enhancing to it. Is that correct?

12 A. No, ma'am.

13 Q. You didn't have to zoom in as you said?

14 A. A one-on-one comparison would be completed under a
15 glass or it could also be scanned in. I believe you're
16 referring to the zoom in. It's just a chart so that I could
17 present to the jury as what I did.

18 Q. So what you're saying is that you were able to with
19 your naked eye look at this without any enhancement at all.
20 Is that your testimony?

21 A. I would either use a glass or I would scan it in to do
22 a scaled version of the print for the verification.

23 Q. Okay. And so what did you do in this case?

24 A. It would've been both.

25 Q. You did both. So you scanned it and ---

1 A. I would have first looked at it with a magnification
2 glass to do it and then I would also scan it in to also do
3 the verification.

4 Q. You talk about a void line. What is that?

5 A. A void line is a area in a latent print that was caused
6 by some internal source very similar to the void line seen
7 in the left image on the screen. This one coming down and
8 coming up, that is considered a void. And often times,
9 ridge detail is not in those voids.

10 Q. And yet, you were able to identify what you say is a
11 crease there right where that void line is.

12 A. Correct. Can we refresh it. (Clerk complies.) If you
13 see the distal crease coming down from the bottom, it comes
14 down. And this area right here is heavily distorted and it
15 can't be seen. But if you follow through that, you will see
16 a crease. And I'm actually going to highlight it. I'm
17 going to try to highlight right underneath it. You can
18 actually see the crease. It comes right up, it goes through
19 that void, and ever so slightly it comes down and stops
20 right there. You can also see the distal crease in the
21 known. And this is the area that is heavily distorted and
22 it can't be compared. But if you follow through this
23 bottom, you can see where the crease would follow up,
24 following through.

25 Q. And you see that where you have heavily distorted

1 images such as what we have there in the unknown sample, I
2 guess you would call it; the one on the left. You said that
3 you would need over 30 level two details to make the
4 identification?

5 A. No. I used 30 to make the identification. However,
6 you don't need that many to make the identification.

7 Q. Okay. And you're only presenting us with A,B,C,D,E,F,
8 G. Is that right?

9 A. Just as an example of what an examiner looks at to make
10 that identification.

11 Q. Okay. You didn't go back through the original
12 examiner's bench notes and do every single print that he
13 had. Is that what your testimony is?

14 A. That's correct.

15 Q. Okay; you didn't. And so, I guess, if you're the
16 quality control for him, who is the quality control for you?

17 A. When I do the verification, I do look through the bench
18 notes of the original examiner. And it is the job of the
19 verifier to look for mistakes or to make sure those bench
20 notes can withstand scrutiny. And that's what was done in
21 this matter.

22 Q. So nobody checked you?

23 A. That's correct.

24 Q. Have you had anyone who is certified look back at what
25 you did in this case? Who has taken the test that you're

1 not allowed to take yet.

2 A. I have not.

3 BY MS. SARJI: I don't have any other questions, Judge.

4 Thank you.

5 THE COURT: Any redirect?

6 AST. SOL. WARD: Nothing, Your Honor.

7 THE COURT: You may step down, sir. Thank you. Ladies
8 and gentlemen, it's almost four o'clock. Do you need a
9 brief afternoon break?

10 (Jury affirms.)

11 THE COURT: Let's take about a 10-minute break and then
12 we will resume with the testimony.

13 (The jury exits the courtroom at 3:48 p.m.)

14 (A brief recess was taken and the proceedings resumed
15 at 4:06 p.m.)

16 THE COURT: Are the parties ready for the jury?

17 AST. SOL. JUSTIS: State's ready, Your Honor.

18 BY MS. SARJI: Yes, Your Honor. Thank you.

19 THE COURT: Let's have our jury, please.

20 (The jury enters the courtroom at 4:06 p.m.)

21 THE COURT: Welcome back, ladies and gentlemen of the
22 jury. We're now ready to proceed. You may call your next
23 witness, Solicitor.

24 AST. SOL. JUSTIS: Thank you, Your Honor. May it
25 please the Court? The State calls Dr. Lee Tormos.

Direct Examination of Dr. Lee Tormos by Ast. Sol. Justis

1 LEE TORMOS, after being duly sworn, testified as
2 follows:

3 THE COURT: Your witness.

4 AST. SOL. JUSTIS: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY AST. SOL. JUSTIS:

7 Q. Dr. Tormos, could you tell the jury where you are
8 employed?

9 A. I'm employed at the Medical University of South
10 Carolina in Charleston.

11 Q. And did you have an opportunity to perform an autopsy
12 on an individual named Travis Gordon?

13 A. Yes, I did.

14 Q. Before we get to that, let's find out a little bit
15 about yourself. Could you tell the jury and the Court your
16 educational background?

17 A. Yes. I began my medical education with an
18 undergraduate degree in general sciences which is also
19 called premed. Then I went to medical school at the
20 University of Puerto Rico, Medical Sciences Campus, where I
21 completed my doctorate in medicine. Then I stayed on and
22 became an anatomic and clinical pathologist after doing four
23 years of residency training in pathology. I worked for a
24 couple of years at the medical examiner's Office doing
25 autopsies in Puerto Rico and I also worked in private

1 practice. In 2010, I decided to further my education and
2 move to South Carolina where I did my fellowship or
3 specialty training in forensic pathology right here at the
4 Medical university of South Carolina. And I've been here
5 ever since.

6 Q. Are you board-certified?

7 A. I am board-certified in anatomic and clinical pathology
8 and in forensic pathology.

9 Q. Do you serve in any kind of faculty capacity at MUSC?

10 A. I am a professor and I'm also the Director of the
11 Forensic Pathology Fellowship at MUSC..

12 Q. So how long have you been a doctor?

13 A. I've been a doctor since 2007.

14 Q. And in that nine years since being a doctor, how many
15 autopsies would you say you had performed?

16 A. About 2000.

17 Q. And how many times have you been qualified as an expert
18 in court?

19 A. Every single time. About 20 times; maybe 25.

20 AST. SOL. JUSTIS: At this time, Your Honor, the State
21 would Dr. Tormos as an expert in forensic pathology.

22 THE COURT: Any voir dire?

23 BY MS. SARJI: No, Your Honor. Thank you.

24 THE COURT: The Court finds that she's qualified.

25 Q. Could you briefly explain to the jury what forensic

1 pathology is?

2 A. Forensic pathology is an area of medicine that pursues
3 the scientific knowledge of determining the cause and manner
4 of death. In other words, how and in what circumstances a
5 person died.

6 Q. And I think you mentioned earlier that you performed an
7 autopsy on the victim in this case of Travis Gordon. Is
8 that correct?

9 A. That is correct.

10 Q. Do you recall the date of that autopsy?

11 A. The date of the autopsy is June 15, 2015 at nine
12 o'clock in the morning.

13 Q. Can you give a brief overview of what you do when you
14 do an autopsy?

15 A. When we do an autopsy we carefully examine the body as
16 it gets to us including the clothing and any of the debris
17 on the body. Then we remove the clothing and examine the
18 body carefully in the front and the back noting any marks,
19 scars, injuries, or any external findings. Then we examine
20 the body internally looking for evidence of natural disease
21 and/or injuries that may be present inside the body. During
22 the course of the autopsy, we also perform other ancillary
23 testing including toxicology testing. We may perform
24 X-rays; we may draw fluids from the body for additional
25 testing; and also take trace evidence including things such

1 as fingernail clippings and pulled scalp hair as well as DNA
2 standards for the police to use as a comparison of DNA.

3 Q. And do you sometimes -- do you take photographs?

4 A. We take photographs of the body in the front, the back,
5 the side and all pertinent injuries and close-up.

6 Q. And did you have an opportunity to take any X-rays in
7 this case?

8 A. Yes, we did.

9 Q. I'm showing you what's been marked as State's Exhibit
10 24. Do you recognize this?

11 A. Yes. This is a CD that contains images of the X-rays
12 that we took during the course of the autopsy.

13 Q. And did you have an opportunity to review this CD
14 before testifying today in court?

15 A. Yes, I did.

16 Q. Is it an accurate representation of those X-rays that
17 were taken?

18 A. Those were the X-rays that I provided the solicitor.

19 AST. SOL. JUSTIS: At this time, the State would offer
20 State's 24 into evidence, Your Honor.

21 THE COURT: Any objection?

22 BY MS. SARJI: None, Your Honor.

23 THE COURT: All right. It's in.

24 (State's Exhibit No. 24, CD of X-rays, was received
25 into evidence.)

1 Q. So when you performed the autopsy on Mr. Gordon, could
2 you explain to the jury what you did and what you discovered
3 as you were doing the autopsy.

4 A. Okay. We examined the body externally and we found
5 that the body was clad in a dark t-shirt and athletic shorts
6 and a pair of black tennis shoes. There was a lot of blood
7 around the head area. We proceeded to examine the wounds
8 carefully as well as the rest of the body. In terms of the
9 body findings from the neck on down, all that we found were
10 just routine findings such as scars around the elbows.
11 There were some scars on the abdomen that probably
12 correlated to an appendectomy that he had. But there was
13 really nothing going on below the level of the neck. There
14 were no injuries, no abrasion, no contusions, nothing from
15 the neck down. All the injuries were concentrated in the
16 head.

17 Q. And what did you discover -- you talk about the
18 injuries in the head. What did you discover?

19 A. Okay. There are two main injuries in the head and both
20 are gunshot wounds. The first injury that I'm going to
21 describe is the one to the left side of the upper lip. It
22 is an entrance gunshot wound. And I'm pointing on my body
23 to where it is on the left side of the upper lip. And this
24 entrance gunshot wound perforates the skin and soft tissue
25 before it hits the maxillary bone. This is a very strong

1 bone and it's made even stronger by the roots of the teeth
2 that are inserted in the bone which are also very strong.
3 The bullet shattered the maxilla. And it also shattered
4 itself. And all of those bony fragments and the fragments
5 of the bullets entered the mouth, the oral cavity, and they
6 embedded themselves inside the mouth including the tongue.
7 And there's a big tongue laceration. Bullet fragments were
8 recovered from inside the mouth.

9 The second injury, which is the most fatal injury of
10 the two, is to the left side of the forehead. And I'm
11 pointing to above my left eyebrow where the entrance is
12 different from the injury to the left side of the lip. This
13 is a close-range injury. Meaning that the muzzle of the gun
14 was very, very close to the skin, maybe even in loose
15 contact at the time that the injury was sustained. And I
16 can tell that because there's a lot of soot on the skin
17 around the entrance wound. That bullet perforated the skin
18 and soft tissue of the forehead, and it entered the skull
19 cavity. And it also traveled through the brain creating
20 hemorrhage and destruction. We recovered that bullet on the
21 posterior aspect of the left hemisphere of the brain. And
22 associated to that, we have fractures of the skull and just
23 generalized collapse of the brain.

24 Q. And you describe the first shot as going through the
25 kind of upper lip area. Would that had been a fatal shot?

1 A. It could potentially be a fatal shot depending on
2 whether the fractures extended to the base of the skull.
3 Unfortunately, because of the injury to the brain -- to the
4 upper part of the skull, which also creates fractures, I'm
5 not able to tell which one fractured, but it was potentially
6 lethal. It also caused a lot of bleeding in his mouth, and
7 that blood was being aspirated into the lungs. So we also
8 found the blood aspiration pattern as his breathing and all
9 that blood gushing in his mouth.

10 Q. What about the second gunshot wound that you described
11 up in the forehead? Would that have been fatal?

12 A. That is very, almost immediately, fatal; almost.
13 That's a non-survivable injury.

14 Q. I'm going to show you at this time, Doctor, the X-rays.
15 And if you can kind of explain to the jury what these X-rays
16 show.

17 A. Okay. This is a frontal radiograph of the skull. As
18 you can see, you can see the outline of the ears on each
19 side, and you can see that projectile that entered the left
20 side of the brain -- which looks to be on the right but it's
21 really on the left -- which is this projectile right here.
22 That is the projectile that is at the back of the skull.
23 The second projectile is not showing up very well. But it's
24 all these fragments on the left side of the mouth where it
25 shatters the teeth and all those fragments are inside the

1 mouth. This is a better view. This is a side view of the
2 skull. Again, you can see the projectile that entered the
3 forehead at the back of the skull right here. It's that
4 white area; that is the projectile. And you can see all of
5 the projectile fragments of the bullet that hit the maxilla
6 and entered the mouth here. Those are the bullet fragments
7 that we recovered. You can also see in this view the
8 extensive skull fractures here as they extend down; here at
9 the top. And they're just extending and radiating outward
10 from the entrance gunshot wound to the forehead.

11 Q. Were you able to recover any of those projectiles from
12 the victim?

13 A. Yes. From the inside of a cranial wall, we recovered
14 the form lead core and it's copper-colored jacket. And from
15 the mouth area, we recovered three jacket fragments and six
16 fragments of the lead core itself.

17 Q. I'm showing you what's been marked as State's 19 and
18 State's 20. Can you take a look at those photographs and
19 tell me if you recognize those.

20 A. These are the images of the projectiles that we
21 recorded during the course of the autopsy including the
22 envelope in which they were sealed and transferred over to
23 law enforcement.

24 Q. Are those fair and accurate representations of what
25 they looked like, what you recovered from the victim that

Direct Examination of Dr. Lee Tormos by Ast. Sol. Justis.

1 day?

2 A. They are.

3 AST. SOL. JUSTIS: At this time, Your Honor, the State
4 would offer State's 19 and 20 into evidence.

5 THE COURT: Any objection?

6 BY MS. SARJI: None, Your Honor. Thank you.

7 THE COURT: They're in.

8 (State's Exhibits No. 19 and 20, Photographs, were
9 received into evidence.)

10 AST. SOL. JUSTIS: May I publish for the jury, Your
11 Honor?

12 THE COURT: You may.

13 Q. And that is State's number 19. Doctor, can you just
14 tell us:

15 A. Okay. So this is the projectile that was recovered in
16 the head. As you can see, the led core is to the left, and
17 the jacket that goes around it is to the right. When you
18 look at the X-rays, you see that they were still together in
19 the head. But during the course of removing the projectile
20 from the brain, they were very loosely approximated so they
21 separated. So we have the two fragments from a single
22 bullet to the brain.

23 Q. In showing you he State's 20, will you explain what
24 we're viewing in that picture?

25 A. These are the fragments that were recovered from the

1 oral cavity. Some other fragments were in the tongue, some
2 were embedded in the oral mucosa. as you can see the
3 irregular and gray fragments are the fragments of the lead
4 core. And the three copper-colored fragments are the
5 fragments of the jacket.

6 Q. All right. Doctor, based on this particular autopsy
7 and within the bounds of reasonable medical certainty, have
8 you formed an expert opinion concerning the cause of death
9 of Travis Gordon?

10 A. I have.

11 Q. And what is that opinion?

12 A. The cause of death is gunshot wounds to the head.

13 AST. SOL. JUSTIS: Thank you. No further questions.

14 Please answer any questions Ms. Sarji might have.

15 THE COURT: Cross examination?

16 BY MS. SARJI: None, Your Honor. Thank you.

17 THE COURT: You may step down, Doctor. Thank you.

18 THE WITNESS: Thank you. Am I excused?

19 THE COURT: Any objection to being excused?

20 AST. SOL. JUSTIS: No, Your Honor.

21 BY MS. SARJI: None, Your Honor.

22 THE COURT: You may call your next witness.

23 AST. SOL. JUSTIS: At this time, Your Honor, we have --
24 all of our next witnesses are scheduled for first thing in
25 the morning. So we're done with our witnesses for today.

1 THE COURT: All right. If y'all could approach.

2 (A bench conference is held out of the hearing of the
3 jury panel and court reporter. See note on the index
4 page.)

5 THE COURT: Ladies and gentlemen of the jury, it's a
6 good time for us to take our afternoon recess. I know we've
7 heard a lot of testimony this afternoon. We got a couple of
8 other things to take care of this afternoon outside the
9 presence. So what we will do is go ahead and recess until
10 9:15 in the morning. If you would please be back in your
11 jury room a couple minutes before then so we can get
12 everybody together and resume with the trial in the morning.
13 Again, please remember my previous instruction to you to not
14 discuss this case with anyone. That includes your family
15 and friends, each other, or please don't do any independent
16 research or look at any news accounts or anything regarding
17 this case. Have a nice evening. I'll see you in the
18 morning.

19 (The jury exits the courtroom at 4:23 p.m.)

20 THE COURT: Counsel, it's my understanding that you
21 wanted to listen to the testimony of Ms. Dubois. Is that
22 correct?

23 AST. SOL. JUSTIS: Yes, ma'am.

24 BY MS. SARJI: Yes, Your Honor. Specifically, just the
25 parts where she -- my recollection is that she was denying

1 having had contact with Mr. Shewtzuk between the time that
2 they broke up in April of 2015 and June 12th of 2015.

3 THE COURT: And just so I can follow along, do you have
4 the records that you're looking at to show there may have
5 been some contact?

6 BY MS. SARJI: So I did get my pages mixed in with my
7 legal pad. I think that it was May 26th, I believe. And
8 then there were several calls in June. But we put those
9 back here. If you can give me just one second to find the
10 piece of paper that I wrote it on, that would probably be
11 faster than having to look back through those things. And I
12 apologize, Judge. I realized as soon as I had picked
13 everything up that I had done something with those specific
14 pages. Here it is. So on May 26, 2015, there were calls on
15 June 6, 2015; there were two. And on June 5, 2015. And
16 so -- yeah, that was . . .

17 THE COURT: So May 26th there were two calls. June
18 6th?

19 BY MS. SARJI: June 6th there were two. May 26th,
20 there's one. And then there's June 5th there's also calls.
21 I mean, the other issue is that these records show that he
22 didn't even have the phone activated until early May of
23 2015. So, you know, if they weren't even talking, why did
24 she have his number even? And they're clearly talking all
25 these other times that she denied under a oath; at least in

1 a general way.

2 (Brief pause.)

3 THE COURT: Madam Court Reporter, can you find that?

4 COURT REPORTER: I have it ready.

5 THE COURT: Thank you.

6 (At 4:31 p.m., the audio of the testimony of Katelyn
7 Dubois was played back.)

8 THE COURT: Is there a point, Ms. Sarji?

9 BY MS. SARJI: Oh, I'm sorry, Judge. So she says there
10 a couple of different times that she wasn't talking to
11 him; that she hadn't talked to him since they broken up is
12 what I just heard her say. And, you know, that she did talk
13 to him on June 12th, but that she hadn't talked to him since
14 they had broken up. In fact, and Glen just found another
15 time that I hadn't seen before because he has it enlarged,
16 she was having communication with him from at least May
17 26th. And that was just from my cursory, you know, scan of
18 these documents. And her credibility matters a lot in the
19 case just because of what he believed that she was telling
20 both of these individuals that she has denied saying on the
21 stand. And I think that her credibility is ---

22 THE COURT: How is her credibility, other than
23 establishing there was some relationship between her and
24 between the victim and between the defendant, whether it's
25 in May or the beginning of June on the day in question, how

1 is that relevant as to your client's actions?

2 BY MS. SARJI: Because it goes to what she was telling
3 my client about Travis and what Travis was doing to her.
4 And when I asked her that question, she specifically lied
5 about it. Our position would be that she was not truthful
6 about that.

7 THE COURT: Well, certainly, there's inconsistencies.
8 I think that was certainly brought out during your
9 cross-examination of her as to what time she talked to him,
10 on what day. But as of the crimes that your client is
11 facing here today, how is that specifically relevant to his
12 defense?

13 BY MS. SARJI: I think it goes -- it goes to his state
14 of mind. And in a case where ---

15 THE COURT: Are you claiming a sudden heat of the
16 passion in this instance?

17 BY MS. SARJI: Perhaps.

18 THE COURT: Well, I'm asking you. Yes or no?

19 BY MS. SARJI: I mean, without having to disclose too
20 much trial strategy, yes, Your Honor. That would be our,
21 pretty much -- yes.

22 THE COURT: So from May 26th conversation or June 5th
23 conversation or a June 6th conversation, you're saying that
24 the sudden heat of passion for June 13th?

25 BY MS. SARJI: I am saying that we know that she is

1 lying about not having talked to him, at least on those
2 occasions. So who's to say that there weren't more
3 occasions that they were talking. Who's to say that she
4 wasn't inflaming him on June 12th. Who's to say -- I mean,
5 you know, it leads ---

6 THE COURT: Well, that's certainly an argument. But,
7 however, I don't see what the point of this activity is at
8 this stage of the game where you had an opportunity to cross
9 examine her. Those records, you certainly brought out that
10 there are inconsistencies. I'm certain that the Solicitor
11 would stipulate that there are inconsistencies and there was
12 contact. But what are you trying to accomplish right now as
13 far as listening to this testimony?

14 BY MS. SARJI: Because she perjured herself, Judge.

15 THE COURT: I understand that, Ms. Sarji. However,
16 she's not the one on trial here. If she perjured herself,
17 that would be referred to law enforcement. They can
18 investigate; they can review this record. What we're
19 concerned with here is your client's trial. She can
20 certainly be charged with perjury. That's up to an
21 investigative agency to look at. But at this point, we need
22 to proceed with your client's trial. And how is this
23 relevant other than you proved the inconsistencies in her
24 statement that were brought out through cross examination.
25 And I think the Solicitor, based on what he stated earlier

1 on those records, it's my understanding he would stipulate
2 and allow you to put those records in even under the
3 State's, although you've already admitted that piece of
4 evidence, that she was inconsistent in that. How is that
5 relevant on the day in question?

6 BY MS. SARJI: I've already explained to you why.

7 THE COURT: Okay. Well, then let's move on. What else
8 would you like out of this testimony?

9 BY MS. SARJI: Nothing, Your Honor....

10 THE COURT: All right. Anything further, Solicitor?

11 AST. SOL. JUSTIS: Nothing from the State, Your Honor.

12 THE COURT: All right. We'll be at recess until 9:15
13 and we'll start the trial.

14 (The proceedings in the trial of the case adjourned for
15 the day at 4:36 p.m.)

16 - - - - -

17 (The proceedings in the trial of the case resumed on
18 Wednesday, September 8, 2016, at 9:32 a.m.)

19 THE COURT: Good morning, everyone. Thank you. Please
20 have a seat. Are the parties ready to proceed?

21 AST. SOL. JUSTIS: The State's ready, Your Honor.

22 BY MS. SARJI: Yes, Your Honor, we're ready. Just for
23 the record, Judge, my understanding is that yesterday up
24 until the very last sidebar that we did at the bench, that
25 our sidebars were not being recorded for the record. And so

1 I just want to make sure that if there's something that has
2 to get turned on, you know, today or, you know, whatever the
3 technical aspects are of the recording equipment, I would
4 just ask that if we can just go ahead and turn them on so
5 that out of an abundance of caution all of the sidebars are
6 being recorded.

7 THE COURT: My understanding is that they were
8 recording after your request yesterday and I had asked the
9 court reporter. So my understanding is that they were being
10 recorded. The recording device is right here. If there is
11 a technical problem --

12 BY MS. SARJI: I've been told the very last one that we
13 did, they weren't.

14 COURT REPORTER: Can I just clarify? No; it's all
15 recorded. I have from when we turned on that recorded when
16 it requested, it's all recording. There's a portion of it
17 where we started the trial where that recording wasn't on.
18 Now, whether or not we had a bench conference, I don't
19 remember. Maybe the first day of the trial or whenever we
20 started. But at the point when you asked me to put it up
21 there, all of that is recorded.

22 BY MS. SARJI: Oh, I'm sorry.

23 COURT REPORTER: Sorry for the confusion.

24 BY MS. SARJI: I must have misunderstood what you were
25 saying.

1 COURT REPORTER: Right.

2 BY MS. SARJI: Okay. I'm so sorry, Judge.

3 THE COURT: That's okay. All right. Anything further
4 before we bring the jury in?

5 BY MS. SARJI: No, Your Honor. Thank you.

6 THE COURT: Let's have the jury, please.

7 (The jury enters the courtroom at 9:36 a.m.)

8 THE COURT: Good morning, ladies and gentlemen of the
9 jury. Welcome back. I hope that you had a nice evening.
10 We're now ready to proceed with the trial of the case.
11 Solicitor, you may call your next witness.

12 AST. SOL. WARD: Thank you, Your Honor. The State
13 would call Alex Shewtzuk.

14 ALEX SHEWTZUK, III, after being duly sworn, testified
15 as follows:

16 THE COURT: Your witness.

17 AST. SOL. WARD: Thank you, Your Honor. May it please
18 the Court?

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION

21 BY AST. SOL. WARD:

22 Q. Mr. Shewtzuk, where do you currently live?

23 A. [REDACTED] -- [REDACTED].

24 Q. And are you currently employed?

25 A. Yes.

Direct Examination of Alex Shewtzuk by Ast. Sol. Ward

1 Q. And where are you working?

2 A. East Coast Cleaning.

3 Q. And are you married?

4 A. No.

5 Q. And can you tell the jury how you know the defendant?

6 A. That's my cousin.

7 Q. And would you say you guys spend a lot -- you spend
8 time together and hang out?

9 A. Used to.

10 Q. Okay. I would like to turn your attention back to June
11 13th of last year. Do you recall that day?

12 A. What was that day?

13 Q. June 13th was a Saturday last year. Do you recall
14 picking waking up and receiving text messages from the
15 defendant?

16 A. Oh, yes. Yes.

17 Q. Could you tell the jury what the conversation was
18 through text message?

19 A. He was asking if I wanted to buy a gun. And I told him
20 no. I said I didn't have the money. And then I -- trying
21 to remember everything. There was a few -- there was quite
22 a few texts back-and-forth. And he was saying something
23 about how he was gonna go fight this kid and then said I
24 probably didn't want the gun anyways. And then that was the
25 last of the text messages.

1 Q. Okay. Do you remember what your phone number was back
2 then?

3 A. Yeah. It's the same number.

4 Q. Which is?

5 A. 843-696-9181.

6 Q. Okay. (Brief pause.)

7 AST. SOL. WARD: Sorry, Your Honor.

8 Q. I'm going to show you a summary that's been marked as
9 State's Exhibit 41 for identification. Do you remember
10 receiving this text message?

11 A. Yes.

12 Q. And what was the time on that text messages?

13 A. 9:26:26.

14 Q. All right. And what does the text message say?

15 A. "Never mind; it's about to have a body on it. So I
16 doubt you would want it." And I said, "What?" Or do you
17 want me to read it.

18 Q. That's it for now.

19 A. Oh, okay.

20 Q. You can actually keep reading it, those few texts.

21 A. I said, "What?" And he said, "Yeah," shaking my head.
22 I said, "I don't know what you're saying, call me." And
23 then I said, you know ---

24 Q. Yeah, go ahead.

25 A. I said, "Shit no. I just got up. I don't want to hear

Direct Examination of Alex Shewtzuk by Ast. Sol. Ward

1 your voice this early in the morning." And then he'll go,
2 "Basically, I want to fight this dude who had been talking
3 shit and threatening me. If you got a gun -- if he got a
4 gun, if he pull it, I'm gonna shoot his ass."

5 Q. That's it.

6 A. Okay.

7 Q. After those text messages with the defendant, did you
8 hear about anything occurring shortly thereafter those text
9 messages?

10 A. It was a few hours later I heard something ---

11 BY MS. SARJI: Objection, Your Honor. It calls for
12 hearsay.

13 THE COURT: Sustained.

14 Q. Did the defendant end up calling you later that day?

15 A. Yes.

16 Q. And what was that conversation?

17 A. He was wanting me to get his dad to call him.

18 Q. Did he tell you about anything that had occurred?

19 A. Not at first. It was later that afternoon when I
20 heard, you know, what happened. And then I still didn't
21 believe it. You know, this -- it was like he kind of, you
22 know, like talking down -- talking himself up to be -- you
23 know, I didn't believe it. Just because -- you know, I
24 didn't believe it until actually I saw it on the news. You
25 know, there was no -- everything kind of ---

1 Q. Okay.

2 A. --- falling into place.

3 Q. Did you have an opportunity to speak with police a few
4 days after the 13th?

5 A. Yes. I had four different agencies raid my house. And
6 they pulled up; it was like 20 or 25 of them. They came up
7 in the yard and asked me if Tommy was at my house. I told
8 them no. And I told them they could go in and look. So
9 probably five or six of them went in and looked. The rest
10 of them were going around the property, looking in the shed
11 and under the house and all that. They kept asking me if
12 he's been here; he's been here; tell us if he's been here.
13 And I got security cameras at my house that records from the
14 30 days past. And I offered them to take the DVR because he
15 hadn't been there -- shoot, it's probably two or three weeks
16 since he been there. And offered them to take that. And I,
17 you know, told them to bring it back when they're done.
18 They didn't want it. And they were telling me that they
19 will keep coming back and searching my house until they
20 found him. And, you know, I told them, that's when I kind
21 of got an attitude with them because I wasn't hiding nothing
22 from them. You know, I offered them video footage for the
23 past 30 days of my house. You know, so there's no point if
24 you come back, but they didn't want it. Then I wrote a
25 statement down and then that was the last I heard of it

Direct Examination of Alex Shewtzuk by Ast. Sol. Ward

1 until Mr. Justis got ahold of me a few weeks ago.

2 Q. Okay. And that written statement, you gave to
3 Detective Smith?

4 A. There's was a older gentleman I was sitting in the car
5 with.

6 Q. Okay. And do you recall what your written statement
7 said?

8 A. Somewhat.

9 Q. I'm going to show you a copy of your statement if
10 you'll look at that.

11 A. (Witness complies.)

12 Q. Do you recognize that statement?

13 A. Yes, sir.

14 Q. And is that your statement?

15 A. Yes, sir.

16 Q. Okay. If you could read basically the first paragraph
17 of what you told police.

18 BY MS. SARJI: Objection, Your Honor. I think he can
19 ask questions but he's not entitled to have him just read
20 his statement into the record.

21 THE COURT: That's correct. You can ask him questions.

22 Q. You had a chance to look at your statement. Did that
23 help refresh your recollection?

24 A. Yes, sir.

25 Q. All right. Could you tell the jury what your statement

1 said?

2 A. It said that Tommy called me. It was later on in the
3 evening. And he said that he shot a guy. And I told him he
4 was stupid that he just got his daddy back. And it went on
5 from there, just talking back and forth about basically him
6 and his dad because his dad had been gone so long. And it
7 wasn't long after that conversation where I didn't hear from
8 him anymore. I tried to call him, but it was just going
9 straight to voice mail. So after that, that was last I
10 talked to him. I tried to call him, you know. I was
11 worried about him. He was my cousin, you know. So -- but
12 that's pretty much what happened.

13 Q. And you said you attempted to call him after that. Did
14 you ever have a chance to actually speak with him?

15 A. No. His phone was off.

16 Q. Do you recall attempting to make a phone call around
17 2:40 the day of this incident where there is a phone
18 conversation for about 44 seconds?

19 A. I can't remember off the top of my head exactly.

20 Q. Do you believe you would have spoke to him at that
21 time?

22 A. Forty-four seconds isn't too long.

23 Q. And in your statement you gave to police, why didn't
24 you tell them about the text messages from earlier in the
25 morning?

Direct Examination of Alex Shewtzuk by Ast. Sol. Ward

1 A. What's that?

2 Q. When you gave that statement to police, why did you not
3 tell them about the text messages between you and Tommy
4 earlier in the morning?

5 A. Probably because I didn't think about it because I was
6 -- I just had four police agencies storm my house. And, you
7 know, it's kind of nerve-racking seeing 20 guys with big ol'
8 guns running in your house. You know, that kind of frazzles
9 you a little bit, you know. I had my two kids in there. I
10 didn't know what was -- you know, it kind of throws you for
11 a loop.

12 Q. I understand.

13 AST. SOL. WARD: Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 AST. SOL. WARD: Sorry, Your Honor.

16 Q. Later in the day on the 13th, were you with Tommy's dad
17 at some point in the day?

18 A. I don't think I saw him that day. Oh; oh, yeah. Is
19 that the day they came to my house?

20 Q. Yes.

21 A. Yeah, he was over at my house.

22 Q. Okay.

23 A. He was there when they pulled up.

24 Q. Okay. There was a phone call made from you to Tommy at
25 approximately 1:23 that day that was about three minutes.

1 long. Would that have been the first time he told you what
2 occurred?

3 BY MS. SARJI: Objection, Your Honor. He hasn't asked
4 him if he recalls the phone call and what was said. He's
5 clearly leading the witness and he's not making a proper
6 foundation for where he's going.

7 AST. SOL. WARD: I'll rephrase.

8 THE COURT: Please rephrase.

9 Q. Did you recall receiving a phone call -- or you calling
10 Tommy about 1:23 the day of this incident?

11 A. I'm not sure of the times. I don't know. I made a
12 couple of phone calls that day. I don't know -- you checked
13 the time I called him.

14 Q. Did you call ---

15 A. If it's saying I called him, then, you know, phone
16 records don't lie. But I don't remember what was said at
17 that time.

18 Q. And you stated earlier and in your statement that you
19 talked to Tommy and told you that he had shot a guy,
20 correct?

21 A. (Nonverbal response.)

22 Q. Would that had been from Tommy calling you or you
23 calling Tommy?

24 A. I don't remember.

25 Q. And then about four, almost five o'clock that day, the

Cross Examination of Alex Shewtzuk by Ms. Sarji

1 defendant called you again. And it was again about a
2 three-minute conversation. Do you recall that?

3 A. Like I said, there was quite a few phone calls that
4 day. I don't remember every phone call and what was said.
5 You know, this was over a year ago. I can barely remember
6 what I did two weeks ago.

7 Q. So you don't recall any other further conversation with
8 Tommy?

9 A. I mean, I can't remember what was said.

10 AST. SOL. WARD: Nothing further, Your Honor. Please
11 answer any questions the defense may have.

12 THE COURT: Cross examination?

13 BY MS. SARJI: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MS. SARJI:

16 Q. Mr. Shewtzuk, on the morning of June 13th, you and
17 Tommy were texting back and forth. Is that right?

18 A. Yes, ma'am.

19 Q. You were getting text messages from his telephone
20 number, his cell phone number. Is that correct?

21 A. Yes, ma'am.

22 Q. You don't know who he was with at the point that you
23 were getting those text messages?

24 A. No.

25 Q. You don't know who else might've been using his phone

1 at that point?

2 A. No.

3 Q. I mean, you weren't watching him text you from across
4 the room or anything like that?

5 A. No.

6 Q. And when the Solicitor just asked you about a statement
7 that was made from Tommy's phone where at 9:26 -- and I'm
8 happy to show you the summary that has been identified as
9 State's Exhibit 41 -- from 9:26 in the morning where he
10 tells you nevermind about the gun. And he says something --
11 the text that comes in says, you're not gonna want the gun,
12 right?

13 A. Yes, ma'am.

14 Q. And after that, you're like, what are you talking about
15 basically, right?

16 A. Yes, I was.

17 Q. And the text you get back in response says. I'm going
18 to go fight with this guy, right? That would be ---

19 A. A few texts later -- yeah.

20 Q. At 9:29. Is that right?

21 A. Yeah, 9:29.

22 Q. He doesn't say I'm going to go kill this guy. He says
23 I'm going to go fight this guy, right?

24 A. Yes. I'm going to go fight this dude.

25 Q. And he says this guy has been talking shit about him,

1 right?

2 A. Yes.

3 Q. And this guy has been threatening him, right?

4 A. Yes, ma'am.

5 Q. And he says if he's got a gun, I'm gonna fight back
6 basically, right?

7 A. Yes, ma'am.

8 Q. You didn't take any of that too seriously though, did
9 you?

10 A. Not really.

11 Q. In fact, I think the statement that you made just
12 before when he said he was going to go fight with this
13 fella, you ended it -- forgive me because I don't know what
14 all the abbreviations in text messages mean -- but the
15 NLMMFAO.

16 A. Yes.

17 Q. That's an expression of?

18 A. Laughter.

19 Q. Okay. Thank you. Thank you. And you started to say
20 to the Solicitor when he was asking you questions just now,
21 you said he would talk himself up to and you didn't finish
22 that statement. And I wanted to know what you were going to
23 say. I think that you were talking about Tommy, and I
24 wanted to know what you had to say about that.

25 A. Well it just always seemed that, you know, that he

1 would, you know, try to talk himself up.

2 Q. He's a big talker?

3 A. -- yeah.

4 BY MS. SARJI: I don't have anything further, Your
5 Honor. Thank you.

6 THE COURT: Any redirect?

7 AST. SOL. WARD: Briefly.

8 REDIRECT EXAMINATION

9 BY AST. SOL. WARD:

10 Q. You stated you believed you were texting with the
11 defendant that morning, correct?

12 A. Yes.

13 Q. When you received a phone call from him or from that
14 telephone number, who were you talking to?

15 A. Stanley Tomkin (ph).

16 Q. Thank you.

17 AST. SOL. WARD: No further questions.

18 THE COURT: You may step down, sir. Thank you.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: You may call your next witness.

21 AST. SOL. JUSTIS: At this time, the State calls David
22 Shewtzuk.

23 DAVID SHEWTZUK, after being duly sworn, testified as
24 follows:

25 THE COURT: Your witness.

Direct Examination of David Shewtzuk by Ast. Sol. Justis

1 AST. SOL. JUSTIS: Thank you, Your Honor. May it
2 please the Court?

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY AST. SOL. JUSTIS:

6 Q. Mr. Shewtzuk, could you tell the jury where you work.

7 A. I worked for CIA right now. It's a remodeling company.

8 Q. And where do you live?

9 A. Summerville.

10 Q. And could you tell the jury how you're related to
11 Mr. Tommy Shewtzuk, the ---

12 A. I'm his father.

13 Q. I'm going to turn your attention back to June of 2015.
14 More specifically, June 13th, which was a Saturday. Do you
15 remember that day?

16 A. Somewhat, yeah.

17 Q. Okay. What do you remember from that day? What were
18 you doing that day?

19 A. Working.

20 Q. And who lived with you at that time?

21 A. Me, Tommy, and I want to say -- I don't know if Nikki
22 was still there or not at the time.

23 Q. But Tommy lived with you back then?

24 A. (Affirmative nonverbal response.)

25 Q. And where did y'all live at that time?

1 A. [REDACTED]

2 Q. And you went to work that day. Did you have an
3 opportunity to speak with your son that day?

4 A. No.

5 Q. So during the day, you never spoke to your son?

6 A. Oh, that day?

7 Q. That day. Sometime that day?

8 A. Yeah; he had called me during the day.

9 Q. Okay. And when was the first time you remember talking
10 to him that day?

11 A. Sometime in the morning, mid-morning.

12 Q. And what was the content of that conversation?

13 A. He had called me and told me he did something bad.

14 Q. But did he explain anything about that?

15 A. I don't remember exactly what was said. But he said it
16 was really bad and that he needed to get away.

17 Q. Okay. And did you give him any advice that morning?

18 A. Yeah. I told him to go to North Carolina.

19 Q. And after that phone conversation, did you hear from
20 him again?

21 A. A couple of times.

22 Q. Okay.

23 A. Mostly through text. Maybe a couple of calls.

24 Q. Okay. And what was your phone number back then? Do
25 you remember?

Direct Examination of David Shewtzuk by Ast. Sol. Justis

1 A. I don't remember that number.

2 Q. Okay. What about Tommy's? Do you remember that
3 number?

4 A. Huh-uh.

5 Q. And did Tommy have his own cell phone?

6 A. I had given him one, yes.

7 Q. Okay. Was the phone in your name?

8 A. Yeah.

9 Q. Would that number had been 843-209-9308?

10 A. Possibly. I'm not good at remembering.

11 Q. But you remember texting with him that day?

12 A. Yeah.

13 Q. Did you get to speak to him on the phone again after
14 that initial phone call that morning?

15 A. I think so; later on that afternoon.

16 Q. And when was the next time you saw Tommy after that
17 phone call?

18 A. I don't remember if it was the next day. I think it
19 was the next day or the day after. I'm not sure.

20 Q. Okay. So within a day or two of that phone call, you
21 saw Tommy. Where did you see Tommy?

22 A. At our house.

23 Q. Okay. And when he came to the house, was anybody with
24 him?

25 A. That boy Love was there.

1 Q. Okay. And do you know Love's name?

2 A. (Nonverbal response.)

3 Q. What did Love look like?

4 A. About my height, about my build.

5 Q. Okay. Was he white, black, Hispanic?

6 A. White.

7 Q. And what did they do when they came to your house?

8 A. He cut his hair and took a shower and everything and
9 they left.

10 Q. Okay. And was that last time you saw him prior to his
11 arrest?

12 A. (Affirmative nonverbal response.)

13 Q. Was that before or after the police made contact with
14 you?

15 A. After.

16 Q. And when police made contact with you, were you able to
17 give them a statement?

18 A. (Affirmative nonverbal response.)

19 Q. And you provided that information to them?

20 A. (Nonverbal response.)

21 THE COURT: Mr. Shewtzuk, you need to answer yes or no
22 so the court reporter can take down what you're saying
23 instead of uh-huh.

24 Q. So you remember meeting with law enforcement a couple
25 of days. I think it would've been on the 15th, which would

1 have been, I believe, a Monday if Saturday was the 13th.

2 A. Yes.

3 Q. Do you recall meeting with them?

4 A. Yes.

5 Q. And you recall giving a fairly lengthy statement to
6 them?

7 A. Yes.

8 Q. Okay. I think you testified -- do you remember
9 everything that was in that statement.

10 A. Huh-uh.

11 Q. Would it help if I kind of showed you your statement?

12 A. Yeah, that would probably.

13 Q. Take a look at it and kind of -- just ignore my
14 highlights. I'll let you kind of scan that just to kind of
15 refresh your memory.

16 A. (Witness complies.)

17 Q. Does that refresh your memory some?

18 A. Oh, yes.

19 Q. Okay. Do you remember -- so can you tell the jury what
20 you remember telling police that Tommy said to you when he
21 called you late that morning, that first time you talked to
22 him told him about the incident.

23 A. That he had done something bad and that he needed to
24 get out of town.

25 Q. Okay. Is that all he said you?

1 A. That I remember, yeah.

2 Q. And so your statement didn't refresh your memory?

3 A. I just -- I briefly scanned over everything. I'm not a
4 very fast reader.

5 AST. SOL. JUSTIS: If I may, Your Honor, let's show him
6 page 1.

7 Q. This little first paragraph -- can you read that in
8 your head, not out loud, and see if that refreshes your
9 memory.

10 A. (Witness complies.)

11 Q. Does that refresh your memory?

12 A. Yeah.

13 Q. Okay: So did you tell police some more information?

14 A. Yeah. He shot a boy twice.

15 Q. So you remember making that statement, right? I mean,
16 this is your statement, correct?

17 A. (Affirmative nonverbal response.)

18 BY MS. SARJI: Your Honor, asked and answered.

19 THE COURT: Overruled.

20 Q. When he came the next day or the day after, came to the
21 house -- I mean, you said that a gentlemen by the name of
22 Love or someone you knew to be called Love came with him.
23 How did they arrive? Do you remember?

24 A. I don't remember what they were driving. That boy Love
25 was driving a vehicle.

Cross Examination of David Shewtzuk by Ms. Sarji

1 Q. Okay. Did Tommy have a vehicle?

2 A. (Nonverbal response.)

3 THE COURT: Sir, is that a yes or a no?

4 A. No.

5 Q. But you're sure that they came in some kind of vehicle.

6 They didn't walk, did they?

7 A. Yes.

8 Q. You mentioned that Tommy had told you he needed to get
9 out of town or he was gonna get out of town. To your
10 knowledge, did he do that?

11 A. No.

12 Q. Did you advise him of anything?

13 A. Yeah. At first, I told him to go to North Carolina.

14 Q. Okay. And what did you tell him later?

15 A. To turn himself in.

16 Q. And do you remember how you told him that?

17 A. I kept trying to call him. He wouldn't answer. So I
18 texted him to turn himself in.

19 Q. So you sent him a text that said turn yourself in. Do
20 you remember if he replied to that?

21 A. I don't believe he did.

22 AST. SOL. JUSTIS: Beg the Court's indulgence. (Brief
23 pause.) Okay. No further questions, Mr. Shewtzuk. Please
24 answer any questions Ms. Sarji might have for you.

25 THE COURT: Cross examination?

1 BY MS. SARJI: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MS. SARJI:

4 Q. Mr. Shewtzuk, do you know Tommy to be productive with
5 regard to people that he cares about?

6 A. Yeah.

7 Q. And when you were telling the Solicitor about what you
8 had talked to the police about, there was something else
9 that you told the police that day. You told them that this
10 boy had beat up his ex-girlfriend. Is that right?

11 A. Yes.

12 Q. And he also told you that the boy had threatened him.
13 Is that right?

14 A. Yes.

15 BY MS. SARJI: Court's indulgence, Your Honor.

16 THE COURT: Yes, ma'am.

17 BY MS. SARJI: I don't have any other questions, Judge.
18 Thank you.

19 THE COURT: Any redirect?

20 AST. SOL. JUSTIS: Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY AST. SOL. JUSTIS:

23 Q. Mr. Shewtzuk, do you remember telling police that Tommy
24 told you he pointed the gun at the clerk?

25 BY MS. SARJI: Your Honor, outside the scope of cross?

1 THE COURT: Sustained.

2 AST. SOL. JUSTIS: No further questions.

3 THE COURT: You may step down, sir. Thank you. You
4 may call your next witness.

5 AST. SOL. JUSTIS: The State calls Harley Austin.

6 HARLEY AUSTIN, after being duly sworn, testified as
7 follows:

8 THE COURT: Your witness.

9 AST. SOL. JUSTIS: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY AST. SOL. JUSTIS:

12 Q. Good morning, Ms. Austin.

13 A. Good morning.

14 Q. Ms. Austin, could you tell the jury were you currently
15 work.

16 A. I work for Goose Creek Transportation.

17 Q. Okay. And where do you live?

18 A. I live at [REDACTED]

19 Q. And how do you know the defendant, Tommy Shewtzuk?

20 A. He used to be my boyfriend.

21 Q. Okay. Do you remember when you dated him?

22 A. Last year in March until September.

23 Q. Okay. Let me take you back to June of 2015. Did you
24 have an opportunity to speak with Tommy back in June of
25 2015?

1 A. Yes, sir.

2 Q. Okay. You were dating at the time?

3 A. Yes, sir.

4 Q. Okay. Do you remember meeting with law enforcement at
5 some point subsequent to June concerning an incident that
6 Tommy had been alleged to have been involved in?

7 A. Of this year?

8 Q. Well, the incident was last year ---

9 A. --- year.

10 Q. Spoke to you this year?

11 A. Yes, sir.

12 Q. Okay. And did you have an opportunity to meet with
13 Tommy at some point in the last year and discuss the
14 incident that occurred?

15 A. Yes, sir.

16 Q. Okay. And what did Tommy tell you when you spoke with
17 him?

18 A. He didn't give any specific details. Just that he did
19 not originally plan on shooting Travis. It was -- the plan
20 was to rob him and it got out of hand.

21 Q. Okay. Did he say anything about anyone being with him
22 or anything like that?

23 A. He didn't tell me who was with him; no, sir.

24 Q. And did you write a statement to that effect?

25 A. Yes, sir.

1 AST. SOL. JUSTIS: No further questions. Please answer
2 any questions that Ms. Sarji may have.

3 THE COURT: Cross examination?

4 BY MS. SARJI: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MS. SARJI:

7 Q. Harley, you just said that he didn't -- did I
8 misunderstand when you said that he didn't have somebody
9 with him that day?

10 A. No. I said he didn't tell who was with him.

11 Q. Okay. But there was another person in the car. Is
12 that right? To your knowledge.

13 A. I believe so.

14 Q. You said that Tommy told that his -- he never meant to
15 shoot Travis and that it just got out of hand.

16 A. Yeah. He didn't originally plan to shoot him.

17 BY MS. SARJI: I don't have anything further. Thank
18 you.

19 THE COURT: Anything, Solicitor?

20 AST. SOL. JUSTIS: Nothing -- briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY AST. SOL. JUSTIS:

23 Q. What did he say his original plan was?

24 A. To rob him.

25 AST. SOL. JUSTIS: Thank you. No further questions.

1 THE COURT: You may step down, ma'am. Thank you. You
2 may call your next witness.

3 AST. SOL. JUSTIS: At this time the State calls
4 Detective Adam Smith.

5 ADAM MICHAEL SMITH, after being duly sworn, testified
6 as follows:

7 THE COURT: Your witness.

8 DIRECT EXAMINATION

9 BY AST. SOL. JUSTIS:

10 Q. Detective Smith, where do you work?

11 A. I work with the Dorchester County Sheriff's Office.

12 Q. And how long have you been with the Dorchester County
13 Sheriff's Office?

14 A. It will be almost ten years. It will be ten years this
15 October.

16 Q. And what's your position at the Dorchester County
17 Sheriff's Office?

18 A. Currently, I'm a detective in the criminal
19 investigations division.

20 Q. And did you have an opportunity to investigate a case
21 involving a Thomas Shewtzuk?

22 A. Yes, I did.

23 Q. And how did you become involved in that case?

24 A. On the morning of June 13, 2015, I was contacted by my
25 supervisor who is Sergeant Rick Carson. And he advised me

1 that there had been a shooting at the Quick Food Mart which
2 is at the corner of Dorchester Road and Highway 17-A. And
3 he said that a male had been shot and was deceased and
4 advised me to respond to the scene.

5 Q. And did you respond?

6 A. Yes, I did.

7 Q. And when you arrived at the scene, did you have an
8 opportunity to review a videotape?

9 A. Yes. During the course of the search warrant being
10 executed at the scene, the manager of the store allowed us
11 to view the video that the store cameras had. Or excuse me,
12 the DVR that the store owned; the DVD camera footage.

13 Q. And were you able to -- watching that video, were you
14 able to glean any information from that video that assisted
15 you in your investigation?

16 A. Yes.

17 Q. What kind of information were you able to get from that
18 video?

19 A. Basically, there was an altercation that took place
20 inside the store which led to the shooting. Through the
21 video, we were able to see a van that was parked outside of
22 the side door of the business which pulled up just before
23 the shooting and then it left after the shooting. So based
24 on that -- and there were some other accounts of a van that
25 had left the scene -- we were able to give the BOLA, be on

1 the lookout, to surrounding agencies and/or our patrol
2 deputies so they could try to search for that van.

3 Q. Were you able to glean any information as far as maybe
4 an identity or identifying marks from the person that did
5 the shooting?

6 A. Yes. I mean, it appeared to be a younger, white male
7 who had a tank top on and shorts. And there was some -- it
8 looked like distinct tattoos that were visible on the
9 subject's body.

10 Q. At that point in time, did you have any idea who that
11 individual was?

12 A. No; we did not. Not at this time.

13 Q. At some point in time, were you able to receive
14 information that told you the name of the victim?

15 A. Yes.

16 Q. And who was the victim?

17 A. It was Travis Aaron Gordan. And we learned that -- but
18 when the van was located, we were able to get the license
19 plate off of the van, which came back to Melissa Gordon. We
20 searched that address and found Travis Gordon to be living
21 at that address. I pulled up his picture through the DMV.
22 And at that time, he looked very similar to the person who
23 was the victim inside the store.

24 Q. Okay. At some point in time, you contact next of kin?

25 A. Yes. Myself and another detective in the coroner's

1 office, we made notifications to the victim's family later
2 that day after the victim had been identified.

3 Q. And did you have an opportunity to meet with the
4 victim's family at some point in time?

5 A. Yes, we did; at their residence in Goose Creek.

6 Q. And when you did that, did anything of consequence
7 occur at that meeting?

8 A. Basically, we just gained some background on the
9 victim. Found where he worked, what his work schedule was,
10 what his normal habits were. We obtained his phone number;
11 the provider for his phone at that time. We kind of just
12 gathered information about us life that would help us out
13 throughout the investigation.

14 Q. Did you have an opportunity to look at, you know, where
15 he actually resided?

16 A. Yes, we did. The family allowed us to look inside his
17 bedroom, which was a normal young man's bedroom. We didn't
18 find anything out of the ordinary. But we did locate his
19 work computer and his wallet were inside the bedroom at that
20 time.

21 Q. So this is Saturday, June 13th, correct?

22 A. That's correct.

23 Q. As you are conducting your investigation, did you
24 receive any information concerning this investigation that
25 kind of start leading you to a particular suspect?

1 A. Yes. What we did was we had obtained the video from
2 the store. We got still images from the video. We were
3 able to put together some pictures to pass out to local
4 agencies in attempt to try to identify the person in the
5 video. We're working kind of late in through the evening at
6 that point in time. And during the late afternoon, evening
7 hours, we received a phone call from a woman who identified
8 herself as I believe Jeanie Montor (ph) who is the
9 grandmother of Katelynn Dubois. And they said they had
10 information on the shooter in this case.

11 Q. And did you have an opportunity to meet with those
12 individuals?

13 A. Yes, we did. We met with them at our office and we
14 obtained a statement from them.

15 Q. And who did you actually obtain statements from during
16 that meeting?

17 A. It was Katelynn Dubois and her sister, Raven Dubois.

18 Q. And based on those statements that you got from them,
19 did that kind of advance your investigation?

20 A. It did. And it led us to other individuals who that we
21 later on talked to which were the Lawn (ph) family.

22 Q. Based on the conversation that you had with Katelynn,
23 were you able to start focusing on any particular
24 individuals?

25 A. Yes. She identified an individual, Thomas Shewtzuk,

1 who was her ex-boyfriend. And then she also stated that she
2 also dated the victim in this case, Travis Gordon. So from
3 there, we were able to pull up the DMV photo of
4 Mr. Shewtzuk, get some identifying information on him. And
5 then as we do with most of our people that we look for, we
6 check on Facebook. We were able to find a Facebook page for
7 Mr. Shewtzuk, and we were able to find pictures of him that
8 were posted on there publicly. And through the course of
9 looking at those pictures, we compared them to the
10 surveillance footage and there appeared to be -- I mean, the
11 individual was the same race, about the same build; but he
12 also has distinct tattoos on his Facebook pictures which
13 were similar in nature to the ones that were on the subject
14 in the surveillance footage.

15 AST. SOL. JUSTIS: Beg the Court's indulgence.

16 Q. Detective, I'm showing you what's been was marked for
17 identification purposes as State's Exhibit 43, 44, and 45.
18 Tell me if you recognize those.

19 A. Yes, I do.

20 Q. And what do those appear to be?

21 A. These are images that I obtained from Tommy Shewtzuk's
22 or Shewtzuk Facebook page during the course of the
23 investigation.

24 Q. And how can you tell those are the images you obtained?

25 A. These are the ones I provided to the State. So these

1 are the ones that I actually copied myself from his Facebook
2 page on.

3 Q. Okay. And so you printed those pictures out?

4 A. That's correct.

5 Q. Are they are a fair and accurate representation of what
6 you observed on his Facebook page that day?

7 A. Yes, they are..

8 AST. SOL. JUSTIS: At this time, Your Honor, the State
9 would offer 43,44, and 45 into evidence.

10 THE COURT: Any objection?

11 BY MS. SARJI: None, Your Honor.

12 THE COURT: They're in.

13 (State's Exhibits No. 43, 44, and 45, Photographs,
14 were received into evidence.)

15 Q. I'm showing you what's been marked as State's Exhibit
16 43, Detective. Could you just kind of explain this and tell
17 me how you

18 A. When I typed in the name of Thomas Shewtzuk or Tommy
19 Shewtzuk, this is the page that popped up when I first typed
20 that name. So this is actually I guess a homepage if you
21 will.

22 Q. Okay. Was there anything that kind of struck you from
23 this page as interesting?

24 A. Initially, what struck me was the actual picture of the
25 individual on there, the hairstyle, a white male, about the

1 same age as what appeared to be in the video. And also
2 there is a distinct tattoo on the hand as well.

3 Q. I'm showing you State's 44. What are we looking at in
4 this picture?

5 A. This was another picture that was on the Facebook page
6 at that time that I copied and printed. In this picture
7 there's a distinct tattoo on what would be the individual's
8 right bicep. And then there is also what appears to be a
9 tattoo that kind of overlays from the shoulder area into the
10 bicep.

11 Q. And could you kind of circle those.

12 A. (Witness complies.) The bicep tattoo and there is a
13 tattoo that's on the shoulder area as well.

14 Q. Okay. And what is that that appears on his what would
15 be, I guess, his left chest?

16 A. There is some other writing that's on enterprising --
17 or excuse me. Right there. And you can also see somewhat
18 of the tattoo on the hand as well down below.

19 Q. And finally, State's 45?

20 A. This was another picture that was on the same Facebook
21 page. And it just kind of shows the tattoos on the forearms
22 and on the hand, which are a little bit more clear than the
23 other pictures that were on there.

24 Q. And you stated after meeting with Katelynn Dubois, she
25 kind of let you to some other individuals that you spoke to.

1 A. That's correct.

2 Q. Who are some of the other individuals that you spoke to
3 in this case?

4 A. We ended up speaking with, Kallie Vaughn, Doug Vaughn.
5 We spoke with David Shewtzuk, Alex Shewtzuk, and then April
6 Wolf and Carmen Jensen, who also goes by Nikki.

7 Q. And you received statements from those individuals?

8 A. That's correct. We interviewed and received from
9 statements from them.

10 Q. At some point in time, did you attempt to obtain arrest
11 warrants for Mr. Shewtzuk?

12 A. Yes. After we interviewed David Shewtzuk, he provided
13 us with details to the case that would've been from somebody
14 who was involved or had intimate knowledge of it. And based
15 on the information of that and the footage that we obtained,
16 I obtained arrest warrants on Thomas Shewtzuk for the charge
17 of murder in this case.

18 Q. And at some point subsequent to those arrest warrants
19 being issued, did Mr. Shewtzuk turn himself in?

20 A. Yes. We spent several days looking all hours of the
21 day for him. He was put on the news. He was online. And
22 on June 18th he turned himself into our office. He
23 voluntarily walking up to our office door and turned himself
24 in.

25 Q. And subsequent to him turning himself in, did you speak

1 to any other individuals or witnesses in this case?

2 A. Yes. Several days after that, we spoke with **Lillian J.**

3 who he came forward with information as well since she
4 was also an ex-girlfriend of the -- now the defendant in
5 this case.

6 Q. You mentioned earlier that you had obtained some
7 information concerning phone numbers.

8 A. Right.

9 Q. When you met with these individuals, all these various
10 witnesses, did you obtain phone number information from
11 these individuals?

12 A. That's correct. During the normal course of business,
13 whenever we obtain a written statement from them, an
14 individual, it has their basic -- their name, their address.
15 It has their phone numbers; several contact information
16 lines so that we can go back and reach out to these people
17 later on if need be. So we use that as kind of a resource
18 when we need phone number information.

19 Q. Were you ever able to get phone number information on
20 Mr. Tommy Shewtzuk?

21 A. Yes. We were provided his phone number by several
22 individuals, which all matched. And that information was
23 sent off. His carrier was Verizon Wireless. So I had
24 obtained a search warrant for his telephone records and
25 submitted that to Verizon.

1 Q. And at some point subsequent to submitting that search
2 warrant for those phone records, did you in fact receive
3 phone records from Verizon?

4 A. Yes, I did.

5 Q. Okay. And when you obtained those phone records, was
6 there anything that assisted you in your investigation in
7 those phone records?

8 A. Yes. When Verizon provides the records, they provide
9 you with what is called the CDR, the Call Detail Records,
10 which has your date, time, your target number, the actual
11 number that the person you're looking. And it also has the
12 telephone numbers to the person that calls were made to or
13 came from. It has the tower information. But they also
14 have the text message information. And then in this case,
15 we were able to get to it quick enough that Verizon was able
16 to provide us with some of the actual text message content.

17 Q. Okay. And when you reviewed that text message content,
18 did anything strike you as unusual in those text messages?

19 A. Throughout the course of the investigation, we used
20 phone records a lot. Verizon, whenever you're able to get
21 text message detail, they're kind of notorious for not
22 putting it in chronological order. So it's not like you
23 look at your phone and see a chat that actually goes down
24 where you can look in order. So we actually had to create a
25 spreadsheet, which we combined all the phone records and the

Direct Examination of Adam Smith by Ast. Sol. Justis

1 text messages together to make it easier to read.

2 AST. SOL. JUSTIS: Beg the Court's indulgence.

3 Q. Detective, I'm showing you what's been marked as
4 State's Exhibit 41. Please tell me if you recognize that
5 item.

6 A. Yes, I do.

7 Q. And what does that item appear to be?

8 A. This is the compilation that was put together for the
9 target number from Tommy Shewtzuk in this case. And this
10 combines the text message detail, the call detail records,
11 and the actual text message content.

12 Q. And prior to testifying today, have you reviewed that
13 document?

14 A. Yes, I have.

15 Q. Does it seem to an accurate representation of what the
16 text messages that you received from Verizon and the phone
17 calls depict?

18 A. Yes, it does.

19 AST. SOL. JUSTIS: At this time, the State would offer
20 State's 41 into evidence.

21 THE COURT: Any objection?

22 BY MS. SARJI: We would renew our previous objection,
23 Your Honor.

24 THE COURT: Same ruling. It's in.

25 (State's Exhibit No. 41, Verizon Summary Record, was

1 received into evidence.)

2 AST. SOL. JUSTIS: May I publish for the jury?

3 THE COURT: Yes, sir.

4 Q. Detective, kind of explain what we're looking at in
5 this image.

6 A. In the spreadsheet in the very top left-hand corner is
7 the date, which for this section would be June 13th which
8 would be the date of the incident in this case. And then
9 the far left column you have time. The next column over is
10 the call or text where it came from. And then the next
11 column over would be call or text where the actual text went
12 to. And then in the far right, if it was a text message and
13 we had text message detail from Verizon, that was then put
14 in that column.

15 Q. Okay. And so on this particular page here, are these
16 text messages or phone calls?

17 A. In the section right here, these are all text messages.

18 Q. Okay. And could you explain those other -- the second
19 and third columns.

20 A. So the second column would be a call or a text from.
21 And in this case, it would be a text from. And then if we
22 knew the telephone number, we would input the person's name
23 in there. Or if we did not, we would just put the actual
24 number. And that's where the actual text message was
25 received from. And then the next column over is where the

1 actual text message went to.

2 Q. And I see in that first one under call text, it says,
3 "I -- y'all hit me up, please," and "I still got this strap
4 for sale." Based on your experience as a law-enforcement
5 officer, do you know what the word "strap" means?

6 A. Yes. In my years of professional experience at the
7 sheriff's office, working the street and investigations,
8 strap is a slang term for a firearm that is commonly used on
9 the street.

10 Q. And I noticed these text messages start -- or these
11 records start at 7:18. Is that a.m. or p.m?

12 A. That would be 7:18 a.m.

13 Q. Okay. And the time on these records, are they in
14 24-hour military time?

15 A. Yes, they are.

16 Q. So for your compilation you have essentially the
17 morning of the incident?

18 A. Correct.

19 Q. Turn to the second page of Exhibit 41. Looking at
20 those records there, was there anything that kind of struck
21 you on those records?

22 A. There are more text messages. And then throughout the
23 course of these text messages, there's continuing talk of
24 trying to sell a firearm.

25 Q. Okay. Could you tell us about -- it looks like a phone

1 call at 8:35?

2 A. Correct. That phone call is from the target number
3 which belonged to Tommy Shewtzuk. And it went to the
4 telephone number belonging to Joshua Jordan in this case.
5 And it was approximately -- the number in parenthesis is the
6 amount of seconds that the phone call lasted. It's how the
7 cell company provides records. So 235 seconds.

8 Q. Okay. And Joshua Jordan, was that an individual you
9 had spoken to in this case?

10 A. Yes, we have.

11 Q. And if we look at 8:55/57, what is that there?

12 A. That is a text message from Tommy Shewtzuk's cell phone
13 number to Joshua Jordan's cell phone. And it says, "Yo,
14 swing this way."

15 Q. And I'm going to have to raise this a little bit. So
16 start from there, can you kind of tell us what the phone
17 calls and text messages are at that point from that point
18 on.

19 A. From 8:35, there's another text message from Nikki
20 Jensen to Tommy Shewtzuk, "Yo, call me when you get up. At
21 8:39, Tommy calls Nikki which lasts about 52 seconds.
22 There's another phone call at 8:55 -- or excuse me, a text
23 message at 8:55. A text to Joshua Jordan, "Yo, swing this
24 way." 8:58, the victim in this case, Travis Gordon, places
25 a phone call to Tommy Shewtzuk and it lasted approximately

1 115 seconds. Right after that phone call at 9:01 a.m.,
2 Tommy Shewtzuk calls Joshua Jordan. The phone call lasts
3 approximately 184 seconds. Right there at 9:01 again, Tommy
4 Shewtzuk sends a text message to Travis Gordon's cell phone
5 number with the address of [REDACTED] Summerville,
6 South Carolina, 29485, which was Tommy and David's home
7 address.

8 Q. Okay.

9 A. And then after that at 9:02, Travis Gordon sends a text
10 message to Tommy Shewtzuk, "Perfect. Very much
11 appreciated." At 9:02 again, Travis Gordon sends another
12 text message to Tommy Shewtzuk, "On the way." And then at
13 9:05, Tommy Shewtzuk calls Joshua Jordan which lasts
14 approximately nine seconds.

15 Q. When you see a call for about nine seconds, what does
16 that tell you?

17 BY MS. SARJI: Objection, Your Honor. Calls for
18 speculation.

19 THE COURT: If he has any knowledge.

20 A. I work a lot of cell phone investigations throughout
21 the County pertaining to call records and doing cell phone
22 forensics. And usually that's most likely a voice mail that
23 the call didn't go through at that time.

24 Q. Let's go to page three of Exhibit 41. Again, start at
25 the top there and tell us what we have.

1 A. At 9:00, Joshua Jordan calls Tommy Shewtzuk. Phone
2 call is about five seconds. At 9:05, Tommy Shewtzuk calls
3 -- or excuse me, sends a text message to Travis Gordon with
4 a message, "Okay." 9:05, Joshua Jordan sends a text message
5 to Tommy Shewtzuk, "Tired. I'm gonna stay home." 9:06,
6 Tommy Shewtzuk calls Joshua Jordan for about 42 seconds.
7 9:07, Joshua Jordan calls Tommy Shewtzuk; about 32 seconds.
8 9:07, Joshua Jordan calls Tommy Shewtzuk; approximately 27
9 seconds. 9:10, Tommy Shewtzuk calls Joshua Jordan;
10 approximately 25 seconds. And there's several calls that
11 appear to be either fail or they didn't connect. And then
12 at 9:13 it picks back up with a text message from Travis
13 Gordon to Tommy Shewtzuk, "Almost there. I asked you to be
14 prompt. Where you want to meet afterwards?" 9:13, Tommy
15 Shewtzuk responds to Travis Gordon, "We'll talk when you're
16 here." 9:23, Travis Gordon sends a text message to Tommy,
17 "Very well." 9:23, Tommy sends text message to Travis. At
18 9:24, Alex Shewtzuk sends a text message to Tommy Shewtzuk,
19 "How much?" They are referring to previous text messages
20 about the sale of the gun. 9:25, Tommy Shewtzuk sends a
21 text message to Alex Shewtzuk, "I want like around two or
22 three. But for you, I'll do some good. What do ya think?"
23 9:26, Alex sends a text message to Tommy, "What kind of
24 gun?" 9:26, Tommy sends a text message to Alex, "Nevermind.
25 It's about to have a body on it so I doubt you'll want it."

1 At 9:27 Alex responds to Tommy, "What?" And then 9:27 Tommy
2 responds back to Alex, "Yep. SMH," which is shaking my head.

3 At 9:27, Alex responds back to Tommy, "I don't know what
4 you're saying." 9:27, Tommy responds back to Alex, "Call
5 me." And then 9:29, Alex responds back to Tommy, "Shit no.
6 I just got up. I don't want to hear your voice this early
7 in the," and "LMMFAO".

8 At 9:29, Tommy Shewtzuk sends a message to Alex
9 Shewtzuk, "LOL. Basically I'm gonna fight this dude who
10 been talking shit and threatening me. And if he got a gun,
11 if he pull it, I'm gonna shoot his ass." And then Alex
12 Shewtzuk responds, "Word." And 9:30, Tommy sends a text
13 message back to Alex, "Yeah. LOL." And then 9:34, Travis
14 Gordon attempts to phone Tommy Shewtzuk -- or excuse me he
15 does call; 55 seconds. There's another phone call for 55
16 seconds. Immediately after the 9:35, Tommy Shewtzuk calls
17 Joshua Jordan for about 12 seconds. And then there's
18 another text message at 9:43 from a number asking about the
19 gun that he previously asked to sell.

20 Q. And then what's the next activity on the phone?

21 A. Phone call is after that. After 11:20, Nikki Jensen
22 calls Tommy Shewtzuk for about 92 seconds.

23 Q. And do you remember approximately what time this
24 incident happened?

25 A. The incident occurred just before 10:00 a.m. on the

1 13th.

2 AST. SOL. JUSTIS: Your Honor, may we approach at this
3 time?

4 THE COURT: Yes, sir.

5 (A bench conference is held out of the hearing of the
6 jury panel and the court reporter. See note on the
7 index page.)

8 THE COURT: Ladies and gentlemen of the gallery, the
9 anticipated testimony that is about to start does contain
10 some disturbing images and a potential video. If you are
11 not in a position where you can watch that or you want to
12 leave the courtroom at this time, I would encourage you to
13 do so now.

14 Q. Detective Smith, you had said earlier that you had
15 viewed the videotape of this incident. Is that correct?

16 A. Yes, I did.

17 Q. I'm going to show you State's Exhibit 46. Do you
18 recognize this item?

19 A. Yes.

20 Q. And what does that appear to be?

21 A. It's a disk that contains screenshots of tattoos which
22 would be from the defendant.

23 Q. And did you have an opportunity to view these
24 screenshots?

25 A. Yes.

1 Q. And when you say screenshots, what are they screenshots
2 from?

3 A. Actual video footage from the surveillance ---

4 Q. And these screenshots, are they fair and accurate
5 representations of the video that you viewed?

6 A. Yes, they are.

7 AST. SOL. JUSTIS: At this time, the State would offer
8 State's 46 into evidence.

9 THE COURT: Subject to your previous objection?

10 BY MS. SARJI: Yes, Your Honor. Thank you.

11 THE COURT: They're in.

12 (State's Exhibit No. 46, CD of Screenshots, was
13 received into evidence.)

14 AST. SOL. JUSTIS: Publish these photos for the jury,
15 Your Honor.

16 Q. All right. Detective, can you tell us what we're
17 seeing in this photo and what interest you have in this
18 particular photo?

19 A. This is from the Quick Food Mart where the incident
20 took place. This is a camera that's coming from behind the
21 register or at the register area and facing back towards the
22 back which would be, if you're looking at the very back, the
23 cooler would be back here, the side door to your left, and
24 the front door, if you will, to the right. And the
25 left-hand side over here is Ms. Miller who was one of the

1 patrons inside of the store at that time. The individual up
2 front, that is the victim, Travis Gordon. And then to the
3 right it was the suspect who was the shooter in this
4 incident.

5 Q. And what does that picture depict?

6 A. This picture is right after the first shot is placed at
7 the victim at the register. It shows the -- this was one of
8 the bullets that hit the victim in the face. And the
9 suspect with the gun, you can also see in this picture the
10 tattoos on the shoulder and the bicep of the suspect.

11 Q. And what's that kind of on his chest there, on his left
12 chest?

13 A. There is another tattoo that is kind of curved that's
14 underneath the tank top that he's wearing. This is another
15 one right after the first shot. In this clip, you can also
16 see the tattoo on the shoulder. You can see the tattoo on
17 the bicep. And then on the far arm, you can see the a
18 tattoo on the forearm as well. And there's also on this
19 closest arm right here, which would be the individual's
20 right forearm, you can see a tattoo going up and then also
21 something on his hand as well.

22 This one was actually previous to the other ones. And
23 you can see the tattoo on the shoulder more clearly. This
24 is another one that you can see the tattoos that go down the
25 individuals right arm.

Direct Examination of Adam Smith by Ast. Sol. Justis

1 Q. And you can also see the head of the . . .

2 A. Yes.. The face of the suspect as well.

3 AST. SOL. JUSTIS: At this time, Your Honor, the State
4 would publish State's Exhibit 16.

5 THE COURT: Yes, sir.

6 BY MS. SARJI: We would renew our previous objection.

7 THE COURT: Yes, ma'am.

8 BY MS. SARJI: Thank you.

9 Q. While we're getting that ready, Detective, I'm going to
10 show you some other photographs and ask you if you can
11 identify these?

12 AST. SOL. JUSTIS: May we approach real quick?

13 THE COURT: Yes, sir.

14 (A bench conference was out of the hearing of the jury
15 panel and court reporter. See note on the index page.)

16 Q. Detective, I'm showing you State's 25, 26, 27, 28, 29,
17 30, 31, 32, and 33. Take a look at those photographs and
18 tell me if you recognize those.

19 A. Yes, I do.

20 Q. And what do those photos appear to depict?

21 A. These would be the photographs of the defendant that
22 our crime scene unit took of him after his arrest in this
23 case to show the tattoos that he had on his person from the
24 waist up.

25 Q. Are these a fair and accurate representation of what

1 the defendant looked like and what his tattoos looked like
2 the day that these photos were taken?

3 A. Yes, they do.

4 AST. SOL. JUSTIS: We would offer State's 25, 26, 27,
5 28, 29, 30, 31, 32, and 33 into evidence, Your Honor.

6 THE COURT: Subject to your objection, they're in.

7 (State's Exhibits No. 25 through 33, Photographs, were
8 received into evidence.)

9 AST. SOL. JUSTIS: My I publish for the jury, Your
10 Honor?

11 THE COURT: Yes, sir.

12 Q. And that is State's 25. Can you tell us what that
13 depicts?

14 A. It's a front picture that was taken of the defendant in
15 this case to show the tattoos that he had on his person.
16 You can clearly see them on the upper chest and on his left
17 shoulder and his left forearm. You can also see them on the
18 right shoulder, right bicep, and right forearm as well. And
19 it appears that some of them have -- it looks like there's
20 some overlay on them as if they were, I mean, possibly some
21 new ones were added to them.

22 Q. I'm going to show you State's 26. Just tell us what
23 that shows.

24 A. It appears to be tattoo that's covering up some kind of
25 writing on the -- that would be on the upper left chest

1 portion. Tattoo from the left shoulder, you can also see
2 again the upper left chest tattoo as well. And there
3 appears on the shoulder, there appears to be some kind of
4 writing that's underneath that tattoo.

5 Q. I'm sorry. That was State's 27. State's 28?

6 A. Tattoo; and once again, you can see the writing
7 underneath it.

8 Q. Is that just a closer version of the previous?

9 A. Correct.

10 Q. State's 29?

11 A. It's from the right side. There's a tattoo on the
12 shoulder. There's a tattoo on the right bicep. But on the
13 right bicep, there appears to be something that's underneath
14 of it. And then there's a tattoo down the right arm as
15 well. And you can also see the left forearm on this angle
16 as well.

17 Q. State's 30, tell us what that depicts?

18 A. That's a closeup of the tattoo that's on the right
19 bicep. And the image -- or the tattoo on top, it looks -- I
20 think it's newer or had been placed over another tattoo
21 that's there.

22 Q. State's 31?

23 A. This is the tattoo from the right shoulder area. It
24 appears that there's some kind of shading or another tattoo
25 that was underneath of it at some point in time.

1 Q. And State's 32?

2 A. This would be from the right forearm.

3 Q. Finally, State's 33?

4 A. This is a tattoo from the left forearm.

5 AST. SOL. JUSTIS: At this time, Your Honor, the State
6 would publish State's 17 -- or 16. I'm sorry.

7 THE COURT: Yes, sir.

8 (State's Exhibit No. 16, a surveillance video, was
9 played at 10:56 a.m.)

10 BY MS. SARJI: Your Honor, we object to the second
11 video as being overly cumulative.

12 THE COURT: Overruled.

13 (A second surveillance video was played.)

14 AST. SOL. JUSTIS: No further questions.

15 THE COURT: Cross examination?

16 CROSS EXAMINATION

17 BY MS. SARJI:

18 Q. Detective Smith, you don't know what, if any,
19 relationship that there was between Tommy and Travis Gordon
20 prior to June 13th?

21 A. From the information we obtained, they were not friends
22 and didn't associate with each other.

23 Q. Okay. You don't have any way of confirming that. For
24 example, were you able to access Travis Gordon's Facebook
25 page?

1 A. No, I wasn't.

2 Q. You were not able to obtain messaging that was
3 exchanged between he and Tommy prior to that point?

4 A. No, I wasn't.

5 Q. You, likewise, did not access Mr. Shewtzuk's, Tommy
6 Shewtzuk's, Facebook page, did you?

7 A. No, we did not.

8 Q. So you couldn't have seen any of the correspondence
9 that was sent back and forth through Facebook on his page
10 either.

11 A. I don't have that information, no.

12 Q. Okay. What you are aware of is that both Tommy and
13 Travis dated Katelynn Dubois. Is that correct?

14 A. That's correct.

15 BY MS. SARJI: Court's indulgence, Your Honor.

16 Q. And you were the one who took the statement from
17 Tommy's dad, David Shewtzuk. Is that right?

18 A. That is correct.

19 Q. And so he told you as well that Tommy had reported to
20 his father that Travis had actually threatened him. Is that
21 right?

22 A. I would have to refer back to the original statement
23 just confirm the verbiage on it.

24 Q. Give me one second. (Brief pause.) And I'm not going
25 to have this marked just because I think it was done

1 previously. But I'm going to give you a statement and ask
2 you if you recognize that. And I apologize for the
3 markings.

4 A. Yes, I do.

5 Q. And is that the statement that you took from David
6 Shewtzuk, that was taken from David Shewtzuk?

7 A. Yes.

8 Q. And so after having looked at that first page of the
9 statement, does it refresh your recollection at all as to
10 whether David Shewtzuk reported that he had been told by
11 Tommy about Travis threatening Tommy?

12 A. In the statement -- would you like for me to read it?
13 Or, I mean, he says that there was a boy that beat up his
14 ex-girlfriend.

15 Q. And that that boy had threatened him. Is that . . .

16 A. Yeah. The photocopy is kind of light.

17 Q. Yeah -- given to me. I apologize.

18 A. And in there he says that the boy had followed him to a
19 gas station and threatened him.

20 BY MS. SARJI: I don't have anything further, Judge.

21 Thank you.

22 THE COURT: Any redirect?

23 AST. SOL. JUSTIS: No, Your Honor.

24 THE COURT: You may step down, Detective. Thank you.

25 You may call your next witness.

1 AST. SOL. JUSTIS: The State rests at this time, Your
2 Honor.

3 THE COURT: Ladies and gentlemen of the jury, at this
4 point the State has rested their case. At this stage, it's
5 a good time for us take a brief morning recess. Just
6 because the State has rested the case, please, again,
7 remember my instruction to not discuss this case amongst
8 yourselves or with anyone. We'll take a brief recess.

9 (The jury exits the courtroom at 11:04 a.m.)

10 THE COURT: Any motions at this time?

11 BY MS. SARJI: Yes, Your Honor. I would make a motion
12 for a directed verdict in that the State has failed to prove
13 the charge of murder. And I would before going any further
14 after you have considered that motion, I would like the
15 opportunity to talk to my client in private before we decide
16 what our next steps will be.

17 THE COURT: Yes, ma'am. As to your motion to a
18 directed verdict on murder, there's obviously direct answer,
19 circumstantial evidence of the each of the elements as
20 charged in the charge of murder. So your motion for
21 directed verdict on that charge is respectfully denied.

22 BY MS. SARJI: Thank you.

23 THE COURT: You need a few minutes to discuss with your
24 client?

25 BY MS. SARJI: I do. And I would like, if I could, to

1 do it downstairs or in a conference room somewhere. I
2 just -- I need -- frankly, I need at least 15 minutes with
3 him alone to discuss our strategy from this point forward if
4 that is acceptable.

5 THE COURT: That's fine. If you would just coordinate
6 with security. They're in charge of that. So wherever they
7 deem fit to put you, that's fine. That's completely within
8 their discretion. If you would also please discuss, I
9 understand your strategy, but I will be placing him under
10 oath prior to you having an opportunity to present any
11 evidence, if you wish to do so. And I will place him under
12 oath as to whether or not he is going to testify. So he
13 needs to be prepared for that.

14 BY MS. SARJI: At that's part of what I need the time
15 to talk to him about.

16 THE COURT: We'll be at recess for a few minutes.

17 (A brief recess was taken at 11:06 a.m. The
18 proceedings resumed at 1:47 p.m.)

19 THE COURT: Are the parties ready to proceed?

20 AST. SOL. JUSTIS: The State's ready, Your Honor.

21 BY MS. SARJI: Yes, Your Honor.

22 THE COURT: Ms. Sarji, before we left you indicated
23 that you wanted your motion for directed verdict on the
24 murder charge heard before you talked to your client. Are
25 you ready to proceed with your other motions?

1 BY MS. SARJI: Yes, Your Honor. We would make motions
2 for directed verdict on the other kidnapping charges as
3 well. Judge, I think specifically with regard to Hatel
4 Patel, which was indictment 2015-GS-18-954. Ms. Patel never
5 came in and testified. There was no discussion about what
6 she heard or whether she even saw this weapon. I don't
7 believe that any facts have been presented upon which a jury
8 could find my client to be guilty of kidnapping,
9 specifically with regard to Ms. -- again, I hope I have my
10 indictment number -- Hatel Patel, indictment 2015-954.

11 With regard to Mary Miller on a indictment number 953
12 for the kidnappings, we would make a directed verdict motion
13 on the basis that I don't believe that she ever testified
14 that she felt that her movement was restricted in any way.
15 While she does indicate that she had held up her hands and
16 said, "Don't shoot me," she never said, you know, that she
17 was confined, that she felt like she couldn't, you know, run
18 away. That I think as well as the State has failed to meet
19 its burden, at least presenting some facts upon which the
20 jury could base a guilty verdict.

21 THE COURT: Thank you, ma'am. Solicitor?

22 AST. SOL. WARD: Thank you, Your Honor. May it please
23 the Court? In regards to the victim Ms. Patel, the first
24 thing I would say is that that Officer Villa testified that
25 Ms. Patel was the store clerk that day who he attempted to

1 speak with before getting a translator. Then as we put
2 evidence in of the actual video of the event, you can see
3 Ms. Patel behind the counter. When the gun is pointed at
4 her, she basically dives to the ground. And we have
5 testimony from Ms. Johdie Lee, who is the other patron in
6 the store, stated she heard the shooter yell, "If you call
7 911, I will kill you bitches." I believe that statement,
8 pointing a gun at the store clerk, Ms. Patel, would be a
9 confinement or a possible loss of her freedom at that point
10 which would present evidence for kidnapping. At least the
11 existence of the evidence is what we're looking for here for
12 directed verdict.

13 For Ms. Miller, the same thing as Ms. Sarji stated, she
14 admitted that the gun was pointed at her. She put her hands
15 up and was afraid she was going to get shot. Again, when he
16 comes back in and yells, "Do not call 911 or I'll kill you,"
17 the gun is also pointed at her at that point in time. I
18 believe, again, that would be a confinement or loss of
19 freedom and shows the existence of evidence. And I think
20 those are only things related to that.

21 THE COURT: Ms. Sarji, as you understand, at this
22 juncture of the trial, the Court is concerned whether there
23 is existence or nonexistence of evidence of each of the
24 elements of the offense. The Court does find that there is
25 some directed and circumstantial evidence of each of the

1 elements of each of the crimes charged by the video as well
2 as by the actions of the defendant. Restraining each of the
3 victims based upon the comment, "Don't call 911," obviously
4 they were able to -- they felt confined at that point to not
5 be able to move. The video does show Ms. Miller raising her
6 hands and asking not to shoot as well. As well as her
7 testimony, which is corroborated. In regards to Ms. Patel,
8 whether or not she testified, that evidence was presented
9 through direct witness which witnessed the elements of the
10 alleged kidnapping. So your motion for directed verdict is
11 respectfully denied.

12 BY MS. SARJI: Thank you.

13 THE COURT: All right. Have you had an opportunity to
14 discuss with your client whether or not he wishes to
15 testify?

16 BY MS. SARJI: I have, Your Honor.

17 THE COURT: All right. Mr. Shewtzuk, if you will
18 please stand.

19 (THOMAS ROBERT SHEWTZUK was duly sworn)

20 THE COURT: Mr. Shewtzuk, at this time I'm going to
21 explain to you certain of your rights. If you do not
22 understand anything that I say, please stop and ask me.
23 Also, if you want me to explain anything in more detail to
24 you, also please stop to ask me. We have now reached the
25 stage of the trial where you may present your defense. You

1 you as our foreperson of the jury. Your duties of course
2 again will be to write the verdict on the verdict form as
3 well as the indictment when you do reach a verdict. And if
4 you have any questions or need anything while you're
5 deliberating, of course, and you would be the liaison to the
6 Court for that matter. Now we will continue with the trial
7 of the case. Ms. Sarji?

8 BY MS. SARJI: Thank you, Your Honor. The defense
9 rests..

10 THE COURT: Thank you, ma'am. Ladies and gentlemen of
11 the jury, both sides have rested their case. It is now time
12 for the parties to give their opening -- or their closing
13 statements. I apologize. Please pay close attention. Ms.
14 Sarji, are you opening on the law?

15 AST. SOL. JUSTIS: I am, Your Honor.

16 THE COURT: You may proceed.

17 AST. SOL. JUSTIS: Thank you, Your Honor. May it
18 please the Court?

19 THE COURT: Yes, sir.

20 CLOSING ARGUMENTS

21 AST. SOL. JUSTIS: Good afternoon, ladies and gentlemen
22 of the jury. I'm going to spend just a few moments with
23 you, talk about the law as applicable in this case.
24 Anything I say that contradicts what the Judge instructs you
25 on after closing arguments, she will instruct you on the

1 law, then disregard what I say and follow what the Judge
2 tells you.

3 But, briefly, I'm going to talk about the law in this
4 case. First of all, Mr. Shewtzuk's is charged with one
5 count of murder. And murder is actually one of the
6 shortest -- has one of the shortest of definitions of any
7 crime. And it's simply killing another person with malice
8 aforethought, either expressed or inferred. And malice is
9 hatred; ill will, hostility towards another person; or it
10 could be the intentional doing of a wrongful act without
11 just cause or excuse and with an intent to inflict injury;
12 or under circumstances that the law will infer an evil
13 intent. Aforethought, that simply means -- malice
14 aforethought does not require that malice exists for any
15 particular time before the act is committed. However,
16 malice must exist in the mind of the defendant just before
17 and during the act for the time that the act was committed.
18 And when they talk about expressed or inferred, there's two
19 different ways malice can be shown. They're not different
20 types of malice; they're just ways that they are shown.
21 Malice aforethought may be expressed or inferred. These
22 terms, expressed and inferred, do not mean different kinds,
23 but merely the manner in which the malice may be shown to
24 exist.

25 First, we have expressed malice. When a person speaks

1 words which express hatred or it will for another, that's
2 expressed malice. Or when a person prepared beforehand to
3 do the act, which was later accomplished. Planning.
4 Preparation. That's expressed malice. Inferred malice may
5 be inferred from the conduct showing a total disregard for
6 human life. So that's something you infer from their
7 actions. Inferred malice may also arise when the deed is
8 done with a deadly weapon. So the use of a deadly weapon
9 may be inferred malice. The fact that a person used a
10 deadly weapon in committing the act.

11 (Brief interruption.)

12 AST. SOL. JUSTIS: There's also a felony murder
13 inference. If one intentionally kills another during the
14 commission of a felony, an inference of malice may arise.
15 As you know, the defendant is also charged with kidnapping
16 in these cases. So you're allowed to infer malice if you
17 believe that there was a kidnapping.

18 Now you're also going to be charged on a lesser
19 included charge of voluntary manslaughter. Okay. So if you
20 find that the defendant did not commit murder, you can then
21 look at voluntary manslaughter and see if that law applies
22 to the facts. And voluntary manslaughter is when the
23 defendant takes the life of another in the sudden heat of
24 passion based on sufficient, legal provocation. And both
25 the heat of passion and the sufficient legal provocation

1 must be present at the time of the killing. Not a week
2 before; not a day before; at the time of the killing. The
3 person has to be provoked. Mr. Shewtzuk is also charged
4 with three counts of kidnapping. One for the clerk, Ms.
5 Patel, who is behind the counter; one for Ms. Mary Miller
6 whom you heard from this week, the lady that was standing
7 next to Travis Gordon; and finally, Travis Gordon himself.
8 And to prove kidnapping, the law states if you unlawfully
9 seize, confine, inveigle, decoy, kidnap, abduct, or carry
10 away -- inveigle means to lure -- another person by any
11 means whatsoever without the authority of the law. So if
12 you're restraining that person's freedom, take away their
13 free will to leave, you have kidnapping.

14 And finally, we must prove all of these, and that goes
15 to each victim. We look at those three victims, and we
16 apply those -- that law to the facts you know about these
17 three victims. And finally, reasonable doubt. You must
18 prove these crimes were committed by the defendant beyond a
19 reasonable doubt. And that's not beyond any and all doubt.
20 There are very few things in this world that we know with
21 100 percent certainty. And the law does not require
22 100 percent certainty. It requires that you believe, you
23 are firmly convinced beyond a reasonable doubt of the
24 defendant's guilt. And if you are firmly convinced, then
25 you must find the defendant guilty.

1 Now in just a few moments, Ms. Sarji is going to get up
2 here. She's going to give you her closing arguments. I ask
3 that you pay attention. Keep an open mind. And after she
4 talks to you, then I'll present my closing. Thank you.

5 THE COURT: Ms. Sarji?

6 BY MS. SARJI: Thank you, Your Honor. May it please
7 the Court?

8 THE COURT: Yes, ma'am.

9 BY MS. SARJI: Ladies and gentlemen, just as Mr. Justis
10 asked you, I would ask you again what I did at the beginning
11 of this case which is to keep an open mind. Unquestionably,
12 this case is a tragedy and nothing that I'm saying here to
13 you today is meant to belittle or denigrate the sorrow that
14 Travis Gordon's family and friends are feeling. But the
15 question that you have to ask yourself is whether the
16 tragedy will be compounded. Because this is a tragedy all
17 around, for Mr. Shewtzuk as well. Is justice going to be
18 served here today or is the tragedy going to be compounded?
19 And that's a question that each and every one of you need to
20 ask yourselves. Because what we have here in our state is
21 that you all have to make that decision. Each of you
22 individually have to decide whether you believe that Thomas
23 Shewtzuk is guilty of murder and kidnapping beyond a
24 reasonable doubt. Whether you can go home and stand on your
25 conscience in that belief.

1 Tommy Shewtzuk did not intend to murder Travis Gordon.
2 If you look at what the evidence says that the State has
3 presented to you -- and you can go back and look at the
4 exhibits that have been entered into evidence. You know,
5 don't take my word for it. Go back through the things that
6 we have. And part of what we have is we've got these phone
7 records that were entered into evidence. What the phone
8 records show is that Tommy Shewtzuk and Travis Gordon were
9 corresponding with each other by text message and telephone
10 calls on June 13, 2015. And that Travis Gordon was coming
11 over to Tommy Shewtzuk's house. And they -- there's been
12 testimony that has been offered as well as the text messages
13 that are here before you that indicate that they were going
14 to fight. Tommy told his dad that this was because he had
15 been told that Travis Gordon had beaten up his ex-girlfriend
16 who was Katelynn Dubois. And that Travis had threatened
17 him. In any event, Travis went to Tommy's house that
18 morning. And if you look at the phone records, it shows
19 that it was about 9:30. He was getting directions; he says
20 I'm almost there. There is a phone call that's placed. And
21 then after that, you know, the texting and the phone
22 messages stop. And they're together from that point. If
23 Tommy Shewtzuk had intended to kill Travis Gordon, if there
24 was malice aforethought as the Solicitor has told you there
25 was, he would've done it in the half an hour that they were

1 together alone or otherwise because another third person.
2 He wouldn't have gone to a gas station where Travis gets out
3 of the car. He walks -- he almost in a relaxed manner, he
4 walks into the gas station. If you intended to kill
5 someone, you wouldn't do it that way. He wouldn't had let
6 him get out of the car. He wouldn't have gone to a public
7 place in broad daylight to a crowded gas station. Instead,
8 ladies and gentlemen, consider what Harley Austin told you,
9 which is that Tommy told her he never intended to kill
10 Travis Gordon. That this was an awful situation,
11 undisputedly awful situation, that got out of hand. But
12 that does not make him a murderer under our law. That does
13 not indicate malice aforethought.

14 Now the Solicitor, I'm sure, is going to get up and
15 tell you that the text messages that were sent from Tommy to
16 his cousin Alex, who came in and talked to you that said,
17 "Never mind, you know, you don't want this gun I'm trying to
18 sell. It's about to have a body on it." And that's a
19 really inflammatory statement to make. And it's really
20 scary that somebody would say that, right? But what Alex
21 told you is Tommy is a big talker. He took him to be
22 kidding. And right after that, after he makes this
23 statement, he then says I'm gonna go fight with this guy
24 who's threatened me. You know, he's not saying I'm gonna go
25 kill this guy. His intention is to go and engage in a fight

1 with him. And I think that that is where the malice
2 aforethought is not present here. Not only that, but just
3 the objective circumstances if you look at this with a
4 dispassionate heart and look at this from the evidence that
5 we have before us, there was plenty of time if this is
6 really what he had intended. If there was really malice and
7 a plan, he wouldn't have done it in this way. This was a
8 kid, two kids, and a very horrible situation. He didn't
9 have an evil heart with the intent to do someone in.

10 Kids these days, I mean, guns are everywhere. They're
11 in videos. They're in movies. They're wearing them as
12 fashion accessories. I mean, guns are being flashed and
13 these kids -- Tommy was 18. These kids do not appreciate
14 the consequences of these types of actions and what happens.
15 What happens after this incident? Tommy runs to his dad.
16 And again, this is not a cold-hearted murderer that is on
17 trial before you. He as well, ladies and gentlemen, he
18 didn't intend to kill anybody. He had a prior opportunity
19 to do this. I can't defend what happened. I can't defend
20 the act. But I can defend Tommy Shewtzuk and I can defend
21 what was in his heart that day and what his actions and the
22 objective evidence demonstrate, which is there was no malice
23 aforethought. This does not rise to the level of murder.
24 He never meant to kill Travis. I think what Harley
25 specifically said was he never meant to shoot him.

1 Detective Smith told you that when he looked at the
2 video what he saw was an altercation that led to a shooting.
3 There is -- as I said, there's been plenty of evidence.
4 Tommy's dad told you that what he had been told was that
5 Tommy believed that Travis had beaten his ex-girlfriend.
6 And although Katelynn wouldn't admit to that on the stand to
7 having told Tommy that, I would submit to you all as well
8 that she wasn't telling the whole truth to you. She denied
9 several times having continued contact with Tommy after they
10 broke up in April of 2015. Again, phone records don't lie.
11 I think another one of the witnesses said that to all today.
12 I think that was Alex Shewtzuk that told you all that. And
13 I would encourage you to go back to the phone records that
14 we have. And what you will find if you decide to do that is
15 that Katelynn actually continued to have contact with Tommy
16 in May of 2015; May 26, 2015, there were phone calls between
17 them that are evidenced in the actual records themselves.
18 There's a summary of calls that you can look at. She had
19 telephone calls with him on June 3 of 2015, which is another
20 piece of the evidence. There were calls between them on
21 June 5, 2015. I think -- and forgive me, I didn't bring up
22 that particular note, but there are two calls either June
23 5th or June 6th, and then another call the subsequent day.
24 And so when she sat before you and denied having told Tommy
25 that, I would ask you to look at that with a critical eye

1 and armed with the knowledge that she was lying when she
2 said she didn't continue to talk to Tommy. And we know that
3 from the objective evidence and the records that don't lie.

4 With regard to the kidnappings, this case is what it
5 is. It is one of the few cases where there is any kind of a
6 video of an event that has happened. And I think that you
7 all can draw your conclusions from that. I think that when
8 you look at it objectively, you're going to see that he
9 pointed the gun at these ladies that were in the store as
10 Ms. Mary Miller told you. I think that when you look at
11 that, there's enough for you to infer guilt on the charges
12 of kidnapping; but not on murder. He is not a murderer. He
13 did not have malice aforethought. The Judge is going to
14 tell you what the law is with regard to voluntary
15 manslaughter. And I would ask you to consider that in this
16 case. I think that there has been ample evidence presented
17 to you of the threats that went between the two of them by
18 virtue of Tommy's dad's testimony, as well as Tommy having
19 been told that Travis had beaten up the ex-girlfriend. And
20 I think that that is a passionate -- I mean, you heard that
21 Tommy was somebody who defends the people, that he is
22 protective of the people that he cares about. And Katelynn
23 was one of those people.

24 So I think that there is ample evidence from which you
25 guys can find that he is not guilty of murder. And that is

1 what I'm asking your verdict to be. I thank you all for
2 your time. I know this has been a big, long week. And I
3 appreciate all of your attention. I appreciate your open
4 minds. And I would ask you to please consider, each and
5 every one of you, to consider all of the evidence that we
6 have; the good, hard evidence that we have that doesn't add
7 up to with the State is asking you to find. Thank you.

8 THE COURT: Solicitor?

9 AST. SOL. JUSTIS: On June 13, 2015, this is Curtis's
10 son and Christian's brother, was executed. Plain and
11 simple. There's two questions I have the answer for you
12 today. And in any case, we have to answer. And that is
13 number one, was it a crime? Was it murder? Was it
14 kidnapping? And number two, did he do it? I think we
15 already know the answer to the second question. He did it.
16 Was it murder? Was it kidnapping? And did he possess a
17 weapon during the commission of a violent crime.

18 Now let's talk about the kidnappings first. We have
19 Ms. Patel, Ms. Miller. And I've broken them up two ways.
20 But Ms. Patel and Ms. Miller, they were seized and confined
21 in that gas station. Did they have the ability to leave
22 when he came in? When he's pointing those guns -- that gun
23 at them, did they leave? The fact that you watched that
24 video and you watched -- because there's a lot of stuff
25 going on in that video. More times you watch it, more

1 things you see. And when he comes back in and points that
2 gun when he comes back to get the keys, he points that gun
3 at Ms. Patel. She's got the phone to call 911. She drops
4 it and dives to the floor. You think she thought she was
5 kidnapped at that point? Was she free to do what she wanted
6 to do at that point? What about Ms. Miller? You heard her
7 testify. She thought she was going to be shot. She's
8 standing closer than me to him when the defendant comes in
9 and shoots Travis Gordon in the mouth right through his jaw
10 bone, a very tough bone, and it tears his tongue apart. You
11 heard the pathologist; start aspirating blood into his
12 lungs. You saw it on the video. In fact, there it is.
13 There it is. There's Ms. Miller; there's Travis. Is it
14 reasonable? Is it reasonable to believe that Ms. Miller at
15 that point felt her freedom was restricted? And they were
16 threatened with the gun. You heard Johdie Lee testify; she
17 heard the defendant say, "You call 911, I will come back and
18 kill you bitches." Those are his words; not mine.

19 Travis Gordon, he was lured to the defendant's house by
20 the defendant. We have the text message. Yes, Travis calls
21 him that morning. And what we know from those text messages
22 is that prior to Travis Gordon calling him, we went over
23 them, he's trying to sell this gun. He's trying to sell the
24 gun the night before. We have witnesses testify to that.
25 He's needing money. And then Travis calls. Someone with,

1 according to testimony, he's had difficulties with and that
2 they didn't like each other. Travis had a job; he didn't
3 have a job. He needed some money. He's trying to sell that
4 gun. What does Harley tell us? Harley says when I met with
5 Tommy after all this, he told me the plan was to rob him.
6 That's why he takes him to the gas station. I submit to you
7 he takes him there to go to the ATM machine and get some
8 money out. It's a problem though. Travis doesn't have his
9 wallet. Travis goes in there -- and he knows he doesn't
10 have his wallet because it's at home. Detective Smith found
11 his wallet at home when had to go visit Ms. Curtis and tell
12 her that her son had been murdered. So he walks in and what
13 does he do? You see him in the video. He goes right up the
14 counter and slow -- according to Ms. Mary -- slowly says
15 call 911. When you watch that video, you see his eyes. His
16 eyes are cutting back looking at Tommy. Tommy comes up to
17 see what he's doing. When he hears him say call 911, what
18 does he do? He walks out, reaches right into the window of
19 that van -- you can see it on video -- and grabs the gun.
20 Why is the gun there? The gun is there because I contend to
21 you, he had it pulled on Travis when they arrived. Because
22 why else would you say call 911? If Travis is going there
23 to fight him, why would Travis say call 911? So I contend
24 to you Travis was kidnapped. He was made to go to that gas
25 station.

1 Let's talk about the murder. And remember I told you
2 that in order for it to be murder, there must be malice
3 aforethought. So let's talk about all the malice in this
4 case. First of all, you have felony murder malice. He's
5 charged with kidnapping. So if you believe he was
6 kidnapping Travis Gordon, there's an inference of malice
7 right there when the murder happens. Also, I contend to you
8 based on some of the evidence that has come in this case
9 that the real reason was a robbery. And when he goes in and
10 says call 911, he done screwed up the plan. He don't want
11 to kill him there. He prefer to kill him somewhere else.
12 He doesn't want to do it broad day light. But at that
13 point, you already have someone saying call 911, and he
14 figures we're going to jail anyway.

15 We have what's called expressed malice. The whole,
16 never mind, you don't want it, it's about to have a body on
17 it. Those are his words that he sent. You know, he's
18 sending all of these text messages -- and you'll have them
19 back there; you can look at them -- about, you know, selling
20 a gun, got a strap for sale, got a strap for sale. He's
21 texting everybody and their uncle, got a strap for sale, got
22 a strap for sale. Then all of a sudden, you know, he's
23 communicating -- he gets a phone call from Travis and he
24 also talks to Joshua Jordan. I submit to you, that's Love.
25 That's this mysterious Love person. Okay. After he talks

1 to those two people, all of sudden, Alex responds back, how
2 much. And he's like never mind; it's about to have a body
3 on it. Who says that? And then he follows it up with,
4 yeah, I'm about fight this guy; if he have a gun, he'd pull
5 it, I'm gonna shoot his ass. How much more expressed malice
6 do you need? He's telling you what he's about to do. Now
7 his uncle, cousin, whatever he was, might've thought he's
8 just a big talker. He might be. But you know what? This
9 time, he backed it up. I'm gonna shoot his ass. And you
10 heard Ms. Mary testify that when he came in with the gun, he
11 said, "Don't mess with me." I contend to you, that's
12 expressed malice. When you're pointing a gun at someone and
13 you say, "Don't mess with me," that's expressed malice.

14 He recruited someone to help him, Josh Gordon. All of
15 those phone calls. And Josh initially sends a text and
16 says, "I'm tired. I'm gonna stay home." What does he do?
17 He immediately calls Josh. And then there's more phone
18 calls with Josh. Because he wants backup if he's gonna rob
19 somebody. He already thinks that Travis might have a gun;
20 best to have some backup. And he brings the gun with -- if
21 he was just going to fight him, why didn't he just fight him
22 at the house? He sends him his address. And he wants you
23 to believe that Travis Gordon was threatening him. He wants
24 you to believe that when Travis Gordon that morning called,
25 he said something to the effect, "I'm gonna come fight you."

1 Okay, let me give you my address. Who does that? Nobody.
2 And when you look at Travis's text, you know, Tommy texted
3 him his address. What Travis's response? Perfect, very
4 much appreciate it. Doesn't sound like someone who's coming
5 to kick your ass. And Travis says, "On the way." Okay.
6 And you follow the text messages. You know, this is where
7 Josh Gordon, "Tired, I'm gonna stay home." And then he
8 immediately calls and talks to Josh Jordan. And Travis
9 Gordon, almost there, "I ask that you be prompt. Where do
10 you want to meet afterwards?" I don't know but you, but if
11 I'm gonna kick somebody's ass, I don't say, hey, after I
12 kick your ass, where can we meet? Let's go have a drink
13 after I kick your ass. Makes no sense. Because I don't
14 know what story he gave Travis Gordon, but he fed him some
15 line to get him to come there thinking that everything was
16 going to be all right. Meanwhile, he's got this gun, and
17 he's telling people there's about to be a body on it.
18 That's premeditation. And then we have the inferred malice.
19 He used a gun. You see it on the video. It's him and he
20 uses a gun. And he fires not one, but two shots. Because I
21 guess shooting him in the mouth isn't good enough. So then
22 he shoots him again in the head. And you heard the doctor
23 testify, -- contact. It had to be close to the head because
24 of soot around the hole in his head.

25 You know, if he was -- I mean, he runs out to get the

1 gun. If he was so scared, leave. Travis doesn't have a gun
2 on him. He's wearing a T-shirt and gym shorts. He's not
3 doing anything in that video. Yeah, there's a struggle
4 because the guy is coming at him with the gun. So he goes
5 to grab at the gun. I contend to you that's a natural
6 reaction when someone has a gun pointed at your face. I
7 don't know -- get his, because he basically admitted it's
8 him. He told people he did it. Told his dad. Told his
9 cousin. Told everybody, he did. All right. His text
10 messages, his phone calls, puts him with the victim.
11 Twenty-four minutes before the murder, he's with the victim;
12 he's communicating with the victim. The victim is coming to
13 his house. On the way. I ask that you be prompt. And
14 then, finally, you have the video. And he told his dad I
15 did a bad thing; shot a boy twice; gonna go to North
16 Carolina. Why would you go to North Carolina? If this was
17 some kind of self-defense or you're just, you know -- why
18 are you trying to flee? Alex, I shot a boy. That's what he
19 testified. Harley, he was going to rob him. And mind you,
20 and you'll hear this in the Judge's instructions, unlike Law
21 and Order on TV, I don't have to prove a motive. I don't
22 have to prove why he did something. I have to prove that he
23 did those things; that he committed a murder. Why? I don't
24 know. There's only two people that know why. One of them
25 is not here right now.

1 I would contend to you he was going to rob. Travis
2 screwed that up when he went in that gas station and said
3 call 911. You know, text messages put him with a gun that
4 morning. He's communicating with the victim that morning.
5 He's telling his cousin, uncle, Alex, that the gun is gonna
6 have a body on it. He's gonna shoot him. And then if you
7 look at this, his phone goes quiet, okay. 9:43 is the last
8 he receives a text message. Okay. And then nothing else
9 until he receives a phone call which goes to voice mail at
10 11:20. Nothing on his phone. That's because he's
11 committing the murder and trying to get away at that point.
12 Okay. And then when you look at the rest of these over the
13 next several days until he's captured, he's not making very
14 many phone calls or text messages. People were calling him,
15 but they were all going to voice mail. He's hiding. There
16 is a text message -- you know, the phone calls with his dad,
17 with Alex, they're all in here. You'll see them. And the
18 text message where his dad tells him you need to turn
19 yourself in. And his response to his dad, it's in the text
20 message, no. Not, you know, he came at me, something like
21 that. No.

22 Forensics, obviously his fingerprints are found on the
23 passenger door handle of the van. You see him getting in
24 and out of the van. No surprise his fingerprints are there.
25 And then DNA, the cigarette if you watch the video. I

1 actually have a picture of it. There he is right there
2 right before he enters. What's he doing? He's taking that
3 last puff before he throws that cigarette down. And he's
4 gonna throw it down right on this side. Which as you look
5 at the door, it's the left-hand side, how many cigarette
6 butts where on the left-hand side? One. Remember Detective
7 Scott testified to that. We showed you the pictures.
8 They're in there. You'll look at them. The other side had
9 two cigarette butts. But the on the left side was one
10 cigarette butt by itself; it still had ash on it. That's
11 because it was just dropped by him. The. DNA comes back
12 one in 960 quadrillion. That's 9-6-0 and then 15 more
13 zeros. All right. That's the odds of selecting another
14 unrelated individual to match that DNA. All right. So
15 that's him. All right.

16 And then when you look at the video, you look at his
17 tattoos and his face. Yep, you'll have those back there.
18 Look at those tattoos; look at these that are taken when he
19 turns himself in. And the interesting thing is look what he
20 does? He tries to cover them up. Because he knows he's on
21 video at that point in time. And he knows he's wearing a
22 tank top so he's go to do something. And he cuts his hair
23 too. His hair is a lot bushier in your that video. And his
24 dad testified that he came home and cut his hair. Why?
25 Because he's trying to avoid being caught. You will have

1 those back there.

2 Now, let me just go over a few things that Ms. Sarji
3 had brought up. You know, if he wanted to kill him, he
4 would've killed him sooner. I submit to you he probably was
5 going to kill him, and he did kill him sooner. I submit to
6 you after he robbed him, he was going to kill him. Harley
7 said he never intended to kill him. Yeah, she also said he
8 intended to rob him. And Katelynn? Heck, Katelynn talked
9 to him just a couple months ago. And she really didn't want
10 to say what he told her about that. She was kind of
11 evasive. He tried to say that he was the passenger in the
12 van and Travis was swerving the van. Okay. So how do you
13 go from swerving the van to getting shot twice in the head?
14 That's one thing I think we do agree on; the defense and I
15 that, you know, Katelynn probably left some things out that
16 she talked to Tommy about. She talked about threats between
17 the two. Where's Travis's threats on this? Very much
18 appreciated; please be prompt. Yeah, that's real
19 threatening. The only threats I see in these text messages
20 come from Tommy. There's about to be a body on it. I'm
21 gonna shoot his ass. How much more threatening do you need
22 to be? And then he admit, he pointed the gun at the ladies.
23 Why? Why did he point it at the ladies? Because, you know,
24 that you just executed somebody in cold blood. Plain and
25 simple. When you look at -- put the malice back up there,

1 all those examples. When you look at all of the instances
2 of malice, we have every type of malice there is:
3 Expressed, inferred, felony, murder malice.

4 Keep going to where I go to where I list them out, the
5 examples; later on. It's after the law. There you go.
6 That was it.

7 All right. Look at all these: One, two, three, four,
8 five, six, seven, eight, nine. It doesn't get more
9 malicious than that. This is as malicious a killing, as
10 malicious a murder, as you will see. This isn't voluntary
11 manslaughter. This isn't heat of passion. Oh, we were
12 fighting and, you know, he was getting the best of me and I
13 just, you know, pulled out a gun and shot him. This is I
14 went out to the car when he dared to call 911. I went out
15 to the van, picked up a gun, came in. And he comes in
16 pointing the gun. He's pointing it -- I mean, as soon as he
17 walks in the door, he's pointing the gun. And he's in a
18 shooting stance as he's coming towards him. And that's what
19 Travis saw. Just a millisecond before being shot in the
20 mouth.

21 Ladies and gentlemen, that's not murder; that's
22 execution. Plain and simple. When you go back in that jury
23 room, you'll have all this evidence. I ask you to take a
24 look at it. And as Mr. Ward told you in opening, there's no
25 doubt he murdered Travis Gordon and kidnapped Travis Gordon,

1 Ms. Mary, and Ms. Patel. No doubt. Not a reasonable doubt;
2 there's no doubt. If you feel that there is a reasonable
3 doubt, then let him go. Let him loose if you don't believe
4 that's murder. Thank you.

5 JURY CHARGE

6 THE COURT: Thank you, Solicitor.. Ladies and gentlemen
7 of the jury, it's now time for me to instruct you on the law
8 of this case. The indictments in this case charged the
9 defendant with murder, possession of a firearm during the
10 commission of a violent crime, and three counts of
11 kidnapping. I remind you that the fact that the defendant
12 was arrested, charged, and indicted in this case is not
13 evidence in this case and cannot be considered by you as
14 evidence of guilt in this case. Nor does it create any
15 presumption or inference of guilt. The documents are simply
16 the formal written instruments which contain the charges
17 made against the defendant. They are formal documents by
18 which the case is simply brought into this court.

19 The indictments in this case allege five different
20 offenses. Again, the charges are murder, possession of a
21 weapon during the commission of a violent crime, and three
22 counts of kidnapping. Each indictment charges a separate
23 and a distinct offense. You must decide each indictment
24 separately on the evidence and the law applicable to it,
25 uninfluenced by your decision as to any other indictment.

1 The defendant may be convicted or acquitted on any or all of
2 the offenses charged. You will be asked to write a separate
3 verdict of guilty or not guilty for each separate
4 indictment. The defendant has pled not guilty to these
5 indictments. And that puts the burden on the State to prove
6 the defendant guilty. A person charged with committing a
7 criminal offense in South Carolina is never required to
8 prove himself innocent. I charge you that that is an
9 important rule of law that the defendant in a criminal trial
10 no matter what the seriousness of the charge may be, will
11 always be presumed innocent of the crime for which the
12 indictment was issued unless guilt has been proven by
13 evidence satisfying you of that guilt beyond a reasonable
14 doubt.

15 The presumption of innocence does not end when you
16 begin your deliberations. But it accompanies the defendant
17 throughout the trial until you reach a verdict of guilt
18 based on the evidence satisfying you of that guilt beyond a
19 reasonable doubt. Presumption of innocence is like a robe
20 of righteousness placed about the shoulders of the defendant,
21 which remains with the defendant until has been stripped
22 from the defendant by the evidence satisfying you of the
23 defendant's guilt beyond a reasonable doubt. The
24 presumption of innocence is not a mere legal theory. It's
25 not just a legal phrase. It is a substantial right to which

1 every defendant is entitled unless you the jury are
2 satisfied of the evidence of the defendant's guilt beyond a
3 reasonable doubt.

4 What is a reasonable doubt in the law? A reasonable
5 doubt is the kind of doubt that would cause a reasonable
6 person to hesitate to act. The State has the burden of
7 proving the defendant guilty beyond a reasonable doubt.
8 Some of you may have served as jurors in civil cases where
9 you were told that it is only necessary to prove that a fact
10 is more likely true than not true such as by the greater
11 weight or the preponderance of the evidence. In criminal
12 cases, the State's proof must be more powerful than that.
13 It must be beyond reasonable doubt. Proof beyond a
14 reasonable doubt is proof that leaves you firmly convinced
15 of the defendant's guilt. There are very few things in this
16 world that we know of absolute certainty. And in criminal
17 cases the law does not require proof that overcomes every
18 possible doubt. If based on your consideration of the
19 evidence, you are firmly convinced that the defendant is
20 guilty of the crimes charged, you must find the defendant
21 guilty. If on the other hand you think there is a real
22 possibility the defendant is not guilty, you must give the
23 defendant the benefit of the doubt and find him not guilty.

24 I remind you that during this trial you and I have
25 certain duties to perform. As the trial judge, it's my

1 responsibly to preside over the trial of this case, and I
2 also have the duty to rule on the admissibility of evidence
3 offered during this trial. You are to consider only the
4 competent evidence before you. If there's any testimony
5 ordered stricken from the record in this case during this
6 trial, you must disregard that testimony. You are to
7 consider only the testimony which has been presented from
8 the witness stand; any exhibits which have been made part of
9 the record in this case; and any stipulations of counsel. I
10 have the additional duty to charge you the law applicable to
11 this case. As the presiding judge, I'm the sole judge of
12 the law in this case. And it is your duty as jurors to
13 accept and apply the law as I now state it to you. If you
14 already have any idea as to what the law is or what the law
15 ought to be and it does not agree with what I now tell you
16 with the law is, you must abandon this idea because you are
17 sworn to accept it and apply the law exactly as I state it
18 to you.

19 In every case tried in this court before a jury, the
20 jury becomes the sole and exclusive judge of the facts in
21 the case. A trial judge cannot intimate, state, comment on,
22 or make any statement to a trial jury about the facts in the
23 case. You're not too infer from what I have said during the
24 progress of his trial and ruling upon the admissibility of
25 the evidence or otherwise or anything that I say now during

1 the course of this instruction to you that I have any
2 opinions about the facts in this case. The law does not
3 allow me to have an opinion about the facts in this case.
4 This is a matter solely for you, the jury, to determine. As
5 jurors, it is your duty to determine the effect, the value,
6 the weight, and the truth of the evidence presented during
7 the trial.

8 There are two types of evidence which are generally
9 presented during a trial: direct evidence and circumstantial
10 evidence. Direct evidence is the testimony of a person who
11 claims to have actual knowledge of a fact such as an
12 eyewitness. Circumstantial evidences is proof of the chain
13 of facts and circumstances indicating the existence of a
14 fact. The law makes absolutely no distinction between the
15 weight or value to be given to either direct or to
16 circumstantial evidence. Nor is a greater degree of
17 certainty required of circumstantial evidence than of direct
18 evidence. You should weigh all of the evidence in the case.
19 After weighing all of the evidence, if you're not convinced
20 of the guilt of the defendant beyond a reasonable doubt, you
21 must find the defendant not guilty. Necessarily, you must
22 determine the credibility of witnesses who have testified in
23 this case. Credibility simply means believability. It
24 becomes your duty as jurors to analyze and to evaluate the
25 evidence and determine which evidence convinces you of it's

1 truth. In determining the believability of witnesses who
2 have testified in this case, you may believe one witness
3 over several witnesses or several witnesses over one
4 witness. You may believe a part of the testimony of a
5 witness and reject the remaining part of the testimony of
6 that same witness. You may believe the testimony of a
7 witness in its entirety or reject the testimony of a witness
8 in its entirety. You may consider whether the witness has
9 exhibited to you any interest, bias, prejudice, or any other
10 motive in this case. You may also consider the appearance
11 in the manner in which a witness acts while on the witness
12 stand. The rules of evidence ordinarily do not permit
13 witnesses to testify as to opinions or conclusions. An
14 exception to this rule exists where witnesses that we call
15 are expert witnesses. A witness who by education and
16 experience has become an expert in some part, science,
17 profession, or calling may state an opinion as to relevant
18 material matter in which the witness claims to be an expert
19 in and may also state the reasons for that opinion. You
20 should consider any expert opinion received into evidence in
21 this case like any other evidence and give it the weight
22 that you think that it deserves. If you decide that the
23 opinion of an expert witness is not based on sufficient
24 education and experience, or if you conclude that the
25 reasons given in support of the opinion are not sound, or

1 that the opinion is outweighed by other evidence, you may
2 disregard that opinion entirely. An expert witness's
3 testimony is to be given no greater weight than that of the
4 other witness simply because the witness is an expert.
5 Further, you're not required to accept an expert's opinion
6 even though it's not contradicted.

7 There has been evidence presented that witnesses may
8 have made prior statements which are not consistent with the
9 witnesses present testimony. You may use this evidence to
10 decide whether to believe the witness. You may also use
11 evidence of the earlier contradictory statements to
12 determine the truth of those statements. It is up to you to
13 decide whether to believe the earlier statements or the
14 testimony which was given in trial. If a witness has shown
15 to have knowingly testified truthfully concerning any
16 material matter, you may consider this in determining
17 whether to trust the witness's testimony as to other
18 matters. You may reject all testimony of that witness or
19 give all or part of the testimony the weight that you think
20 that it deserves.

21 I instruct you and emphasize that the fact that the
22 defendant did not testify is not a factor to be considered
23 by you in any way in your deliberations and in your
24 consideration of the question of guilt or innocence of the
25 defendant. It must not be considered by you in any manner

1 whatsoever. A defendant has the constitutional right to
2 remain silent. And the assertion of this right must not be
3 considered by you in your deliberations. I repeat, under
4 your oath you are to draw no conclusions whatsoever from the
5 fact that the defendant in this case did not testify. The
6 fact that the defendant did not testify should not even be
7 discussed in the jury room. The burden of proof as I have
8 stated to you is on the State. The defendant is not
9 required to prove his innocence. The burden of proof
10 remains on the State to prove guilt beyond a reasonable
11 doubt.

12 In order to establish the criminal liability, criminal
13 intent is required. For example, the mental state required
14 to be proven by the State for a particular crime might be
15 purpose, intent, knowledge, recklessness, or criminal
16 negligence. Criminal intent must be proven by the State
17 beyond a reasonable doubt. Criminal intent is always a
18 matter that must be determined by the jury from the
19 circumstances surrounding the situation. There is no way to
20 prove intent to a mathematical certainty. There is no way
21 medical science can dissect a person's brain and determine
22 what the person had in mind. So the law says that criminal
23 intent may be inferred from the circumstances shown to have
24 existed. This is how you make a determination of whether or
25 not the element requiring intent was present. It is not

1 necessary to establish intent by direct and positive
2 evidence; but intent may be established by inference in the
3 same way as any other fact by taking into consideration the
4 acts of the parties and all of the facts and circumstances
5 of the case. Criminal intent is a mental state. A
6 conscious wrongdoing. It is up to you to determine what the
7 defendant intended to do based upon the circumstances shown
8 to have existed. Criminal intent can arise from action or
9 failure to act. It may arise from negligence, recklessness,
10 or an indifference to duty or to consequences that is
11 considered by the law to be the equivalent of criminal
12 intent.

13 The defendant is charged with murder. The State must
14 prove beyond a reasonable doubt that the defendant killed
15 another person with malice aforethought. Malice is hatred,
16 ill will, or hostility towards another person. It is the
17 intentional doing of a wrongful act without just cause or
18 excuse with the intent to inflict an injury or under
19 circumstances as the law will infer an evil intent. Malice
20 aforethought does not require that malice exists for a
21 particular time before the act is committed. But malice
22 must exist in the mind of the defendant just before and at
23 the time that the act is committed. Therefore, there must
24 be a combination of the previous evil intent and the act.
25 Malice aforethought may be expressed or inferred. These

1 terms express and infer do not mean different kinds of
2 malice, but merely the manner in which the malice may be
3 shown to exist. That is either by direct evidence or by
4 inference from the facts and circumstances which are proved.
5 Expressed malice is shown when a person speaks words which
6 express hatred or ill will for another when a person
7 prepared beforehand to do the act which was later
8 accomplished. For example, lying in wait for a person or
9 any other acts of preparation going to show that the deed
10 was within the defendant's mind would be expressed malice.
11 Malice may be inferred from the conduct showing a total
12 disregard for human life. Malice may also be implied if one
13 intentionally kills another during the commission of a
14 violent crime. Inferred malice may also arise when the deed
15 is done with a deadly weapon. A deadly weapon is any
16 article, instrument, or substance which is likely to cause
17 death or great bodily harm. Whether an instrument has been
18 used as a deadly weapon depends on the facts and
19 circumstances of each case. A pistol is an example of an
20 instrument which may be considered a deadly weapon.

21 The defendant is also charged with kidnapping. The
22 State must prove beyond a reasonable doubt that the
23 defendant knowingly and unlawfully seized, confined,
24 inveigled, decoyed, kidnapped, abducted, or carried away
25 another person without the authority of law. To do a thing

1 unlawfully is to do it willfully against the law. Knowingly
2 means with knowledge, consciously not accidentally. Seize
3 means to take ahold suddenly or forcibly. Confine means to
4 limit, restrict, or enclose within the bounds, imprison or
5 shut or keep in. Inveigle means to lure, entice, or lead
6 astray by false representations, promises, or other
7 deceitful means. Decoy means to lure by or as by decoy. A
8 decoy is something to entice a person into a trap. Kidnap
9 is to remove a person against his will by unlawful force or
10 fraud. Abduct means to carry away secretly or by force for
11 an illegal purpose. Carried away means to remove. The
12 State does not have to prove that the defendant did all of
13 these things. Instead, if you find beyond a reasonable
14 doubt that the defendant did any of these things, you may
15 find the defendant guilty of kidnapping. Something done
16 without the authority of law is something which the law has
17 not sanctioned, permit, allow, condone, or provide
18 justification for. The kidnapping does not have to be for
19 any personal or monetary gain for any illegal purpose but
20 may be for any reason whatsoever.

21 If you find that the State has failed to prove beyond
22 reasonable doubt that the defendant committed murder, you
23 may consider whether the State has proved beyond a
24 reasonable doubt that the defendant committed voluntary
25 manslaughter. To prove voluntary manslaughter, the State

1 must prove beyond a reasonable doubt that the defendant took
2 the life of another in the sudden heat of passion and based
3 on sufficient legal provocation. Both heat of passion and
4 sufficient legal provocation must be present at the time of
5 the killing to constitute a voluntary manslaughter. Sudden
6 heat of passion may for a time affect a person's self
7 control and temporarily disturb a person's reason. The
8 sudden heat of passion must be the type that would make an
9 ordinary person unable to fully reflect on his actions and
10 would produce an uncontrollable impulse to do violence.
11 Sufficient legal provocation must be the type that would
12 make a person of ordinary reason and caution to become
13 enraged and to lose control temporarily. The provocation
14 needed for voluntary manslaughter must come from some act of
15 or related to the victim. Words alone however vulgar and
16 insulting are not enough to be legal provocation. Where
17 death is caused by the use of a deadly weapon, words must be
18 accompanied by some overt, threatening act which could have
19 produced the heat of passion. The exercise of the legal
20 right no matter how offensive it is to another is never
21 sufficient legal provocation for voluntary manslaughter. If
22 the heat of passion had cooled or if there was enough time
23 to time between the provocation of any, and the killing and
24 for the passion of a reasonable person to cool, the killing
25 would not be voluntary manslaughter. In deciding whether a

1 reasonable person would have had enough time to cool off,
2 you should consider all of the circumstances surrounding the
3 killing. You may consider the nature of the provocation if
4 any, the defendant's mental physical state and the
5 circumstances and relationships between the parties.

6 The defendant is charged with possession of a weapon
7 during the commission of a violent crime. The State must
8 prove beyond a reasonable doubt that the defendant was in
9 possession of a firearm or visibly displayed what appeared
10 to be a firearm during the commission of a violent crime. A
11 firearm means any machine gun, automatic rifle, revolver,
12 pistol, or any weapon which will as designed to or made
13 readily converted to expel a projectile. In order to find
14 the defendant guilty of possession of a weapon during the
15 commission of a violent crime, you must first find the
16 defendant guilty of either committing a violent crime or
17 intended to commit a violent crime. Murder and kidnapping
18 and involuntary manslaughter are all considered violent
19 crimes. The State must prove beyond a reasonable doubt that
20 the weapon furthered, advanced, or helped during the
21 commission of a crime.

22 Ladies and gentlemen of the jury, there are several
23 different verdicts for you to consider in this case. Please
24 remember that your verdict must be a unanimous verdict. You
25 will have in your jury room the verdict form. And

1 Mr. Foreman, this is the verdict form. And it's pretty
2 self-explanatory. It gives you the name of the case, the
3 indictment numbers, and each of the charges. It begins with
4 as to the charge of murder, we the jury unanimously find the
5 defendant, and then you circle the appropriate verdict. If
6 on the charge of murder your verdict is not guilty, then you
7 consider the voluntary manslaughter charge. If your verdict
8 is guilty on the murder, then you move on to the next charge
9 which is the possession of a weapon during the commission of
10 a violent crime. You go through each of those other
11 charges, each of the kidnappings separately. Again,
12 remember my instruction, you must find the facts on each
13 indictment separately.

14 Once you have reached a verdict on all of the
15 indictments, if you would sign here, Mr. Foreman. And also
16 you will have each of the indictments with you back in the
17 jury room. This is the front of the indictment. And the
18 back of the indictment contains the allegations of the
19 indictment. Mr. Foreman, once you reach a verdict on each
20 indictment, if you would write the verdict down here either
21 guilty or not guilty, or not guilty or guilty whichever it
22 is. And then sign your name and date it. Again, there's no
23 reason to state one or the other first. Obviously, one must
24 come first before the other. Also, I'm going to send you in
25 your jury room. But for the last time, please remember not

1 to begin your deliberations just quite yet until you have
2 all of the exhibits and the verdict forms and the
3 indictments. That is just to make sure I didn't leave out
4 any particular instruction that you needed to hear. So if
5 you would, please, retire to your jury room. And once you
6 do reach a verdict, if you would knock on the door, then
7 we'll bring you back in to receive your verdicts.

8 (The jury exits the courtroom at 2:57 p.m.)

9 THE COURT: Any exceptions or objections on the charge
10 of the law from either the State or from the defense?

11 AST. SOL. JUSTIS: None, Your Honor.

12 BY MS. SARJI: I don't have any exceptions or
13 objections with regard to the charges on the law. I would,
14 however, at this point move for a mistrial and ask the Court
15 to discharge the jury based on Mr. Justis's improper
16 comments to the jury that if they don't find him guilty,
17 that he's gonna cut him loose. I did find some case law,
18 Judge, while you were charging the jury. State versus
19 Davis, 239 South Carolina 280. That's a 1961 case. And in
20 that case, there was a comment made about if the jury didn't
21 find that particular defendant guilty of rape that they were
22 gonna -- he was gonna cut loose another rape defendant. And
23 that they found that that was an improper argument made by
24 the solicitor and that warranted a mistrial and a discharge
25 of the jury in the case. That was exactly what the Mr.

1 the defendant's guilt, find him not guilty, which is good
2 law, and cut him loose.

3 THE COURT: Thank you. Before we get to that, before
4 we put that on the record, I understand there are no
5 objections or exceptions to the charges on the law. We did
6 have a charge conference prior to that being done. So all
7 the charges that were requested were actually given.

8 In regards to your motion for a mistrial, Ms. Sarji, I
9 certainly understand the distinction between the two cases.
10 And the Solicitor, what he stated just now is what I heard
11 as well. Basically, if you're not convinced of the
12 defendant's guilt beyond a reasonable doubt, find him not
13 guilty, cut him loose; let him go. He didn't say cut him
14 loose so he can kill somebody or cut this murderer loose.
15 So I thinks there's a clear distinction, and that your
16 motion is respectfully denied. Anything further? I'm going
17 to go let the alternate go at this point.

18 AST. SOL. JUSTIS: No, Your Honor.

19 BY MS. SARJI: No, Your Honor.

20 AST. SOL. JUSTIS: We'll collect the evidence and make
21 sure we have it all.

22 THE COURT: Make sure you got everything. And here's
23 the indictments and the verdict form.

24 (The proceedings in the trial of this cases recessed at
25 3:01 p.m. The jury began deliberations at 3:06 p.m.)

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(The proceedings resumed at 4:22 p.m.)

THE COURT: While we're waiting for Mr. Justis, it's my understanding that we do have a verdict in this case. If there are family members or other people in the media that would have an emotional outburst or not be able to control your emotions, I'll ask that you leave the courtroom at this time. (Brief pause.) Everyone present.

AST. SOL. JUSTIS: Yes, Your Honor.

THE COURT: Let's have our jury in please.

(The jury enters the courtroom at 4:25.)

VERDICT OF THE JURY

THE COURT: Mr. Foreman, has the jury reached a verdict?

FOREPERSON: Yes, Your Honor.

THE COURT: Would you please hand it to the bailiff. Everything appears in order. Madam Clerk, if you would please publish the verdict.

THE CLERK: In the matter of State of South Carolina versus Thomas Shewtzuk, indictment numbers 2015-GS-18-951, 952, 953, 954, and 2016-GS-18-972, we the jury unanimously find the defendant as to the charge of murder guilty. As to the charge of possession of a firearm during the commission of a violent crime, we the jury unanimously find the defendant guilty. As to the charge of kidnapping of Travis

1 Gordon, we the jury unanimously find the defendant guilty.
2 As to the charge of kidnapping of Hatel Patel, we the jury
3 unanimously find the defendant guilty. As to the charge of
4 kidnapping of Mary Miller, we the jury unanimously find the
5 defendant guilty. Signed by foreperson, Wayne Starett,
6 September 8, 2016.

7 THE COURT: Thank you, Madam Clerk. Would you please
8 poll the jury?

9 THE CLERK: Yes, ma'am. As I call your name and juror,
10 if you'll please stand. Juror number 152, Gregory Warren.
11 Was this your verdict in the jury room?

12 JUROR: Yes.

13 THE CLERK: Is this still your verdict?

14 JUROR: Yes.

15 THE CLERK: Thank you. Juror number 14, Angie Bison.
16 Was this your verdict in the jury room?

17 JUROR: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR: Yes.

20 THE CLERK: Thank you. Number 24, Joshua Brown, Jr.
21 Was this your verdict in the jury room?

22 JUROR: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR: Yes.

25 THE COURT: Thank you. Number 105, Allison

1 THE COURT: Anything to further from either the State
2 or the defense at this before we proceed to sentencing?

3 AST. SOL. JUSTIS: Not at this time, Your Honor. I'm
4 having the sentencing sheets printed out right now.

5 THE COURT: All right, sir.

6 BY MS. SARJI: Your Honor, I would renew my motion to
7 bifurcate the sentencing in this case. I had argued at
8 pretrial, and at that point you told me that it was
9 premature for me to be arguing that since we had not yet got
10 the verdict. Now that we have a verdict, I would renew that
11 motion. And I do believe even more after the Court has had
12 the opportunity to review all of the evidence and hear all
13 of the circumstances surrounding this, that it would further
14 sure up our position that his youth was a great contributor
15 to his actions in this case. And I do believe that it is
16 warranted for the Court to allow me the additional time in
17 order to prepare a proper mitigation in his case, and to get
18 a mitigation specialist on board.

19 I do think that the same rationale that the Court
20 applied in Aiken versus Byars in South Carolina as well as
21 in Miller and Roper and Graham, all of those cases support
22 what I'm asking you to do. Which is to give us a more in
23 depth, individualized sentencing hearing in his case after
24 there has been the appropriate investigation into the
25 mitigation in his case. And, Judge, it's not like there's

1 not a lot of information out there to gather, much of which
2 I was unaware of until the beginning of August. I think
3 when Tommy finally started to trust me a bit and has Aunt
4 Linda told me a lot of things about their backgrounds, and
5 after that point, Judge, I began gathering records. I have
6 paid for the records from William S. Hall. I do not yet
7 have those. But there were -- I mean it was \$54 and change,
8 I think; or \$56 and change worth of records. And, you know,
9 so it's not as if he's just telling me that he's been
10 committed to William S. Hall before. My understanding is
11 that he was actually committed for a period of 90 days.
12 And I think that that will be a significant record that I
13 need the opportunity -- you know, I don't know what is
14 holding it up because I should have had them by now. But I
15 don't have those records in my possession yet. I was able
16 to get the records from Connie Maxwell, which is a
17 children's home that he went and was in for a period of time
18 during his youth.

19 There is extensive mitigation in this case that needs
20 to be more fully explored. And especially when in his case,
21 you know, obviously, with the murder charge, he's facing
22 life without parole. But even if Your Honor were to give
23 him a lesser sentence of 40 or 50 years, statistically he
24 dies in prison. And in order to do my job to the best of my
25 ability, Judge, I don't know how I can not ask you to give

1 me this extra time. I know -- I mean, the State's interest
2 in having this charge resolved has been met. This is -- I
3 have had this case less than a year, Judge. I got this case
4 in October of last year. This was really fast for a case to
5 be called to trial. I mean, I've had other cases that were
6 scheduled this summer for trial and my clients in Dorchester
7 County were waiting for three years on armed robbery charges
8 where I was making speedy trial motions. I mean, this was
9 really fast. And I'm asking you for six months, Judge. And
10 I don't think it hurts anything to give me that time to
11 gather the records, to get the appropriate experts involved.
12 And, Judge, it may not change your decision, but it will at
13 least give me the chance. I think the law supports it. I
14 think the science supports it. When you read those United
15 States Supreme Court cases, the rationale behind them, and
16 the science of brain development in youth, it supports the
17 fact that at 18 there's no magic switch that gets flipped.
18 He's in the exact same position that a 17-year-old would be
19 but for the fact -- if he was 17 years old, he still would
20 have been charged as an adult. But because of, you know,
21 that six months of time in his life that passed, I'm having
22 to argue for this instead of being given it by default. And
23 so, Judge, I would just ask you to bifurcate these
24 proceedings and allow me the opportunity to do my best job
25 for him; allow the Court the opportunity to hear -- to do

1 justice in this case.

2 THE COURT: Thank you, Ms. Sarji. Solicitor?

3 AST. SOL. JUSTIS: Your Honor, I think I made my
4 argument pretrial. But I'll essentially say that based on a
5 Aiken v. Byars, which is the case she refers to, is for
6 juveniles under the age of 18. He was 18 at the time of
7 this crime. So that really doesn't apply to him. As I
8 mentioned in pretrial, putting off the sentencing delays
9 several things. Number one, any kind of plea offer or any
10 kind offer we can make the codefendant. He's incarcerated
11 now. He was arrested several weeks ago by US marshals.
12 He's incarcerated. If we don't know what we're going to do
13 with the actual shooter as far sentencing, how can I make an
14 offer to the person that we now know wasn't the shooter.

15 Also, I think the victim is entitled to, or victim's
16 family entitled to, closure. They've been waiting over a
17 year, 15 months, for this day. This day has come. And she
18 does have the ability to file for a sentence
19 reconsideration. And at that point when she gets those
20 records, you know, she can provide those to the Court. But
21 I think in the interest of justice and to give this family
22 some, some, closure in this case as it relates to
23 Mr. Shewtzuk, I think we should move, and move directly to
24 sentencing at this time.

25 THE COURT: Thank you, counsel. Ms. Sarji, as we

1 discussed in pretrial, the motions, I certainly understand
2 your argument that there is some science out there that
3 draws attention to mitigating circumstances for people of
4 youth. However, the Aiken v. Byars decision does not apply
5 to your client. The law in this state is very clear, and it
6 is for those under the age of 18. And you're client was 18
7 at the time. So that bifurcated process is not pursuant to
8 the law in this state as applicable to your client. So your
9 motion would be denied.

10 I understand that the case was quickly called to trial,
11 but the case is over a year old. You had the opportunity to
12 interact with your client. You had the opportunity to
13 interact with your client's family. They're present in the
14 courtroom. They can certainly present testimony during
15 sentencing regarding any mitigation. Your client is
16 certainly free to present any testimony he would like to
17 offer to the Court regarding any mitigation. So certainly I
18 think you're fully prepared to go forward, and your motion
19 is respectfully denied.

20 We will be at recess for a short while while I let the
21 jury -- while I release the jury. And then we'll proceed to
22 sentencing.

23 BY MS. SARJI: Your Honor, can I ask for one thing that
24 Mr. Justis brought up? That because I don't have the
25 records and I have paid for them. I've requested them.

1 I've done everything I could do to get them before today.
2 And he mentioned my ability to file a motion to reconsider.
3 Would the Court consider expanding the time within which I
4 have to file the motion to reconsider so that I'm not bound
5 to the ten days. So that if I don't have those -- or
6 alternatively, allow me to file the motion to reconsider so
7 that I'm protected in terms of the procedural requirement of
8 the ten days. But then postpone the hearing, if you're
9 inclined to have one, until after I have received those
10 records. Because that's something that is out of my
11 control.

12 THE COURT: Certainly, Ms. Sarji. And what I would
13 encourage you to do is based upon your waiting for those
14 records, file the motion in a timely manner. However, I
15 will rule today that you don't have to attach those records
16 to your motion. I'll leave that issue open until we either
17 schedule a hearing or I receive those documents to determine
18 whether or not a hearing is warranted on the matter.

19 BY MS. SARJI: Thank you, Your Honor.

20 THE COURT: We'll be at recess for just a minute.

21 (A brief recess was taken at 4:38 p.m. and resumed at
22 4:46 p.m.)

23 THE COURT: For the record, the jury has been released
24 from their duty. However, they did want to be present in
25 the Court, which I've allowed them to sit back in the jury

1 box.

2 AST. SOL. JUSTIS: May I approach, Your Honor?

3 THE COURT: Yes, sir. (Brief pause.) All right.

4 Counsel, if you would please have your client stand.

5 Solicitor, are you ready to proceed?

6 AST. SOL. JUSTIS: The State's ready, Your Honor.

7 THE COURT: You may proceed, sir.

8 AST. SOL. JUSTIS: Thank you, Your Honor. We do have
9 several of the victims here today. We do have Travis's mom
10 and his brother. I do believe they want to address the
11 Court. And we also have Ms. Miller and her daughter. If
12 they can please come forward at this time.

13 THE COURT: Good afternoon. Who would like start
14 first?

15 VICTIM'S MOTHER: He's going to read my statement
16 because I don't want to lose it.

17 THE COURT: Yes, ma'am; that's fine. Yes, sir. Your
18 name for the record?

19 OTHER: Christian Gordan.

20 THE COURT: All right, Mr. Gordan.

21 MR. GORDAN: I would like, actually, if you would go
22 first.

23 THE COURT: Your name?

24 MS. MILLER: I just want to say to the defendant, yes,
25 I in my heart feel as if you belong to go to jail for life.

1 You took a life and I've always felt that way. And I have
2 always taught my kids if you take -- do something wrong,
3 you're paying for it. And I know that was a young man,
4 didn't know him. But I was in the store and seen everything
5 and what you did was not called for. And I just want you to
6 think about the days that you're going to be in prison and
7 thinking about the life that you took.

8 THE COURT: Yes, sir?

9 MR. GORDAN: Again, this is -- Your Honor, this a
10 statement that my mother wrote.

11 Good afternoon, Your Honor. Thank you for allowing me
12 the opportunity to come before you and speak on behalf of
13 not only myself and my family, but for my son Travis Aaron
14 Gordan. Your Honor, my son was only 23 years old. He had
15 his entire future ahead of him. He had just started a new
16 job at Google, which was so excited about. Because this was
17 his door that opened a world of opportunity; these
18 opportunities that he will never get to experience. He also
19 worked part-time as an unarmed security officer helping to
20 protect patrons at supermarkets around the tricounty area.
21 As a mother, I was scared that something would happen to him
22 on his job because he would work odd hours into the night,
23 and some jobs were in not-so-nice areas. He did his job
24 diligently and with respect to whomever he came in contact
25 with. He had a childlike personality that is rare in people

1 these days. He didn't care anything about your race, color,
2 creed; he accepted everyone for who they were.

3 I am a retired veteran of the United States Coast Guard
4 and was a single mother raising three children during a
5 military career. I made sure I instilled in my children
6 respect and honor, to not judge people, and allow them to
7 experience different cultures. They did not have an easy
8 life, but I made them into caring, responsible adults who do
9 their part in making this society a little better. On June
10 13, 2015, my world was completely -- my world was completely
11 decimated. I lost my baby boy. I did not know why someone
12 would want to hurt him in such a brutal and callous way. On
13 the day, a piece of my soul died. I became someone else;
14 someone I hoped and prayed I would never be. And the sad
15 part is, there is no name for a mother who loses a child.
16 There is widow and widower for some who loses a spouse; but
17 nothing for a parent who loses a child. On the day, the
18 world lost a beautiful soul. And if you think about it, he
19 affected every single person in this courtroom in some way.
20 We are all here because Thomas decided that my son didn't
21 deserve to live.

22 We will all remember this trial. The officers who
23 diligently did their duty will remember this case for years
24 to come. When I first met Mr. Justis, I gave him a picture
25 of Travis. It was a memorial card that we gave to those

1 that attended his service. I told Mr. Justis to staple the
2 card to his file because I wanted him to see his face every
3 time he looked at that file and remember that this was
4 someone's child. He was a brother, a grandson, a nephew,
5 and a friend to many. And to some that didn't deserve his
6 friendship, he wasn't just another statistic in today's
7 society. Your Honor, I plead before you to please remember
8 that this is my son. A son that I will not get to see grow
9 old; who will never get to fulfill his dream of becoming a
10 paleontologists; who will never get married and raise a
11 family. I will never have the chance to dance at his
12 wedding. I will never get to hold the grandchildren that he
13 may have; or celebrate milestones in life because that life
14 was brutally cut short.

15 This tragedy also affected me physically, mentally, and
16 spiritually. It has affected the way I live my life today
17 for the rest of my life. I have to attend post-traumatic
18 stress disorder and grief counseling on a regular basis so
19 that I am able to cope with everyday life. I suffer from
20 fibromyalgia, and autoimmune disorder that can be
21 debilitating at times when my stress level increases. It is
22 not fair to my family that have to assist me when the pain
23 becomes too much to bear. I no longer live my life the way
24 I did 15 months ago. And all because a boy who has no
25 respect for life decided that it would cool to shoot my son

1 and rip him away from me. And it is evident that he is
2 proud of what he did because he displays his prize on his
3 face in the form of a teardrop tattoo.

4 Your Honor, I come before to ask that you would
5 strongly consider giving Thomas a sentence of life without
6 parole. He deserves the death penalty, but that would not
7 provide him the kind of suffering that our family that will
8 endure the rest of our lives. I also ask that if possible
9 that he be put into a prison that is far, far from Berkeley,
10 Dorchester, and Charleston counties. He doesn't deserve to
11 see his family. And his family doesn't deserve to see him
12 whenever they can because I will not get to see my son ever
13 again. I cannot hold him, hug him, talk to him, and grow
14 old with him. I appreciate your time and your
15 consideration. Thank you.

16 THE COURT: Thank you, Mr. Gordon.

17 MR. GORDAN: I cannot speak on behalf of my mother
18 because I don't know what it's like to lose a child. But
19 I've heard it's one of the most painful things that anyone
20 can ever go through. I will speak on behalf of myself and
21 my sister, who is also Travis's younger sister, who found it
22 too difficult to be here for the trial. And also on behalf
23 of all his friends and those that came to see us when he
24 passed.

25 When Detective Smith came to my house June 13th, it was

1 around 6:00 p.m., the doorbell rang. I thought nothing of
2 it, especially since I was only in town for the summer, I
3 was transitioning between graduating college and starting my
4 first job and my career. No more than two minutes later, my
5 mother screamed my name and it pierces my heart to its very
6 core. I've never heard her scream that way before. And it
7 haunts me every day; I hear that scream in my head. And I
8 feel as though I will hear it for the rest of my life. I
9 ran to see her and she was obviously in a panic. Her
10 reaction was to look out the window because I know she
11 wanted to run after Travis when she found out that he had
12 passed.

13 The effect that this event has had a my family is
14 great. As I said, my sister couldn't find the strength to
15 be here today. She has come down with depression. Travis
16 was her absolute best friend. And I raised both of them.
17 As my mom said in her statement, she was a single mother.
18 The reason being is because my father was a substance
19 abuser. He was physically, verbally, emotionally abusive
20 not just to my mother, but to me, to Travis, and to Miranda,
21 my younger sister. We got through all of that together.
22 And when Travis passed, and because I was gone because of
23 college and again starting a new career, she lost the one
24 person that was there for her. And since then she's been
25 like my mother but I would say worse; completely and utterly

1 destroyed emotionally. All she can do now is go to work.
2 And when she's home, she doesn't want to be home. Because
3 my brother is everywhere in the house and she can't stand to
4 miss him that much. Friends have sent art work because they
5 loved that boy so much; it's all around our house. I
6 remember leading up to his memorial, all the support we got
7 and all the tears shed in our house and on our lawn because
8 they couldn't believe that such a horrible act of violence
9 was acted upon such an angel on earth.

10 As I said about our upbringing, Travis was unique in
11 every way. My sister and I were both born in July; he was
12 born in April. My sister has the same skin tone as me, but
13 he was darker because our father is African-American. He
14 embraced his uniqueness, his individuality, and he grew up
15 using the negative influences as positive motivation to live
16 a good life as a good person. He had a clean criminal
17 record. There was no record. He never, he never, abused
18 any substances. He never harmed anybody. Anybody that ever
19 wanted to fight him or argue with him, he wouldn't have it.
20 He would wait until the situation was calm and tried to work
21 it out. He hated when people didn't like him. He was
22 always trying to please others. And he worked -- he always
23 had a job where he was serving others. That is what he
24 loved to do.

25 At this time, Your Honor, I'd like to also share the

1 same sentiments as my mother and as Ms. Miller. I too would
2 like to see Thomas given life without parole for the same
3 reasons and also because of the potential that there could
4 be a hearing to reduce his sentence. I feel that today we
5 can only walk out here with all the closure that we can if
6 we know that today he receives the sentence of life without
7 parole.

8 THE COURT: Thank you, Mr. Gordon.

9 MR. GORDAN: I have one more thing. I'm sorry. And
10 with everything going on in the media today, Black Lives
11 Matter or people not standing during the national anthem
12 because they're so upset with the justice system in our
13 country, I would hope that you would find it correct to give
14 him that sentence, that you will not let us down or this
15 country down. The law that you serve and the law that you
16 uphold, there are rapists in this country that are being set
17 free after serving minimum sentences of a few weeks or a few
18 months. And there is outrage in this county over it. I
19 don't want the death of my brother to be among those. He
20 deserves full and complete justice. Thank you.

21 AST. SOL. JUSTIS: Your Honor, the first time I met Ms.
22 Curtis she was in my office, I don't think she probably said
23 two words the entire conversation that we had. She was
24 there for a good hour. Her husband was with her and he
25 probably did more talking. She just kind of sat there. And

1 she did at the end -- at the end of the meeting I asked her
2 if she had any questions. And she did hand the memorial
3 card of her son to me. And this week has been probably the
4 first time, absolutely the first time -- I met with her
5 multiple times over the course of 15 months -- and this is
6 the first I've actually seen her smile. And heard her speak
7 more than probably ten words. So, you know, I'm a witness
8 to the type of pain that this poor lady has gone through
9 over the last 15 months. And I think everyone would agree
10 based on the eloquent words of her son Christian, that's the
11 type of children she raised. And it's just, you know, as
12 Ms. Sarji said, it is a tragedy what happened. And it's a
13 huge tragedy for this family.

14 And when you look -- you know, he's looking at 30 to
15 life sentence. And when you look at the actions of that
16 day, you know, he could be judged just by those actions.
17 Since he's been incarcerated, Your Honor, he hasn't been a
18 model prisoner. Just a few weeks ago when they opened up
19 the new jail and they moved inmates there, since then, I
20 mean, within the first day or so, he's busting out windows
21 in the jail. He's ripping tables off the wall. You know,
22 he's getting put in lockdown. He's obviously cannot conform
23 to society's rules. And my concern -- you know, as I told
24 mom, I can't bring your son back. And whatever punishment
25 he gets is not going to bring your son back. But I think,

1 you know, not only does he need be punished for that, but
2 society needs to be protected. And he has shown nothing to
3 show that he can conform to society's rules. And the only
4 place appropriate for him is prison. And that's why -- it's
5 in the State's opinion that he deserves a life sentence.
6 And that's exactly what the State would like to request from
7 Your Honor, a life sentence.

8 THE COURT: Thank you, Mr. Justis. Anything further?

9 AST. SOL. JUSTIS: No, Your Honor.

10 THE COURT: Ms. Sarji?

11 BY MS. SARJI: Thank you, Your Honor. And this is a
12 tragedy all-around. But I don't believe that we are all
13 reduced to the worst thing that we've ever done. And in
14 this case, the worst thing that Tommy has ever done has
15 unfortunately brought us before the Court. But, Judge, his
16 life and what he has gone through, I will tell you, is more
17 striking to me. And I've been doing criminal, indigent
18 criminal defense, since I started my career in 1998, as a
19 lawyer. And I will tell you that the things that he has
20 gone through in his life are one of the most striking cases
21 that I have come across. When he was four years old, his
22 father went to prison for killing somebody in a bar fight.
23 His mother turned, I think prior to that, she was drinking
24 and doing drugs. And this is just coming from the records
25 from Connie Maxwell Children's Home, okay; and from what

1 Tommy has told me. And I think as I've told the Court,
2 there's a lot more out there in terms of the John de la Howe
3 records as well as the records from William S. Hall.

4 But at that point, his mother was engaging in
5 prostitution. She would tell him to get lost while she was
6 doing her work.. His Aunt Linda Henderson, who was not able
7 to be here, told me that she would be literally be driving
8 down the road and see Tommy walking on the side of the road
9 when he was a little kid. And she would stop to pick him up
10 and ask him how he was doing. And he'd tell her he hadn't
11 eaten in three days. And this was when he was elementary
12 school-aged. His mother -- by the time that he was 12 years
13 old, he had, by his mother's own admission in the records
14 for Connie Maxwell, that he had been in a violent home; that
15 he witnessed her being a victim of domestic violence by her
16 live-in boyfriend. As well, Your Honor, shortly after his
17 father went to prison when he was four, he was sexually
18 molested by one of his mother's many boyfriends. My
19 understanding is -- then went on to molest his other two
20 sisters. So he has had a past. Again, Your Honor, I wish
21 that I had a mitigation expert in here who could have
22 presented all of this much more effectively than I can. But
23 he has had a very tragic childhood. By the time that he was
24 12, when he started at Connie Maxwell -- and Your Honor is
25 aware of what Connie Maxwell Children's Home is -- so he was

1 placed in Connie Maxwell. The way his mom did it, they told
2 him that they were going to take him there for the weekend,
3 and then they just never showed back up to pick him up.
4 That's how they told him he was going to Connie Maxwell.
5 So, understandably, he's got trust issues.

6 At the point when he did go to Connie Maxwell, his
7 mother had already said go live with a neighbor. Just total
8 lack of appropriate parental involvement. Even the records
9 from Connie Maxwell, which I will submit to the Court,
10 indicate that they were worried at that point about whether
11 his mom would do what she needed to do for him in terms of
12 following through. And so it sounds like, you know, hearing
13 Mr. Gordon's family talk about how she's raised her
14 children so well and despite him having been exposed to this
15 violent, you know, criminal domestic violence or an abusive
16 and substance-abusing father, he had a strong mother who
17 gave him guidance that he needed to make sure that he isn't
18 standing before you in this position. And that's something
19 that Tommy didn't have. And so from a very early age, he's
20 being surrounded by violence. He is not able to trust any
21 of the adults in his life. He's been neglected and abused.
22 From what Mr. Henderson told me -- and again, Your Honor,
23 if we could have continued this sentencing proceeding, I
24 would have had her -- I would have, you know, hopefully she
25 would have been to come at that point. I know she very much

1 cares about Tommy and very much wanted to be here. But
2 based on what Ms. Henderson has told me, he's been in and
3 out -- there's been DSS involvement throughout his life.
4 And I don't have those records, Judge. That's something
5 that a mitigation specialist would've been able to gather.
6 When he did end up going to Connie Maxwell, and based on
7 what Ms. Henderson has told me, at some point his
8 grandfather stepped up and said, hey, I'll take Tommy; let
9 him come and live with me. I'd like for Tommy to be with
10 me. When granddad found out that he couldn't get more
11 Social Security disability benefits for having Tommy living
12 with him, he gave him back. He took him back to Connie
13 Maxwell and dropped him back off.

14 He has had a life full of rejection, which has
15 understandably created anger issues for him which are also
16 documented in the Connie Maxwell records. At the same time
17 that Connie Maxwell knew that all of this was going on,
18 they didn't do a psychological assessment on him. So he's
19 12 years old; he's already been placed outside the home,
20 Judge. He was there from when -- from January 23, 2009,
21 through the March 3, 2010. Again, at that point, that's
22 when his grandfather said that he would have him come live
23 with him before he then tossed him aside. So he was
24 readmitted back in June of 2010 to Connie Maxwell where he
25 stayed until January of 2011. At that point, the folks at

1 Connie Maxwell recognized that he needed a higher level of
2 care and they put him in John de la Howe. Now, I don't have
3 those records... I don't know what was done. And, again, I
4 would beg the Court for additional time. Because I know
5 that none of this undoes what happened on June 13, 2015.
6 But I think it is necessary in the administration of
7 justice, mercy is part of justice, and part of what you do
8 has to take into account the individual's that stand before
9 you. He was 18 when this happened, Judge; 18 years old. He
10 had no appreciation -- frankly, Your Honor, I think that my
11 level of concern for him is probably the most that he has
12 had in his life. Except for from Linda Henderson. And I'm
13 sorry, but -- my heart breaks for him as it does for Ms.
14 Gordon. But I don't think that putting him in prison for
15 the rest of his life does anything more than compound this
16 tragedy. I'm sorry, Judge. I am not acting like a good
17 lawyer right now because we are not supposed to do this.
18 And I'm supposed to remain cold and dispassionate and able
19 to relay to you all of this without emotion. And I'm sorry
20 that I am dripping snot on your table.

21 I just want you to know, Judge, that I believe that
22 there is a lot more to Tommy than just this day, and there
23 are a lot of circumstances in his past as well as -- he
24 didn't have a chance, Judge. He didn't have a chance. His
25 mom started him smoking pot when he was 12 years old. When

1 he would come home to visit her from Connie Maxwell, she'd
2 sit him down and smoke pot with him. By the time he was 15,
3 she had offered him meth and had him smoking meth when he
4 was 15 years old. That's his mom; who, by the way, didn't
5 bother to come to Court to speak on his behalf. There's
6 just so much that has led him to this point. And I would
7 ask you to consider all of that. Thirty years for him is an
8 appropriate sentence. I think at that point, he will have
9 grown up. Statistically, I think he dies in prison even if
10 you give him a 30-year sentence. I understand the
11 Solicitor's request that the Court not give him the minimum
12 sentence on this. I mean, I get -- I understand where he is
13 coming from. But I don't think that a life without parole
14 sentence, it doesn't bring Travis back nor does it take into
15 account all of the mitigating circumstances that we have in
16 this case. And to have a background just as rife with abuse
17 and disregard. When I was talking to Tommy yesterday -- and
18 as I told Your Honor, he did not want to put everybody
19 through this. I think if we had any choice or felt that
20 there was any way to preserve a record and not -- and for
21 him to plead guilty and not be losing the possibility of any
22 type of developments in the law with regard to the
23 sentencing of individuals who are similarly situated to him
24 and that sort of thing, he has always wanted to come in and
25 accept responsibility. But we didn't have a choice but to

1 try this case. Judge, I know his dad wants to talk.

2 THE COURT: I'd be happy to hear from him.

3 MR. DAVID SHEWTZUK: Yes, ma'am. I went to prison when
4 he was four. I already new his mom was sleeping around and
5 doing all this and all that. She never took care of the
6 kids. I worked; I come home; I took care of the kids. When
7 I went to prison, every time I heard from family members or
8 anything it was always about what Jane was putting the kids
9 through; what Jane was putting the kids through. Granted, I
10 was in prison; I heard bits and pieces from here and there.
11 But I had a guy that was in prison that come found me, was
12 living with them at the time, and told me you need to get
13 your dad to get them kids out of that house because they're
14 being abused. They're getting locked up in the room. They
15 stay -- they don't come out the room unless they're going to
16 school. His momma had him making meth so she can smoke it
17 for free. I mean, yes, I feel deeply sorry. And I pray for
18 the Gordon family all the time, and I'm gonna continue.
19 Yes, Tommy is my son. We always take responsibility for
20 what we do. Like she just said, if he could've had a decent
21 plea to where he had a max-out date instead of nothing, he
22 would've plead and we wouldn't be here right now.

23 Tommy has been through heck his whole life. From the
24 time I went to the prison up until now, until I got out of
25 prison, he was still catching the devil with everything.

1 Yes, she lost her son. I'm losing my son. Why they
2 requested him to be away from us, I don't understand. I
3 mean, because if it was vice versa, she would want to be
4 able to see her son. But, I mean . . .

5 I would like to be able to spend time with my son
6 inside of the prison. He is -- I mean, he's been to the
7 point to where he is destroyed my cousins house with swords
8 and stuff because of the stuff he was going through, and
9 nobody there to talk to, so we had to let it out in some way
10 or fashion which is -- I just ask you please just take Ms.
11 Sarji's consideration on getting the mediation specialist in
12 here because there's a lot to his past that I don't know
13 because I was gone, and to give him a light at the end of
14 the tunnel. I don't really don't know what else to say.
15 He's been through a lot. And most of it's my fault for --
16 for being somewhere I shouldn't have been. Granted, I just
17 defended myself, but I did what I did. I did my time. And
18 don't know -- I never denied doing. Tommy shouldn't spend
19 the rest of his life in prison, no. He is a very bright
20 young man. He's very smart. But he's had no guidance;
21 none. None, whatsoever.

22 BY MS. SARJI: And, Judge, there very clearly is some
23 mental illness in his background. I mean, he spent 90 days
24 at William S. Hall. It wasn't like a five-day IOP, let's
25 get him stable. It was 90 days. So there is something more

1 -- that said, I have had no doubts about his competency to
2 stand trial or his ability to assist me in his defense. I
3 didn't feel that a competency evaluation was necessary. But
4 there is very definitely some underlying pathology that I --
5 psychopathology that is significant enough to warrant a
6 three-month stay at William S. Hall. Again, I am trying to
7 get those records. They haven't been received, but
8 certainly, I think that kind of thing should be considered
9 as mitigating in his case. That he seems to have had some
10 long-standing issues with mental illness that have not been
11 addressed by the system appropriately from the time that he
12 was a child. And, again, the records that I have reflect
13 that he wasn't even given a psychological evaluation when he
14 was at Connie Maxwell. They may have done it at John del la
15 Howe, but I don't have that information before the Court.
16 So I just would ask you to consider all of this and to
17 recognize that his youth is a very important factor in what
18 happened. It is one of the controlling factors, I think, in
19 what happened, and the impulsive nature of youth and that
20 sort of thing. And, again, I mean, I know it's probably
21 adequately preserved, that argument in the motion that I
22 did. But I think the science backs up what I'm saying in
23 terms of the -- he did not have the same capacity as a fully
24 developed adult in terms of reacting to an emotionally
25 charged situation. And you couple that with his background

1 and some potential mental illness in his past and that
2 renders the devastating consequences that have brought us
3 here today. And, Judge, I just -- it is not that Tommy has
4 not had any more remorse over this. He has. And I'm sure
5 he's going to express that to you. Unless -- because it
6 takes a little while to get him to talk, open up. And so I
7 don't know whether he's gonna feel comfortable enough to do
8 that right now. But, Judge, he's relayed to me and enough
9 that it's gotten me choked up, you know, how he feels about
10 all of this. And I just want to make it clear that I think
11 you can accomplish the ends of justice without a life
12 sentence in this case.

13 THE COURT: Thank you, Ms. Sarji. Anything further?

14 BY MS. SARJI: I'm sorry?

15 THE COURT: Anything further?

16 BY MS. SARJI: Does anybody else want to talk on
17 Tommy's behalf? No? Okay.

18 THE COURT: Mr. Shewtzuk, do you care to speak?

19 THE DEFENDANT: Yes, ma'am. I just wanted to make it
20 clear that I'm not -- for my actions. And this tattoo is
21 not a teardrop to show -- on part of my actions. It's just
22 simply my zodiac symbol. That's all it is. I do want to
23 apologize for the Gordon family, my actions were very
24 unnecessary, very stupid, you know. I've got to live with
25 this every day of my life as well. I regretted it every

1 single day and nothing I can do to take it back. But I
2 pray, every single day I pray, God forgive me for my
3 actions. I really wish that the Gordon family would forgive
4 me as well because, you know, it help me with peace. But if
5 they don't, I completely understand. And I don't have
6 nothing else to say other than I'm fully ready to accept --
7 no matter what you have in mind, whether it's life, whether
8 it's 30, doesn't matter. I'm ready to accept it,
9 responsibility for my actions.

10 THE COURT: Thank you, sir. Anything further from
11 anyone?

12 BY MS. SARJI: Nothing, Your Honor. Thank you.

13 AST. SOL. JUSTIS: No, Your Honor.

14 THE COURT: Certainly, this is one of those cases
15 that's tragic for all sides. It's tragic, obviously, in
16 ways that the victim's family has expressed very eloquently.
17 For them and for society to lose the victim in such a
18 callous and heinous and violent manner, and for the
19 witnesses to have to witness somebody being murdered in
20 front of them, being shot in the head, thinking that they
21 could be next; to have to live that terror is not something
22 that should happen in our society. And I certainly
23 understand that you've had and dealt with a difficult hand
24 in life. Your parents completely failed you. There's no
25 question about that. However, that failure does not give

1 you a free license to kill people. It just doesn't. I
2 understand that you are 18 years old at the time. And since
3 then, since your -- just like Mr. Justis said; since you've
4 been incarcerated, you're telling me that you pray every day
5 for forgiveness, yet with that praying you're destroying
6 things at the jail and being disruptive. Your actions don't
7 match what you're telling me. Your past as far as
8 behavioral issues, a light sentence doesn't fix that in any
9 way, shape, or form. If anything, society needs to be
10 protected.

11 There's just -- you know, it's difficult obviously for
12 attorneys and judges and families to be a courtroom where
13 it's a sterile environment and you don't see the actual
14 day-to-day grief of these families. But that's what you
15 caused. Every day of their life they're going to have to
16 cope with that. You took their son away; you took their --
17 for no reason. And I'm empathetic to your past. However,
18 you have free will and choices to make, and one of them you
19 made a terrible, terrible choice. And you have to pay the
20 consequences for that.

21 On indictment 2015-GS-18-0954 for kidnapping, you're
22 hereby committed to the State Department Corrections for the
23 period of 30 years. On indictment 2015-GS-18-0953 for
24 kidnapping, you're likewise committed to the State
25 Department of Corrections for the period of 30 years. On

1 the possession of a firearm during the commission of a
2 violent crime on indictment 2015-GS-18-0952, you're hereby
3 committed to the State Department Corrections for a period
4 of five years. On indictment 2015-GS-18-0951 for murder,
5 you're hereby committed to the State Department of
6 Corrections for the balance of your natural life. There
7 will be no sentence on indictment 2015-GS-18-0972 pursuant
8 to the kidnapping statute which prevents a sentence being
9 concurrent with a murder sentence for the same crime.

10 AST. SOL. JUSTIS: Thank you, Your Honor.

11 BY MS. SARJI: Thank you, Judge. Sorry I lost it.

12 THE COURT: The Court is adjourned.

13 (The proceedings in the trial of this case concluded on
14 Wednesday, September 8, 2016, at 5:27 p.m.)

15
16 (Court's Exhibit No. 3, Jury Question, was marked for
17 identification.)
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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
)
 COUNTY OF DORCHESTER) CASE NO.: 2015-GS-18-0951; 0952;
 0953; 0954; 0972
 STATE OF SOUTH CAROLINA)
)
 v.) TRANSCRIPT OF RECORD
)
 THOMAS SHEWTZUK)
)
)

ORIGINAL

Monday, July 17, 2017

COMMENCING AT:
 Dorchester County Courthouse
 St. George, South Carolina
 Before The Honorable Maite Murphy, Judge

APPEARANCES:

For the State:
 Assistant Solicitor Glenn Justis, Esquire
 First Circuit Solicitor's Office
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For the Defendant:
 Susan Barber Hackett, Esquire
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Heather R. Landry, CVR
 Official Court Reporter

1 (The proceeding began at 11:10 a.m.)

2 THE COURT: Counsel for the defense, if you would just
3 please state for the record your motion that we have here
4 before the Court and your client's name.

5 MS. HACKETT: Certainly, Your Honor. My name is Susan
6 Hackett, H-a-c-k-e-t-t, with the Office of Appellate
7 Defense. I'm here on behalf of Thomas Shew --
8 S-h-e-w-t-z-u-k. We're here on an order to reconstruct the
9 record of bench conferences from the South Carolina Court of
10 Appeals. That order was issued on May 11, 2017. Would Your
11 Honor like a little bit of background? Essential history.

12 THE COURT: Yes, ma'am.

13 MS. HACKETT: Certainly. On July 9, 2015, a Dorchester
14 County Grand Jury indicted Mr. Shewtzuk for murder,
15 possession of the weapon during a violent crime, and two
16 counts of kidnapping. On June 2, 2016, the grand jury
17 indicted him for a third count of kidnapping. He was
18 represented by Leslie Sarji at trial. The State was
19 represented by Glenn Justis and Kyle Ward. The trial
20 started on September 6, 2016, before Your Honor and a jury.
21 He was ultimately found guilty. Your Honor sentenced him to
22 life imprisonment for murder, five years for the weapon, and
23 30 years for two counts of kidnapping. On September 16,
24 2016, Ms. Sarji filed a notice of appeal. That case was
25 then transferred to my office. We ordered the transcript on

Direct Examination of Ms. Sarji by Ms. Hackett

1 October 17, 2016. On February 23, 2017, the transcript was
2 received. Upon review, we realized that the bench
3 conferences were not transcribed. I then filed a motion to
4 reconstruct the record on April 6, 2006 -- 17. Excuse me.
5 May 1, 2017, the State filed a return consenting to the
6 motion. I filed a reply on May 9, 2017. And, again, on
7 May 11, the Court of Appeals granted the motion to
8 reconstruct and Your Honor has scheduled this hearing.

9 THE COURT: Thank you, Ms. Hackett. You may call your
10 first witness.

11 MS. HACKETT: We're going to call Ms. Sarji to the
12 stand.

13 (LESLIE SARJI, was duly sworn and provided the
14 following testimony.)

15 THE COURT: Your witness.

16 MS. HACKETT: Thank you, Your Honor. Before I begin, I
17 have a full copy of the transcript that I plan to give Ms.
18 Sarji to use for her testimony. I have a third copy if Your
19 Honor would like it. Do you want it?

20 THE COURT: Yes, ma'am.

21 MS. HACKETT: Okay.

22 DIRECT EXAMINATION

23 BY MS. HACKETT:

24 Q. Just going to begin, Ms. Sarji, with a little bit of
25 background information. Could you tell us what your current

1 occupation is?

2 A. I'm a lawyer in private practice in Charleston.

3 Q. And can you give us a little bit information about your
4 work history.

5 A. I started out at the public defender's office in
6 February 1999 in Charleston County. I did juveniles for
7 about maybe ten months and then moved into general sessions.
8 I stayed there until sometime in the fall of 2002. And I
9 left and went into private practice working, managing the
10 Myrtle Beach office of a Columbia-based plaintiff's firm
11 which was Suggs and Kelly at the time. And I stayed there
12 until 2008 when I had children. And I quit working for a
13 couple of years and then moved back here to Charleston,
14 which is where I'm from. And in September 2010, I went into
15 private practice at that point. And I've done criminal
16 defense steadily throughout my career.

17 Q. All right. That was part of my next question. So how
18 much of your general practice is devoted to criminal cases?

19 A. Currently, probably about 40 percent. At times, it's
20 higher or lower depending on -- I do federal criminal work
21 as well. So if I have a big federal case, that might be all
22 that I can focus on. But right now, probably about
23 40 percent.

24 Q. And what other type of cases do you have?

25 A. I do Family Court.

Direct Examination of Ms. Sarji by Ms. Hackett

1 Q. Okay. And how did you get involved in representing
2 Mr. Shewtzuk?

3 A. He was an appointed case. I have a Rule 608. I had,
4 at the time, a Rule 608 contract with Dorchester County.
5 And he was appointed to meet through that contract.

6 Q. All right. And sort of getting to the meat of why we
7 are here. Did the judge make use of bench conferences
8 during his trial?

9 A. Yes.

10 Q. And can you just tell us briefly what a bench
11 conference is?

12 A. When you make an objection and some judges prefer not
13 to have to take the time to send the jury out in order to
14 put the basis for the objection on the record, and they will
15 call the attorneys forward to sort of quietly make the
16 argument at the bench. And it just makes things run more
17 efficiently, usually, to do it that way.

18 Q. Are there any other things that might occur at a bench
19 conference? You've kind of gone through an objection and a
20 ruling. But are there other things that may occur during a
21 bench conference?

22 A. Scheduling or -- I don't know if we're talking about,
23 you know, needing to take a restroom break or something like
24 that.

25 Q. Okay. Excellent. When did you learn the bench

1 conferences were not recorded in this case? Just a rough
2 estimate.

3 A. I think it was the first -- I thought after what was
4 either the first or second day of trial. It might have been
5 the first full day. And I was here talking to the court
6 reporter and I was pretty certain that she had said that up
7 to that point when I had asked that the bench conferences be
8 specifically recorded that they were not being recorded.
9 The next day we came in and I told the judge that I was
10 concerned about that. And the court reporter said, no, no,
11 you misunderstood me. I don't know where the
12 miscommunication was, but I was concerned pretty early on
13 about the bench conferences being recorded. And it's also
14 something that you just have to make sure when you're doing
15 that as a trial lawyer. And to preserve the issues for
16 appeal, it's something that you really need to make sure of
17 as a trial lawyer. And I do it as a matter of practice no
18 matter what judge I'm in front of. If we're doing bench
19 conferences, I've learned to ask to make sure that they're
20 being recorded.

21 Q. All right. Have you had an opportunity to review the
22 transcript that has been made available in this case?

23 A. I have, yes.

24 Q. All right. And have you reviewed the portions
25 surrounding where the bench conferences occurred but we

Direct Examination of Ms. Sarji by Ms. Hackett

1 don't have the recordings?

2 A. Yes, ma'am.

3 Q. All right. Before we return to the specific bench
4 conferences, I want to ask you generally about your practice
5 of note taking during a trial. Can you tell the Court,
6 generally, how you take notes in a trial?

7 A. I take notes -- like once pretrial motions are over,
8 because I usually have pretty extensive notes about what I'm
9 going to argue during pretrial motions. But once direct
10 starts or opening, I am writing furiously everything that is
11 being brought up on direct so that I can use that to help me
12 address the questions that I need to on cross. But I don't
13 take notes during cross, obviously. And I don't take notes
14 on the objections because that's all sort of things that you
15 have to be able to do on your feet. And, you know, you're
16 not taking notes about every single thing you do. So I
17 don't have notes that reflect when I objected or what the
18 bench conferences were because I assume that that's all
19 being recorded.

20 Q. And just to clarify that point, in preparation for
21 today's hearing, did you review the notes that you took?

22 A. I did.

23 Q. And did those reveal the subject matter of the bench
24 conferences?

25 A. No, ma'am.

1 Q. All right. So we're going to turn specifically to the
2 bench conferences in this case. And I'd like to begin on
3 page 37 of the transcript, lines 6 through 7. This is where
4 it says a bench conference is held off the record and out of
5 the hearing of the hearing of the jury panel. If you could
6 just take a moment, review that, review the context it's in,
7 and tell us what your memory is to the best of your ability
8 of what happened there.

9 A. I, honestly, I have no specific memory of what this
10 bench conference was. Just based on what the -- based on
11 where we were in the proceedings, I would assume that the
12 judge may have had us come forward so that I could preserve
13 my objections with regard to voir dire. I had asked for
14 some specific voir dire to be posed to the jury, and the
15 Court declined to do so. And so she may have called us
16 forward in an effort to preserve my objection for the record
17 on that. But other than that, I don't have any specific
18 recollection about that.

19 Q. Okay. If you will move down to lines 9 through 10, the
20 judge asked that you approach again. Same question: What
21 is your recollection of what may have transpired during that
22 bench conference?

23 A. I have no independent recollection of that.

24 Q. Okay. We're going to turn now -- and hopefully the
25 tabs are somewhat helpful. They may be a nuisance. If they

1 are helpful, the next tab should be transcript page 43.

2 These are lines number 8 through 9. And if you could just
3 take a moment to review what's around it to get the context
4 to see if you can either have an independent recollection of
5 what transpired or perhaps some ability to tell from context
6 what took place.

7 A. I think this is probably scheduling. Because we just
8 had seated the jury at 4:23. And so we were probably
9 talking about, you know, going ahead and breaking for the
10 day. I don't have any independent recollection about it.

11 Q. Okay. Perfect. And our next two are on page 55, so if
12 you would turn with me there. Lines 8 and 9, please review
13 the context and state for the record what your recollection
14 is of that bench conference.

15 A. I think that, again, is going to be a scheduling issue.
16 It was almost five o'clock, and the judge is proactively
17 calling us forward. So I think that's probably about
18 scheduling.

19 Q. And if we look just a few lines down, lines 14 through
20 15. If you could please tell me what your recollection is
21 or what you're able to best determine based on context?

22 A. I think that at that point Mr. Justis realized that
23 witnesses were still in the courtroom. And so that would've
24 been his asking to approach to ask the judge to tell the
25 witnesses that they were sequestered.

1 Q. So the judge had previously entertained a motion for
2 sequestration in the case?

3 A. Or Glenn and I had agreed upon that. It wasn't
4 something that we had to argue about..

5 Q. Okay. All right. Let's look at page 75. And we are
6 at lines 8 through 9. What's your recollection of what
7 transpired there?

8 A. Oh, well, I was objecting to hearsay testimony being
9 elicited from the witness. Just because somebody -- just
10 because a defendant says something, it doesn't make it an
11 automatic exception to the hearsay rule. And so I would've
12 been going up to state that to the judge, which looks like
13 it was overruled.

14 Q. Do you have any greater specificity of your
15 recollection of what that objection was other than hearsay?

16 A. I mean, he was asking the witnesses to speculate about
17 or to say why Mr. Shewtzuk was trying to sell a gun. I
18 don't recall what I specifically would've argued. I'm
19 sorry.

20 Q. Do you recall the State's argument?

21 A. No. I don't. I mean, I think he says on the record
22 here, it's the defendant statement, Your Honor. So I'm sure
23 he probably just said it was a statement against interest or
24 something like that. But I really have no recollection.
25 I'm sorry.

1 Q. All right. On page 82 of the transcript, this is lines
2 5 through 6. If you could take a moment, you probably need
3 to get a little bit of context here, and see if you can
4 recall the subject matter of this bench conference.

5 A. Yeah. This one I remember with a little bit more
6 specificity. This girl, Kallie Vaughn, was testifying and
7 Mr. Shewtzuk had gotten a tattoo on his face. And she
8 was -- I mean, I think that what she was going to testify to
9 was that the teardrop meant that he had killed somebody.
10 And so I was objecting to them talking about that. And I
11 think that the significance of this was that he got the
12 tattoo on his face after he had been locked up for this.
13 And so I objected because she was -- they were eliciting
14 hearsay testimony. And it looks like they withdrew the
15 question. So I think the judge probably sustained that
16 objection.

17 Q. All right. We're going to turn next to page 88 of the
18 record, lines 2 through 3. So if you need to turn back and
19 review the context to see what this may have been and then
20 tell us?

21 A. So Mr. Justis was asking this witness about whether my
22 client was working anywhere at the time of the crime, which
23 I felt was irrelevant and that it was designed to maybe
24 prejudice the jury a little bit. And so I objected on that
25 basis. And he didn't continue with that line of

1 questioning, so I would assume that the judge sustained that
2 objection.

3 Q. Okay. And page 100 of the transcript. This is lines
4 21 through 22. If you could review that in the context and
5 please tell us what your recollection is of what transpired.

6 A. So I don't know if that's later on, if it was on the
7 record or not. I remember there was an issue -- okay. So
8 there was an issue about the cell phone logs. They had
9 subpoenaed a much broader period of time than what they had
10 subpoenaed even prior to or after. And I can't remember
11 specifically, but it was a much broader period of time that
12 had been subpoenaed than perhaps what was in the warrant, or
13 there was some inconsistency there. And so I objected on
14 -- I know that I had an objection on that. I also know that
15 I was -- I don't know if this is the point where I was
16 objecting because, you know, you can show that a cell phone
17 number transmitted information or made a call, but you can't
18 tell who was actually using the phone at the time that was
19 done. And so as a matter of practice, when I have cases
20 that involve cell phone records, I always make that
21 objection. I know I also had an objection about the
22 discrepancy between the time period and the warrant or the
23 time period and the subpoena. But I can't tell you what
24 specifically which issue that this one was.

25 Q. Okay. Would it be fair to characterize your dual

1 objections to the text messages as being, one, somehow
2 related to the subpoena versus search warrant; and two,
3 related to whether the State could prove that the person
4 using the cell phone was actually Mr. Shewtzuk?

5 A. That it would've been both you're saying?

6 Q. Yes.

7 A. Yes. That would be a fair statement.

8 Q. And this is not tabbed, but if you'll turn to page 106.
9 This is a discussion from you regarding the search warrant.

10 A. Okay.

11 Q. Does this look to be the objection that you had
12 regarding the time frame?

13 A. Yes.

14 Q. Okay. All right. And we'll get back to our tabs then.
15 If we could turn to tab or page number 141 -- this one is
16 tabbed -- Lines 23 through 24 of the transcript. And,
17 again, if you wouldn't mind look at some of the context and
18 let me know what your recollection is.

19 A. I think I asked her so that I could go to the ladies
20 room. I asked her for a break. And then she was probably
21 -- we went forward for scheduling issues on that. That was
22 nothing substantive.

23 Q. Okay. And then our next one is on 145, lines 5 through
24 6. And if you could take a moment and review the context
25 and tell the Court what your recollection is.

1. A. Oh, this is -- is this the video?

2 Q. I don't believe so. This is where immediately
3 afterwards the judge sends the jury out for lunch. And
4 there's some discussion of pulling the testimony of
5 Mr. Dubois or Dubois.

6 A. Oh, okay. I'm sorry. I think that this is -- there
7 was an issue with her. I was pretty certain that she had
8 perjured yourself. I think that's what this is. And so the
9 judge would have called us up. Because I think she let me
10 do that on the record. We did. She excused the jury. So
11 that was probably her -- or that was actually Glenn calling
12 us up asking to approach. So it is. And then she breaks
13 right after that. So I think that was probably just let
14 them take a break so we could deal with the issue of Ms.
15 Dubois.

16 Q. Okay. And can you tell me briefly what the issue with
17 Ms. Dubois was?

18 A. You know, I can't remember the specifics of it. I know
19 being very convinced that she had committed perjury or maybe
20 I had cell phone records that were contrary to what she was
21 saying. There was something about what she had testified to
22 that I was convinced that I had solid proof that she was
23 lying. Which, to me, in a murder case, a witness's
24 credibility when that person is offering inculpatory
25 information about your client, that person's credibility is

1 of utmost importance. And so she was coming in here and
2 lying to the Court. I felt like that was something that the
3 jury should know about.

4 Q. And what remedy were you seeking?

5 A. Well, if she perjured herself, I guess I would've asked
6 that her testimony be stricken. That she be referred to the
7 solicitor's office for prosecution. I don't -- I mean, I
8 don't know.

9 Q. Did you seek to recall her, or did you seek to have the
10 State recall her for additional cross?

11 A. I think that we listened to her testimony, maybe. I
12 honestly just don't remember. Her testimony wasn't
13 stricken. I know that.

14 Q. And do you remember if any law, rules, case law or
15 anything was discussed regarding the testimony of Ms.
16 Dubois?

17 A. I'm sorry, I don't.

18 Q. All right. We're going to move on then to our next
19 piece of the puzzle here which is 191, lines 7 through 9.
20 If you could take a moment review that portion as well as
21 the context and tell us what you recall.

22 A. I was objecting to the chain of evidence on the DNA
23 that the state was seeking to have admitted from a cigarette
24 butt that they retrieved from outside of the incident
25 location. The State -- I can't remember the case that I

1 had, but it was pretty directly on point. And it indicates
2 that the State does not have to prove every single link in
3 the chain in order to get an item into evidence, but there
4 are certain minimum witnesses that they have to put up. And
5 they had failed to do so. And so I brought that issue to
6 the Court's attention at the sidebar along with the case
7 law. And despite the State having failed to meet its
8 burden, I was overruled and the evidence was allowed in.

9 Q. Okay. Do you remember the State's argument for
10 admission?

11 A. I think they basically said that they didn't have to
12 prove up the whole chain. And that I was not disputing
13 that, but there are certain minimum, minimum lengths in the
14 chain; for lack of a better word, that they have to prove.
15 It's fungible evidence, and they didn't even bring in
16 anybody -- my recollection is they didn't even bring in
17 anybody to show from police station to SLED. That was the
18 big missing link. Like, I didn't care what, you know, he
19 didn't have to offer anybody once it was at SLED. But they
20 have to at least say how it got there. And the case law
21 that I had was pretty directly on point, but I was
22 overruled.

23 Q. Okay. All right. We're going to turn to page 242.
24 These are lines 2 through 4. So if you could take a moment
25 review that and the context and let us hear your

1 recollection.

2 A. That's a scheduling thing.

3 Q. We're going to turn next to 291. And these are lines 5
4 through 7.

5 A. So I think that Glenn -- that Mr. Justis asked that we
6 come forward because he was going to put in the videotape
7 of a very -- it was a very clear videotape of the incident
8 that happened. And the victim's parents and family were in
9 the courtroom. And so he wanted the judge to tell everybody
10 that if they couldn't handle it, they needed to leave.

11 Q. Did you have any objection to that cautionary
12 instruction?

13 A. No. I don't think I had an objection to the cautionary
14 instruction. I would likely have renewed my objection --
15 well, no. I objected to it on the next page, so . . .

16 Q. And by it, you mean the introduction of the video
17 itself?

18 A. Of the video itself, yes.

19 Q. Okay. All right. We're going to turn to 294. This is
20 our last one. This is lines 14 through 15. If you will
21 review that as well as the context and provide us with what
22 your memory is as to the nature of the bench conference.

23 A. I would've objected to the photographs coming in.

24 Q. And do you recall the basis of your objection?

25 A. Inflammatory, highly prejudicial. Those kinds of ---

1 Q. A rule -- a Rule 403 objection?

2 A. You know what, I would have to look at my rule book to
3 be able to tell you the number, but, yes.

4 Q. So inflammatory and highly prejudicial is what I heard
5 you say?

6 A. Highly prejudicial.

7 Q. Okay. All right. And if you wouldn't mind, I failed
8 to follow up on the very first one which was page 37. So if
9 you'll bear with me and let's turn back to page 37. And we
10 said this may have involved putting on the record your
11 objection or request for voir dire questions. Did you
12 submit written voir dire requests?

13 A. I did. They should be in the file.

14 Q. And did you include anything additional, any
15 explanation, of why certain questions needed to be answered
16 -- or asked while you were at that bench conference?

17 A. You know, I don't remember. I know that Judge Murphy
18 was incredibly patient and tolerant of my objections and
19 all. She was willing to listen to my arguments. But I
20 can't say whether she was going to let me argue further on
21 that point.

22 Q. Okay. All right.

23 MS. HACKETT: Those are all the questions I have for
24 you, Ms. Sarji. If Mr. Justis has any?

25 THE COURT: Mr. Justis?

Direct Examination of Mr. Justis by Ms. Hackett

1 MR. JUSTIS: No, Your Honor.

2 THE COURT: You may step down, Ms. Sarji. Thank you.

3 THE WITNESS: Thank you, Judge.

4 THE COURT: You may call your next witness.

5 MS. HACKETT: Your Honor, we would like to call

6 Mr. Justis to the stand.

7 (GLENN PAUL JUSTIS, was duly sworn and provided the
8 following testimony.)

9 THE COURT: Your witness.

10 MS. HACKETT: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. HACKETT:

13 Q. Mr. Justis, if you could please tell us your name and
14 where you work.

15 A. My name is Glenn Justis. I'm an assistance solicitor
16 at the First Judicial Circuit.

17 Q. And can you give us a little bit of background on your
18 work history.

19 A. Sure. In 2007, graduated from law school. I had
20 interned with the solicitor's office from 2005 while I was
21 in law school. Upon graduation, I took a position as an
22 assistant solicitor with the solicitor's office. And I've
23 been working as an assistant solicitor since August of 2007.

24 Q. And can you tell us what your role was in the criminal
25 trial of Mr. Shewtzuk?

1 A. I was the lead prosecutor in the case.

2 Q. And did you have any assistance from the prosecution's
3 office?

4 A. I did. Assistant Solicitor Kyle Ward, the second chair
5 of the trial with me.

6 Q. And is Mr. Ward still employed by the solicitor's
7 office?

8 A. He is not. He is working for private firm doing family
9 law.

10 Q. And during the trial, do you recall the judge making
11 use of bench conference?

12 A. Yes, I do.

13 Q. And same question to you: How would you define a bench
14 conference?

15 A. Essentially, that's when we approach the judge at the
16 bench and discuss various issues whether it be scheduling
17 issues or sometimes we briefly argue possibly an objection,
18 and then give the judge an opportunity to decide whether or
19 not more arguments need to be heard on the record or not out
20 of the presence of the jury.

21 Q. Do you recall Judge Murphy making use of bench
22 conferences for this trial?

23 A. Yes.

24 Q. All right. So we're going to first talk about note
25 practice and then get to the meat of it. What's your

Direct Examination of Mr. Justis by Ms. Hackett

1 practice for taking notes during trials?

2 A. Typically, as long as I'm not asking the questions,
3 doing something like that, I'm typically taking notes on
4 what's being said. I don't jot down everything that's said
5 because I do want to listen to what's being said. I want to
6 make sure I pay attention and notice various verbal cues and
7 things like that. But, typically, if someone else from our
8 office is doing direct exam, I'll take some notes on what's
9 being said. If cross-examination by the defense is taking
10 place, I'm taking notes on what they're saying so that I can
11 refer back to those later, not only for future, whether it
12 be redirect or for my closing arguments.

13 Q. And did you take notes during this trial?

14 A. I did.

15 Q. Have you had an opportunity to review your notes prior
16 to this hearing?

17 A. I have.

18 Q. And did you have anything in those notes relevant to
19 the bench conferences?

20 A. Not the bench conferences, no.

21 Q. Okay. All right. So we're going to get right to it
22 then. And I think I might be the envy of all the lawyers in
23 the courtroom getting to put you on the stand and ask you
24 questions. We'll start with transcript page 37. And I
25 believe you still have the transcript in front of you.

1 A. I do.

2 Q. These are lines 6 through 7. And if you can take a
3 moment, review the context, and let us know what your
4 recollection is of what transpired or whatever you can
5 surmise that transpired during that bench conference.

6 A. This appears to be, during jury selection, it appears
7 that the jury selection had ended. And at the end of that,
8 the jury actually exits the courtroom. They go back to the
9 jury room. They kind of get acquainted with that area. The
10 bailiffs take them back. And at that point in time,
11 typically the judge, especially Judge Murphy, having done
12 several trials in front of her, will usually call the
13 attorneys forward to discuss scheduling issues as far as
14 where we go from here.

15 Q. Is that an independent recollection or is that what you
16 think, based on the context, happened?

17 A. That's what it appears. At this point in time, it
18 looks like as I call your name, so we're kind of in between
19 -- correct myself. It looks like we're in between the
20 actual voir dire. We've done the voir dire. Okay. So
21 we're about to ask, actually call the people up, and start
22 picking. So she gives them instructions. I see on here
23 where she says bring your personal belongings with you.
24 Because if they get selected, they go sit right in the jury
25 box; if they don't, they go back. So at that point in time,

1 she's calling us up and just going over -- typically, it
2 would be things like how many strikes, those kinds of
3 things. Because in different cases, depending on the
4 charges, the defense gets either five or ten strikes, things
5 like that. So I would assume we discussed those types of
6 things. I don't recall any kind of big objection about
7 anything that happened in voir dire.

8 Q. If you could look at line 9 through 10 on the same
9 page. Same question: Reviewing the context and that
10 specific bench conference, tell us what your recollection is
11 of what transpired.

12 A. Yeah. It looks like some instructions, probably from
13 the judge, because it's not myself or Ms. Sarji asking to
14 approach. Typically, when the Court -- the judge is asking
15 for that, it's usually something more scheduling
16 purpose-wise.

17 Q. Briefly, with Ms. Sarji, there was discussion that she
18 had requested certain questions to be asked during voir
19 dire. Do you recall objecting to the voir dire request?

20 A. No. Typically, what happens most defense attorneys
21 will submit a list of voir dire questions. Most of them,
22 usually with Judge Murphy, most of those questions are
23 usually covered in her standard voir dire that she does. So
24 typically a copy will be given to me. A copy will be given
25 to the Court. With Judge Murphy, as opposed to some another

1 different judges, usually Judge Murphy will read through
2 that and essentially tell the defense, "Okay. This, I
3 covered this already. I've got this in there. I'm not
4 going to cover this for these reasons," whatever. So a lot
5 of times, unless there's just something really out in left
6 field that's being requested by the defense attorney,
7 usually I don't have to object because most of the -- and I
8 don't recall anything from Ms. Sarji's voir dire that was
9 really out of the ordinary. And it would be things that are
10 probably already covered in the judge's normal charge, just
11 worded differently.

12 Q. And you said that typically Judge Murphy would explain
13 to the lawyer why she's not asking certain questions. Do
14 recall that happening at this trial?

15 A. The only thing I can recall, because it typically
16 happens at every trial, is there might be certain things
17 that she says I already covered that here. You know, I
18 already gave a charge that says this. Because sometimes
19 they will break it out into like five different things. You
20 know, are you a member this? Are your member of that? Are
21 you a member of this? And Judge Murphy has kind of the
22 standard one-liner that kind of covers all of those.

23 Q. Okay. If you'll turn with me to page 43 of the
24 transcript. This is lines 8 through 9. And if you could
25 take a moment, review those lines and the context, and tell

- 1 us what your independent recollection is of what transpired.
- 2 A. At that point, it looks like the jury has been
- 3 selected. The judge asks if there were any exceptions are
- 4 objections to the selection of the jury. At that point in
- 5 time, I did not have any objections to the jury selection
- 6 nor did Ms. Sarji. So at 4:23, the jury was impaneled. At
- 7 that point, Judge Murphy asked us to approach. Based on
- 8 that time, 4:23, obviously it's later in the day. And Judge
- 9 Murphy usually likes to let a jury go at 5:00 p.m., by five,
- 10 because of childcare responsibilities for some of the
- 11 juries. And, obviously, not knowing -- sometimes you might
- 12 do opening statements and then send them home. In this
- 13 case, I recall that all that -- it was determined it would
- 14 be held off until the morning. Since they had been here for
- 15 a good part of the day already, just sitting, waiting, for
- 16 jury selection, it was determined that we would just start
- 17 fresh in the morning and that the jury would be sent home.
- 18 Q. Okay. I want to make sure I understand ---
- 19 A. So that's just scheduling.
- 20 Q. Okay. So is that your independent recollection?
- 21 A. Yes.
- 22 Q. All right. So your independent recollection is that
- 23 the jury was sent home and opening statements began the
- 24 following morning?
- 25 A. That's correct.

1 Q. All right. Mr. Justis, if you wouldn't mind turning
2 over to page 44 of the transcript. And you'll see on line 8
3 where the jury leaves and then they reenter. And if you
4 wouldn't mind looking through the next few pages until page
5 50 where Mr. Ward begins his opening. Does it appear to you
6 that the jury is sent home for the evening yet?

7 A. No. It does appear that the opening statements were
8 done. I know, typically, at the time in the afternoon, I
9 will usually, Judge, we can either send them home now or we
10 can do opening statements. Opening statements usually take
11 15, 20 minutes, tops. So at that point in time, obviously,
12 I was incorrect. At that point in time, Judge Murphy
13 decided to get ahead and do opening statements, and we did
14 those.

15 Q. All right. So it looks like we could agree then that
16 the transcript shows that the opening did take place
17 immediately after jury selection?

18 A. That's correct.

19 Q. Okay. If you'll turn with me to page 55. This is --
20 the first one is lines 8 through 9. Take a moment, review
21 the context, and tell me what your independent recollection
22 is of what transpired.

23 A. It appears that opening statements had ended. And it
24 was approximately 4:40. There was a bench conference at
25 that time. And then after that bench conference that was

1 called by the judge, the Court, the judge, instructed me
2 that I could call my first witness. So that would tell me
3 that at that point in time the judge probably asked, you
4 know, is your first witness here, how long to do you expect
5 that first witness would be, trying to get that --
6 especially since it's a murder case. Typically, sometimes
7 they take longer throughout the week. To make sure we had
8 enough time to get the case tried, it appears that she
9 probably asked how long my first witness would be. And
10 based on my answer, and of course without looking to see who
11 I called first, I couldn't tell you, I probably gave her an
12 answer she thought we'd able to do that witness fairly
13 quickly. And it appears I did call, looks like Ashley Judge
14 -- Ashley Judd. And looking at that, she's actually 16. I
15 do recall now looking at that. She was actually a high
16 school student. She had been here all day. This was, I
17 believe, Monday maybe. So at that point in time, I think I
18 do remember asking the judge if we could get her done that
19 day so that she would not have to miss school again the next
20 day.

21 Q. And if you could briefly look down to lines 14 through
22 15 on page 55. Review that bench conference as well as the
23 context and provide us with what your independent
24 recollection is or what you can best surmise based on the
25 context of what transpired.

1 A. And I think that goes into what I just said. After she
2 asked, you know, or had us call our first witness, that's
3 when I asked. Because I can't be sure, but I don't know if
4 Ms. Sarji was ready to just kind of go home for the day and
5 start fresh with the witnesses the next day. I think that's
6 -- and we might've had a conversation about what I just
7 spoke about. The fact that she was a high school student,
8 is already missing school that day, and that if we can get
9 her done, that's just one less day she was going to have to
10 miss school.
11 Q. Do you recall anything regarding sequestration of the
12 witnesses?
13 A. I believe we did. I know we sequestered all the
14 witnesses. It wasn't anything we had to argue about. I
15 think we both -- I had a lot of witnesses that were young,
16 young people. So I know Ms. Sarji did make that motion
17 because she didn't want them comparing testimony. And it's
18 not a motion that I would have won anyway. So I consented
19 to there being sequestration. Because it works on both
20 sides. So she would have to sequester her witnesses too.
21 Q. All right. Let's turn to the next one which is on page
22 75 of the transcript, lines 8 through 9. If you could take
23 a moment and review that as well as the context and tell us
24 what you recall transpiring during that bench conference.
25 A. Right. That was -- Mr. Ward was doing a direct

1 examination on a Douglas Vaughn who was actually a gentleman
2 who had seen the defendant the night before the incident and
3 Essentially at a party. And at that party, it was alleged
4 that the defendant was showing this pistol around trying to
5 sell a pistol. So he was being asked about purchasing the
6 pistol because, apparently, Mr. Vaughn was interested in
7 purchasing the pistol. And it was a conversation between he
8 and Mr. Shewtzuk about purchasing that pistol. And at that
9 point in time, Mr. Ward asked the witness if the defendant
10 say why he was trying to sell the pistol. And I think Ms.
11 Sarji objected based on speculation. And our argument was
12 simply, you know, if you don't know why -- and I think the
13 actual debate was, well, if he's going to speculate on why,
14 if he doesn't know why, he can say either I don't know why
15 or he said this. You know, this is the reason he gave me.
16 And that was the argument we had that he had -- you know,
17 did he give a reason why he was trying to sell it.

18 Q. If you will look at lines 3 through 4, Ms. Sarji's
19 objection that makes it to the record is hearsay. Would you
20 agree that Ms. Sarji also objected under hearsay as well as
21 speculation?

22 A. Oh, absolutely.

23 Q. And do you remember the argument as to the hearsay
24 objection?

25 A. I do not remember the argument as to why it would be

1 hearsay.

2 Q. I see that this is Mr. Ward's witness. Would you have
3 attended the bench conferences if he were the lawyer doing
4 the direct examination or cross?

5 A. Yes. In fact, throughout the trial, he would attend my
6 bench conferences and vice versa. We both go up, typically.
7 Very rarely does just one go up.

8 Q. All right. Do you agree that based upon the transcript
9 that we do have, it appears that Ms. Sarji's objection was
10 overruled?

11 A. I believe so.

12 Q. Lines 12 through 13 may help.

13 A. Correct.

14 Q. All right. If you will turn with me to page 82, lines
15 5 through 6. If you could review that portion as well as
16 the context and provide us with any information you can
17 regarding what transpired during that bench conference.

18 A. This was the case, in this particular part, I was doing
19 a direct examination of Kallie Vaughn which was a friend of
20 Mr. Shewtzuk's. She had visited him in the jail. So
21 essentially I was trying to get her to tell me what did you
22 talk about when you went to see him. What did he say? And
23 I asked if they talked about anything regarding the case.
24 She said not really. At the point in time, I said, "Okay.
25 Well, by not really, what you mean?" And then she started

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1 to say something about a face tattoo and tole him -- she
2 told him someone thought he got a teardrop. And he's like,
3 and at that point, that's when Ms. Sarji objected based on
4 -- she said I believe what she is saying or what she is
5 about to say, I'm assuming, is hearsay and possibly
6 objectionable. May we approach? So the Court said yes. We
7 approached. We had a bench conference. Based on the bench
8 conference, I withdrew that question. I think the reason
9 why -- the main reason I withdrew the question is I didn't
10 know what she was gonna say. So at that point in time, it
11 wasn't anything really relevant, so I just withdrew the
12 question. I think at that point, my recollection of the
13 bench conference would be I think the judge probably asked,
14 you know, where are you going with this. And I said I'll
15 just withdraw the question. And at that point, we went back
16 on the record. I withdrew the question because I really
17 don't know where she was going with it.

18 Q. All right. Let's turn then to page 88, lines 2 through
19 3. And the same question.

20 A. This was -- Katelynn Dubois who was the, at one point,
21 a girlfriend of not only the victim, they had broken up, but
22 also Mr. Shewtzuk. So she was a mutual acquaintance of both
23 of them. And we were asking about whether or not -- I had a
24 asked question whether or not Tommy had a job at the time
25 this incident happened. And that was objected to by Ms.

1 Sarji. And at that point, we approached. And the reason
2 why we asked that question, and what I would've told the
3 judge at the bench conference, was there a potential
4 allegation that they were attempting to rob the victim and
5 the fact that Mr. Shewtzuk did not have a job at the time,
6 which he didn't. The victim actually had two jobs at the
7 time, two full-time jobs at the time. It went to our theory
8 that he had a reason to try to rob him. The victim had
9 money. The defendant did not have money. Did not have a
10 job. Did not have a source of income. So it was based on
11 that that we were asking that question. And I think Ms.
12 Sarji, I don't know if she actually knew why we were asking
13 that question. So I think she viewed it as more
14 prejudicial, that we were just trying to get out the fact
15 that he didn't have a job and that was prejudicial. The
16 jury would look at him poorly. But that was not the
17 reasoning for our asking of that question. It was a setup
18 that he would have a motive to want to rob someone because
19 he didn't have money. That's why he was trying to sell the
20 gun the night before. Our theory of the case was he's
21 trying to get money. That's why he's trying to sell that
22 gun. He doesn't have a job. This guy does have a job.

23 Q. Do you recall the judge's ruling?

24 A. It looks like she probably said -- she probably ruled
25 in the defendant's favor. Because the next question after

1 that, I just changed the subject. So I'm assuming that the
2 judge ruled in favor of the defendant.

3 Q. All right. We're going to turn to page 100. It's
4 lines 21 through 22. Take a moment, look at that as well as
5 the context which is regarding cell phones and text messages
6 and tell us what your recollections is of what transpired
7 during that bench conference.

8 A. At this point in time, Mr. George Floyd, who is the
9 records custodian for Verizon I think it was, which was the
10 phone carrier the Mr. Shewtzuk was using, Mr. Ward is asking
11 him phone records and talking to him about phone records and
12 essentially trying to establish the authenticity of the
13 phone records that they had that did belong to George
14 Floyd -- belong to Mr. Shewtzuk. And it appears that he
15 asked to approach the witness, judge said, "Yes, sir." And
16 then while he was doing that, Ms. Sarji asked to approach.
17 And I know there was -- and I don't know if it's related to
18 this because I don't have a specific recollection as to this
19 bench conference. But I do know we had taken some of
20 those -- there were two issues. There were two things that
21 came up with the phone records. One of them was I believe
22 we had subpoenaed for a certain time frame of phone records.
23 And I believe Verizon when they actually -- when you
24 subpoena those phone records, when they come to court, they
25 will bring a certified copy of those phone records. So even

1 though they've already issued them to you, we do a search
2 warrant. We say I need this date to this date, they send it
3 to us while we're preparing for trial. A copy of those goes
4 to the defense. Then when they actually get subpoenaed for
5 trial, they will bring a certified copy with them. And I
6 think what happened was they actually brought more records
7 than they initially sent us. Those records, the extra
8 records, the extra time frame, wasn't used at trial to my
9 recollection. It just gave us more information, but we
10 didn't use it. And there was an objection my Ms. Sarji
11 about the fact that Verizon brought more records than we had
12 asked for it. We even sent -- I remember having a copy of
13 the subpoena that we sent Verizon, and we asked for the
14 proper time frame. They just brought more than what we
15 asked for. So at that point, I know she was given the
16 opportunity to look at those phone records, make sure we
17 didn't put anything outside of what we had initially asked
18 for in a trial. So those phone records were allowed in.
19 And I know there were talks about that. I can't remember
20 whether it was during bench conferences or whether it was
21 outside the presence of the jury, you know, on the record.
22 I'm sure, if it's in the transcript, then it was done off
23 the, you know, on the record in front, you know, without the
24 jury. But otherwise, I know we had a discussion about that.
25 So that was one..

1 The other one was we had taken those phone records when
2 we -- especially Verizon, when they send you text messages,
3 they're not in sequential order. They're literally jumbled
4 up out of order and everything. So we actually had people
5 from our staff go through all the phone records and actually
6 group them chronologically and then put them in a
7 spreadsheet and then actually assign, like, who called who
8 or who texted who and put those names. Instead of having a
9 number, we put a name to the number. So it would say, you
10 know, Tommy Shewtzuk. It would say Katelynn Dubois. It
11 would say -- that was just something we did in house. And
12 we actually provided a copy of that to the defense. So that
13 was our work product that we provided to them at the
14 beginning of the trial or prior to trial so that they would
15 have the same working piece that we used. And that, to the
16 best of my recollection, was also introduced into evidence
17 so that it was easier for the jury to understand who's
18 calling who rather than having to look up every single
19 number and kind of match it to, okay, that's this person.
20 We just made it simple and we put it in names.

21 Q. Was there an objection made to the use of that
22 spreadsheet?

23 A. Not that I know of. I think originally we talked about
24 that during the trial and explained it to them. And I think
25 there might've been objection about I think we had different

1 names in different colors just so it was, you know -- I
2 think there was an objection to the color we used for the
3 defendant. So what we did was we did just a black and white
4 version.

5 Q. So during this bench conference, what could have been
6 discussed was the subpoena versus search warrant dates for
7 the phone records or the spreadsheet? Is there anything
8 else that may have been discussed during this bench
9 conference?

10 A. No. Those are the only two issues related to cell
11 phone records that I recall.

12 Q. Do you recall Ms. Sarji's testimony a few moments ago
13 that she may have objected or is pretty sure she objected to
14 the State can't prove who the user of the cell phone was.
15 Do you recall that objection?

16 A. She might have -- I don't recall it, but she might have
17 made that. And I know she probably, she might have even
18 made that argument in closing. And, obviously, at that
19 point it's not something that -- we would have acknowledged
20 that this is a phone that's, you know, associated or has
21 been associated in the past with this person. We can't
22 prove who actually physically made that call. We just know
23 that it was made from that phone that typically I think we
24 had witnesses that -- we had several witnesses testify that
25 that phone number is the number they know as this person.

1 Q: All right. If you'll turn with me to page 141 of the
2 transcript, lines 23 through 24. Review that as well as the
3 context and tell us what your recollection is at this bench
4 conference.

5 A. Sure. It appeared Ms. Sarji had to take a comfort
6 break, and the judge asked us to approach real quick. She
7 was going to allow her. We had just finished up a witness.
8 And she asked for a comfort break. She said, "Sure. Do
9 y'all want to approach real quick." So we approached. So
10 at that point in time, I believe the judge asked the jury if
11 they were good or if they needed a break. And apparently
12 the judge continued, did not give a comfort break. And that
13 might be because the next witness, Kiritkumar, wasn't a very
14 long witness.

15 Q. So do you think at that bench conference on page 141
16 y'all were discussing the request for the comfort break and
17 potentially ---

18 A. Right. I think we were ---

19 Q. --- the length of the next witnesses?

20 A. Correct.

21 Q. All right. If you'll turn with me to page 145, lines 5
22 through 6. Take a moment, review that as well as the
23 remaining portions to get some context. And if you can tell
24 us what your recollection of that bench conference is.

25 A. This was that witness that I just mentioned, Mr.

1 Kiritkumar Mehta, and I did the direct examination on him
2 and I finished with his questions. The judge asked if there
3 was any cross-examination. Ms. Sarji said no. She
4 dismissed that witness. And I asked if we may approach real
5 quick. The judge said certainly, we approached. And it was
6 right after that that the judge sent the jury to lunch. I
7 can only assume at that point in time I was telling her who
8 my next witness was. And it looks like Martin Villa. He
9 was a police officer. At that point in time, based on the
10 time, I can only assume above that I probably told the
11 judge, you know, it's probably a good time to take lunch if
12 you're inclined to do so.

13 Q. If you'll look down at the bottom of page 145 and the
14 judge addresses you and Ms. Sarji and, of course, Mr. Ward
15 regarding this Ms. Dubois and her testimony, and about
16 allowing everyone to listen to it. This continues at the
17 top of 146 about the court reporter pulling the testimony.
18 Can you tell us what you recall regarding this issue
19 regarding Ms. Dubois's testimony?

20 A. I do know that Ms. Sarji believed that she had kind of
21 perjured herself based on -- I don't recall if it was based
22 on what she said in previous statements or from something
23 she just said kind of contradicted herself in actual
24 testimony. But I know there was some discussion about that.
25 And what I recall as far as perjury, that something that,

1 you know, she would have to be charged by our office with.
2 It's not something that necessarily calls for the exclusion
3 of her testimony. That's something for the jury to take as
4 they do any other evidence, any other testimony, they can
5 choose to believe it or not believe it.

6 Q. Was there any opportunity for Ms. Sarji to -- or was
7 the State requested to recall Ms. Dubois so Ms. Sarji could
8 cross-examine her with this newly discovered evidence?

9 A. No. We weren't required to. And I believe she was
10 actually told she could call her as a witness if she chose
11 and ask her whatever she wanted to ask her.

12 Q. But there was no request that the State recall her so
13 that it would be on cross-examination and under leading
14 questions?

15 A. Correct. I wasn't asked to recall her.

16 Q. All right. Do you recall any other motions or
17 objection regarding Ms. Dubois's testimony?

18 A. Not off hand.

19 Q. All right. We'll move back into the bench conferences
20 then. On page 191 should be our next one. This is lines 7
21 through 9. If you could just take a moment and review that
22 portion as well as the context and tell us what you
23 remember.

24 A. This is dealing with some DNA evidence. A cigarette
25 butt and also a buccal swab that was collected from the

1 defendant to compare to the DNA profile that had been
2 established on a cigarette butt found outside the gas
3 station. And there was I guess an objection when those
4 items were attempted to be put into evidence that a chain --
5 we hadn't established the chain. At that point in time, I
6 know there were some discussions essentially the person
7 that -- in both cases, the cigarette butt and the buccal
8 swab, the person that collected those items and sealed those
9 items up did testify and testified to doing that and
10 testified to those items being sealed up and leaving his
11 possession sealed. Then we had the person from SLED, the
12 DNA person from SLED, who actually opened up the package and
13 did the testing on both items, they testified that the
14 package had not been tampered with. That if it had appeared
15 to have been tampered with, they would not have tested
16 either of those items. And based on that testimony, the
17 judge did allow both of those items into evidence finding
18 that we had proven the chain. We had the certified SLED
19 chain which showed which showed everything. We also had --
20 there was other evidence in the case of who transported the
21 evidence to SLED that was in the certified chain that
22 doesn't normally get entered into evidence. According to
23 case law, we're not required to call every witness who
24 handled the evidence. We are required to identify every
25 person in the chain as far as practicable. I think that's

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1 the term that's used in the case on. And we had actually
2 proven or, you know, we were able to prove, you know, who
3 all touched the evidence. And we called those witnesses
4 that actually tampered with the evidence, that actually did
5 something to the evidence. And like I said, the first
6 witness testified they sealed it. It was sealed when it
7 left them. And the person who opened it up testified it was
8 sealed when they got it and they opened it up, tested it,
9 resealed it. So based on that argument -- and that would've
10 been the conversation we had in any bench trial or if it's
11 here on the record in the transcript. And based on, I think
12 it's Belcher case -- I think it might be Belcher. I can't
13 remember the name of the case. But based on that, that's
14 the case the seminal case that everyone uses. And based on
15 that, the judge ruled that we had met our burden and the
16 evidence was admissible and it would be up to the jury to
17 determine what weight they gave the evidence.

18 Q. You mentioned the certified SLED chain?

19 A. Correct.

20 Q. And you mentioned that that is what you used to prove
21 who transported the evidence?

22 A. That's something you get from SLED, and it does show
23 who brought them the evidence. And that is actually sent to
24 the defense. We get that certified chain. They get a copy
25 of it. And we send that to them prior to trial and they

1 have it. But we normally do not put that in. It's
2 essentially hearsay testimony, so we don't try to put that
3 in to evidence at trial. But it's there. It's basically a
4 reference for us to know, you know, who did what.

5 Q. Okay. Do you recall any case law that Ms. Sarji may
6 have mentioned at the bench regarding that chain of custody?

7 A. It would've been -- I think it's that Belcher case.
8 That case, that's the case that everyone uses.

9 Q. Could it possibly be Hatcher?

10 A. It might be Hatcher.

11 Q. All right. If you could turn with me now then to page
12 242 of the record. This is at the top, lines 2 through 4.
13 So you may need to look back and see if you have any idea
14 what this may have been about.

15 A. 242?

16 Q. Yes, sir. 242, lines 1 through 4, at the very top.

17 A. At that point, it looks like I had finished up with a
18 witness. It was late in the day. And the next witness we
19 had scheduled to come the next morning. So we were going to
20 be done for day. At that point in time, we were called
21 forward for essentially scheduling purposes. And I think
22 during that bench conference we also talked about Ms. Dubois
23 and that issue with her possibly perjuring herself. And I
24 think Ms. Sarji wanted to rehear that testimony because
25 there was something I think very specifically and it's

1 listed in here. Something about not having had contact with
2 Mr. Shewtzuk between the time they broke up in April and the
3 night before the 15th. And I think it would be the
4 defense's allegation that there was contact and there was
5 some, whether it be phone records or things of that nature,
6 something, that came out somewhere in the trial that would
7 show they did have contact.

8 Q. Okay.

9 A. So we did talk about that. And I believe whether or
10 not we listened to that, I can't recall.

11 Q. That part about Ms. Dubois, it looks like ultimately
12 makes it onto the record.

13 A. Correct...

14 Q. And the bench conference you think may have been mostly
15 scheduling?

16 A. Mostly scheduling. Just the fact that, hey, we can
17 listen to this. We can get that testimony up and running.
18 We can listen to it now or in the morning, you know, before
19 we start, that kind of thing. Just kind of scheduling when
20 we could listen to that.

21 Q. Okay. Let's turn then to page 291 -- we're almost done
22 -- lines 5 through 7. If you could take a moment, review
23 that. And then give us your recollection of what you
24 believe occurred.

25 A. Right. This is -- my lead detective was testifying.

1 And at that point in time, we had -- there was an actual
2 video surveillance, video of the actual murder that had been
3 introduced into evidence by the store manager. He was the
4 person that actually made the video from their system and
5 gave it to police. Obviously, we did not show the video at
6 that time. I believe, if my memory serves me correctly, at
7 that point in time, we did get it offered into evidence at
8 that point, the video, but we did not show it at that point.
9 It was our trial strategy to show it at the end of the trial
10 and use my lead detective. As he was kind of wrapping
11 everything up and kind of going through the text messages
12 and the timeline of when everything happened. And I had
13 just asked him about the last text from Mr. Shewtzuk, the
14 last activity on his phone, which happened prior to this
15 incident, being recorded on tape. And at that point in
16 time, we were about to show that video. And I had the
17 victim's mother and brother and in the courtroom, and I
18 wanted to give them an opportunity to step out if they chose
19 to or not look or whatnot. And also just to warn everyone
20 else in the courtroom that if they wanted to step out and
21 not watch the video, they could do so. So I asked to
22 approach the judge and that's what that bench conference was
23 about. And the judge made the following, as you can see in
24 the transcript, announcement to the courtroom.

25 Q. All right. Our last one, page 295, lines 14 through

1 15. If you could review that portion as well as the context
2 and tell us what transpired during that bench conference.

3 A. At that point in time, we had our lead detective on the
4 stand, and we were attempting to get in some photographs of
5 the defendant that were taken when he was actually arrested
6 several days later when he turned himself in. They took
7 some photographs of him, several of his arms and chest and
8 everything. There was some identifying tattoos that you can
9 actually see in the video. And it would be the State's
10 argument that in the time between the murder and his actual
11 turning himself in -- I think it was five days later -- that
12 he attempted to cover up those tattoos. And so we had
13 pictures of not only still shots from the video that shows
14 the tattoos and some other -- there might've been some other
15 Facebook photos possibly of him, of his tattoos. I can't
16 recall. But we were essentially getting the detective to
17 identify and compare those to the new photos that were taken
18 when he was actually arrested. So when we attempted to do
19 that, I asked -- I asked to approach. And I think she had
20 already, she meaning Ms. Sarji, had already objected I think
21 to one particular picture. I think it was under, you know,
22 just prejudicial effect of some of these pictures. And so
23 we asked to approach. And I think we had a discussion about
24 those pictures that I was about to show these pictures and
25 why. It was about the significance of showing these

1 pictures; that it's our allegation that he attempted to
2 coverup his identity.

3 Q. If you could look over on 295, lines 4 through 8.. I
4 want to use that point or that part to ask you regarding
5 your statement that you believe Ms. Sarji objected to one
6 photo. Was it to one photo or was it to that whole group,
7 25 through 32?

8 A. I would say probably the whole group. I don't --
9 because I don't -- one photo isn't any worse than the
10 others. They were just photos of different tattoos. He had
11 multiple tattoos. So they were individual photos kind of
12 depicting, focusing on one particular -- we could see one
13 tattoo better than the other. So I think she objected to
14 all of them from what I can recall.

15 Q. Okay. And is it your recollection that the judge
16 overruled the objection?

17 A. I believe so. I don't recall. I think we got all of
18 this photos in.

19 Q. Well, line 6, page 295, does it appear to you that the
20 judge let them all in?

21 A. Yep.

22 Q. Did you recall anything about the judge's reasoning
23 during the bench conference for the admission of the
24 photographs?

25 A. I think they're relevant. I think she determined that

1 they were relevant based on the fact that it appeared, you
2 know, for identity purposes.

3 MS. HACKETT: All right. I believe those are all the
4 questions I have for you, Mr. Justis. Thank you.

5 THE WITNESS: Thank you.

6 THE COURT: You may step down, Mr. Justis. Thank you.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Any other witnesses?

9 MS. HACKETT: No, ma'am.

10 THE COURT: Anything from your side, Mr. Justis?

11 MR. JUSTIS: No, Your Honor.

12 THE COURT: Certainly conclude the testimony. And just
13 so that the record is clear. At the trial of the case, the
14 reason that the bench conferences were not recorded, we were
15 assured by the court report that they were being recorded.
16 There was a recording device placed on the bench.
17 Unfortunately, when the microphone, so that the jury can't
18 hear what we're saying, it creates some static background
19 noise and that prevented the actual recording of it. So,
20 certainly, it was not the attention to not have the bench
21 conferences recorded. We were assured that they were being
22 recorded. But due to technical difficulties, apparently,
23 they were not. Anything further from anyone?

24 MR. JUSTIS: None from the State, Your Honor.

25 MS. HACKETT: Your Honor, I think I need to put on the

1 record we don't have any motions. Typically, at the end of
2 these, either I would make a motion that it hasn't been
3 reconstructed or a motion -- generally, sometimes the State
4 asks for a determination of whether it has been
5 reconstructed or not. I don't have a specific motion here
6 today that it has not been reconstructed. So Your Honor can
7 do as you see fit regarding the Court's order.

8 THE COURT: All right. I'll take that under advisement
9 and notify you of my position.

10 MS. HACKETT: Thank you, Your Honor.

11 MR. JUSTIS: Your Honor, may I add just one thing. I
12 don't know if it would help, you know, if Your Honor
13 supplemented anything that you can recall if there's
14 anything different than what has already been said.

15 THE COURT: Honestly, this is the first time I've had a
16 chance to look at the actual transcript and go through each
17 of the bench conferences. It appears based on both of Ms.
18 Sarji's testimony as well as your testimony, my recollection
19 is very similar to basically what you both testified to.
20 And it certainly appears what I recall. However, I'm going
21 to have to try to find some notes because I usually take
22 pretty detailed notes myself. So I'm going to try to look
23 at those. If there's anything further, of course, I will
24 recall everybody to put that on the record. And if there's
25 not, then of course I will notify you of my ruling and ask

1 you to prepare a proposed order.

2 MR. JUSTIS: Thank you, Your Honor.

3 MS. HACKETT: Thank you.

4 (The proceeding concluded at 12:26 p.m.)

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6 (End of Record)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	INDICTMENT NUMBERS:
	)	2015A1810300575; 2015A1810300603
	)	through -605; 2016GS1800972
STATE OF SOUTH CAROLINA	)	CHARGES: Murder, Poss. Weapon/
	)	Violent Crime, Kidnapping (3 counts)
-versus-	)	
	)	MOTION FOR CONTINUANCE OR TO
THOMAS SHEWTZUK,	)	BIFURCATE PROCEEDINGS
	)	
Defendant.	)	

COMES NOW THE DEFENDANT, by and through undersigned counsel and moves this Honorable Court for a continuance of the trial of this matter, which is scheduled to be heard beginning on September 6, 2016, or in the alternative, to bifurcate the proceedings and hold an individualized hearing pursuant to *Aiken v. Byars*, 410 S.C. 534 (2014). The grounds for this Motion are as set forth below and as may be argued during the hearing of this Motion.

STATEMENT OF FACTS

The Defendant, Thomas Shewtzuk, has been indicted for one count of murder, two counts of kidnapping, and one count of possession of a firearm during commission of a violent crime. The incident that is the subject of these indictments occurred on June 13, 2015. At the time of commission of the crimes, Shewtzuk was 18 years old, having turned 18 just 6 months previously, on January 8, 2015.

APPLICABLE LAW AND ARGUMENT

The United States Supreme Court has recognized that children are "constitutionally different from adults for sentencing purposes. Their 'lack of maturity' and 'underdeveloped sense of responsibility' lead to recklessness, impulsivity, and heedless risk-taking."¹ The

¹ *Miller v. Alabama*, 132 S.Ct. 2455, 2458 (2012) quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005) and *Graham v. Florida*, 130 S.Ct. 2011 (2010).

Supreme Court's rationale in reaching this conclusion was based on "common sense as well as social science."²

The South Carolina Supreme Court has recognized *Miller* applies in South Carolina in *Aiken v. Byars*, 410 S.C. 534 (2014). *Aiken* specifically recognizes that juveniles are excluded from sentences for life without parole, absent "individualized considerations of youth."³ The *Aiken* Court noted that the *Miller* Court "unequivocally held that youth has a constitutional dimension when determining the appropriateness of a lifetime of incarceration with no possibility of parole," and that "we must give effect to the proportionality rationale integral to *Miller's* holding — youth has constitutional significance. As such, it must be afforded adequate weight in sentencing."⁴

As the Court in *Aiken* explains:

Miller is clear that it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the Constitution.... *Miller* does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered.

As evidenced by the record, although some of the hearings touch on the issues of youth, none of them approach the sort of hearing envisioned by *Miller* where the factors of youth are carefully and thoughtfully considered. [footnote omitted]. Many of the attorneys mention age as nothing more than a chronological fact in a vague plea for mercy. *Miller* holds the Constitution requires more. As the majority states succinctly, "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against

² *Aiken v. Byars*, 410 S.C. 534 (2014) citing *Miller v. Alabama*, 132 S.Ct. at 2464.

³ *Aiken v. Byars*, 410 S.C. 534, 541 (2014).

⁴ *Id.* at 542-543.

irrevocably sentencing them to a lifetime in prison." *Id.* We believe this statement deserves universal application.⁵

After fully explaining the rationale for its holding that juvenile offenders are entitled to separate, individualized sentencing hearings before they may be sentenced to life without parole, the Aiken Court set out the appropriate procedure for sentencing hearings in these types of cases. Aiken dictates a specific framework for the sentencing court to consider at a sentencing hearing of a juvenile offender. The Court must consider:

(1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequence"; (2) the "family and home environment" that surround the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the "incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and (5) the "possibility of rehabilitation."⁶

The Aiken Court defines "juveniles" to be individuals under 18 years of age, just as the Miller Court did, even though for purposes of South Carolina law, juveniles are individuals who are less than 17 years of age.⁷ Implicit in this treatment of technically legal 'adults' under South Carolina law as 'juveniles' for purposes of sentencing when faced with life without parole is an understanding of the Miller Court's rationale in holding that juveniles must be treated differently based upon the fact that "children are different."⁸ Thus, the Aiken Court has already implicitly recognized that despite the definition of 'adult' under the law, young individuals are

⁵ *Aiken v. Byars*, 410 S.C. 534, 543-544.

⁶ *Aiken v. Byars*, 410 S.C. 534, 543-544, quoting *Miller v. Alabama*, 132 S.Ct. at 2648.

⁷ 410 S.C. 534, footnote 1 (2014); S.C. Code Ann. § 63-19-20.

⁸ *Miller*, 132 S.Ct. at 2469.

not fully formed adults, justifying treating them as juveniles when considering a life without parole sentence.

Just as a 17 year old brain is undeveloped and immature, so is an 18 year old brain.⁹ In fact, developmental science¹⁰ indicates that human brain maturation continues development into the early twenties.¹¹ Scientific research conducted by psychologists¹² and neuroscientists¹³ shows that capacities related to self control and judgement in “emotionally and socially charged situations may not mature until much later” than the age of 18.¹⁴ Neuroscientific studies reveal “evidence of regional changes in brain structure, function, and neurochemicals during adolescence that are distinct from childhood and adulthood and have been proposed to result in imbalances within brain circuitry. Sepcifically, noninvasive brain imaging and postmortem

⁹ Although *Roper v. Simmons*, 543 U.S. 551 (2005) drew a bright line rule for individuals under 18, the Court also recognized that “[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18.” *Id.* at 575.

¹⁰ Developmental science was heavily relied upon in *Miller v. Alabama*, *Graham v. Florida*, 130 S.Ct. 2011 (2010) (recognizing that juveniles have lessened culpability due to their age and immaturity), and *Roper v. Simmons*, 543 U.S. 551 (2005) (holding that the Eighth Amendment forbids imposition of the death penalty on juvenile offenders) in reaching the holdings within those cases.

¹¹ Alexandra O’Cohen, et al., *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 Temp. L. Rev. 769, Summer 2016.

¹² See, e.g., Laurence Steinberg, et al., *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. Clinical Psychol. 459, 472-73 (2009), cited in O’Cohen, et al., *supra* at 778.

¹³ See, e.g., B.J. Casey & Kristina Caudle, *The Teenage Brain: Self Control*, 22 Current Directions Psychol. Sri. 82, 86 (2013) cited in O’Cohen, et al., *supra* at note 11, page 779.

¹⁴ O’Cohen, et al., *supra* note 11, page 779.

studies have shown continued regional development of the prefrontal cortex, implicated in judgment and self-control, beyond the teen years and into the twenties."¹⁵

Given the ongoing development of prefrontal brain circuitry into the twenties, treating individuals who have not yet reached full brain development as adults seems problematic and studies have been done to examine cognitive capacity in emotionally charged situations within the 18 - 21 year old age range:

We focused specifically on eighteen-to twenty-one-year-olds relative to younger (thirteen to seventeen) and older (twenty-two to twenty-five) ages. To discern specific emotional contexts that may impact cognitive control differently across development, we examined the impact of both brief and prolonged emotional states and of both positive and negative valence on cognitive control. Our premise was that these emotional contexts may relate more to emotionally charged situations relevant for legal policy judgments, such as those related to criminal responsibility, accountability, and public safety, than to emotionally benign situations.

We tested whether young adults would behave more similarly to adolescents (thirteen to seventeen) or adults (over twenty-one) in these emotionally laden contexts

Our findings show that, relative to adults over twenty-one, young adults show diminished cognitive capacity, similar to that of adolescents, under brief and prolonged negative arousal.

This behavior pattern was paralleled by less adult like recruitment of prefrontal circuitry in teens and young adults, consistent with relatively protracted development of the prefrontal cortex into the early twenties.

...Taken together, the findings suggest that young adulthood is a developmental period when cognitive capacity is still vulnerable to negative emotional

¹⁵ Id. at 782, citing Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 *Proceedings Nat'l Acad. Sci. U.S.A.* 8174, 8174 (2004); Kathryn Mills et al., *The Developmental Mismatch in Brain Maturation During Adolescence*, 36 *Developmental Neuroscience* 147, 155-58 (2014); Zdravko Petanjek et al., *Extraordinary Neoteny of Synaptic Spines in the Human Prefrontal Cortex*, 108 *Proceedings Nat'l Acad. Sci. U.S.A.* 13281, 13284 (2011); Armin Raznahan et al., *Longitudinal Four-Dimensional Mapping of Subcortical Anatomy in Human Development*, 111 *Proceedings Nat'l Acad. Sci. U.S.A.* 1592, 1594-95 (2014); Elizabeth R. Sowell, et al., *Longitudinal Mapping of Cortical Thickness and Brain Growth in Normal Children*, 24 *J. Neuroscience* 8223, 8228-30 (2004).

influences. This diminished capacity is paralleled by immature engagement of prefrontal regions that are important for overriding emotionally triggered actions.¹⁶

In other words, there is a scientific basis for treating individuals who have not yet reached their early twenties as different from older individuals. The United States Supreme Court in recent years has increasingly recognized the need for different treatment of younger individuals based, in part, upon scientific studies.¹⁷ When considered against the backdrop of the science of brain development, it seems clear that treating an 18 year old differently than a 17 year old under the law for sentencing purposes is unjustified. If the developmental status and maturity of a 17 year old requires greater consideration of his youth as a factor in sentencing than an adult, then the developmental status and maturity of an 18 year old, which is not appreciably different based upon the scientific literature, should require the same consideration of youth as a factor in sentencing, giving rise to entitlement to an *Aiken* hearing in the same

¹⁶ Cohen, et al., 88 Temp. L. Rev. 769, 785, internal citations omitted, citing MacArthur Found. Res. Network on L. & Neuroscience, <http://www.lawneuro.org>; Alexandra Cohen, et al., *When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts*, 27 Psychol. Sci. 549, 549 (2016); Gogtay et al., *supra* note 15, at 8176-79; Sowell et al., *supra* note 15, at 8826-28; Jason T. Buhle et al., *Cognitive Reappraisal of Emotion: A Meta-Analysis of Human Neuroimaging Studies*, 24 Cerebral Cortex 2981, 2984-87 (2014) et al.

¹⁷See e.g., *Roper v. Simmons*, 543 U.S. 551 (2004)(recognizing that, "as any parent knows and as the scientific and sociological studies ... tend to confirm, "[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable in the young. These qualities often result in impetuous and ill-considered actions and decisions"); *Graham v. Florida*, 560 U.S. 48 (2011)(noting that "parts of the brain involved in behavior control continue to mature through late adolescence"); *Miller v. Alabama*, 132 S.Ct. 2455 (2012)(stating with approval the language in *Roper v. Simmons* regarding the fact that the Court's decision rested not only on common sense, "but on science and social science as well").

manner as a 17 year old would be accorded. Just as a sentence of life without parole has been likened to a death sentence for an individual under 18,¹⁸

For Thomas Shewtzuk, an *Aiken* hearing is necessary to protect his Constitutional rights — not only to protect his Eighth Amendment rights, but also his Sixth Amendment right to effective assistance of counsel. Had undersigned counsel been aware of the *Aiken* case and the substantive rights afforded similarly situated individuals, bifurcation of this case would not be necessary, as mitigation would have been adequately prepared. As it is, that is not the case, and it has only been in recent weeks that undersigned counsel became aware of the need for an in depth consideration by the Court in the nature of an *Aiken* hearing. Since that time, it has become clear that a minimum of an additional 6 months will be necessary to gather mitigation evidence and have an evaluation performed.

The United States Supreme Court has indicated that the defendant's lawyer should conduct investigations into mitigating evidence and "should comprise efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor."¹⁹ The South Carolina Supreme Court has also recognized the "importance of a meaningful mitigation defense" and has determined that

¹⁸ *Graham v. Florida*, 130 S.Ct. 2011 (2010)(life without parole sentences "share some characteristics with death sentences that are shared by no other sentences.").

¹⁹ *Wiggins v. Smith*, 539 U.S. 510, 524 (2003), citing ABA Guidelines for the Appointment and Performance of counsel in Death Penalty Cases 11.4.1(C), p. 93 (1989).

"counsel's failure to adequately investigate and present mitigating evidence resulted in the ineffective assistance of counsel requiring a new sentencing hearing."²⁰

Denying Mr. Shewtzuk the same opportunity to present mitigating evidence as a 17 year old is also a violation of The Equal Protection Clause, which requires government to treat similarly situated people alike.²¹ Seventeen year olds and eighteen year olds are similarly situated under the law — both are defined as "adults" for purposes of South Carolina's criminal code. Yet 18 year olds are being treated differently under the law.

In the case at bar, there are significant factors that must be investigated for mitigation, in order to protect the Defendant's constitutional rights and to allow him effective assistance of counsel. Drucy Glass, a mitigation specialist, has provided an Affidavit detailing the work done by mitigation specialists, her experience in the field, and her opinion that in the case at bar, there are multiple factors that have "tragically impacted [Thomas'] childhood and developmental years including a life long pattern of maternal and paternal physical neglect and abandonment, the incarceration of his biological father for murder when Thomas was four years old, physical abuse, sexual abuse as a young boy by an older adult male, the introduction to methamphetamine as [a] young child by his biological mother who worked as a prostitute, school difficulties, learning disabilities, multiple DSS out of home placements of Thomas and his younger sisters after his mother lost custody, and a commitment to William S. Hall

²⁰ *State v. Mercer*, 381 S.C. 149 (2009) citing *Council v. State*, 380 S.C. 159 (2008); *Wiggins v. Smith*, 539 U.S. 510 (2003) (holding that the mitigating evidence that counsel failed to discover and present, including evidence of abuse in childhood, an alcoholic, absentee mother, sexual molestation, and a period of homelessness, was relevant to assessing the defendant's moral culpability and gave rise to a reasonable probability that a competent attorney would have introduced it at sentencing).

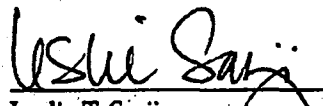
²¹ *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

Psychiatric Hospital as an adolescent." In order to complete the necessary investigation in this case, Ms. Glass indicates that it would take 100 hours of her time.

Additionally, Dr. Susan Knight has provided an Affidavit regarding her experience in conducting forensic evaluations, which undersigned counsel believes to be a necessary component to an effective presentation of mitigating factors in the current case. Dr. Knight has been involved in conducting pre and post-sentencing evaluations pursuant to *Miller v. Alabama* and *Aiken v. Byars*. Undersigned counsel submits that, given the Defendant's young age at the time of commission of the alleged offense, (i.e., 18 years), he is entitled to the same presentation and development of mitigation that a 17 year old, who is also classified as an adult under S.C. law, is entitled to. Dr. Knight indicates that in her experience, a thorough mitigation evaluation would take anywhere from 12 to 18 months to complete.

If the Court is not inclined to grant a continuance of 6-12 months for the trial of this matter, undersigned counsel stands ready to defend Mr. Shewtzuk in the trial of this case as relates to guilt or innocence. However, in order that undersigned counsel not be ineffective in her representation of the defendant, undersigned counsel has no choice but to request the matter be bifurcated, to allow an additional 6-10 months to adequately investigate and present the significant mitigation evidence that exists in this case.

Respectfully Submitted,



Leslie T. Sarji
Attorney for the Defendant

Charleston, South Carolina
August 30, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	INDICTMENT NUMBERS: 2016-GS-
18-972,		
		2015-GS-18-951 through 954
STATE OF SOUTH CAROLINA	)	
	)	
-versus-	)	
	)	
THOMAS SHEWTZUK,	)	AFFIDAVIT OF DRUCY GLASS
	)	
Defendant.	)	

COMES NOW THE AFFIANT, DRUCY GLASS, and after being duly sworn, deposes and states as follows:

1. I am a Mitigation Specialist in the State of South Carolina. I have been working as a Mitigation Investigator/Specialist since 1990. I have Bachelor of Arts Degree in Sociology from the University of South Carolina. I am also a licensed Baccalaureate Social Worker in the state of South Carolina.

2. Since 1990, I have worked on more than forty Capital cases at both the trial level and the post-conviction level in State courts as well as Federal and Military courts.

3. The role of the Mitigation Specialist is to assist the attorneys in many areas related to preparation of mitigation evidence for the penalty phase of the trial. Proper preparation of the mitigation in a death penalty case requires the following:

Conduction a thorough social history investigation and compiling a multigenerational family chronology.

Collection of multiple records from all aspects of a the client's life including birth, childhood, and all medical records, educational records, employment records, mental health and psychiatric records, etc.

Identifying and interviewing all potential penalty phase witnesses including multigenerational family members, friends, neighbors, physicians, mental health and social service personnel, co-workers, employers, wives, ex-wives, girlfriends, former girlfriends, teachers, coaches, past attorneys, police and sheriff personnel, DOC officers, jail guards, etc.

Further investigation of pertinent information discovered in collected documents and interviews.

Providing background materials, information and documentation to experts to enable them to perform competent and reliable evaluations.

Ongoing contact and communication with the client and his family during this entire process.

4. For several reasons, location and interviewing lay witnesses, especially family members is a sensitive endeavor, which requires exceptional time and patience. A

primary reason is that, as with the client, family members frequently suffer from multiple impairments, including mental illness, mental retardation, and substance abuse. In addition there are usually problems obtaining the trust of witnesses. In many cases lay witnesses are initially suspicious of talking to anyone about the client because it is assumed the purpose is to incarcerate or in other ways hurt the family members. Others are reluctant to reveal possibly painful and embarrassing facts regarding family history to a stranger. Consequently, a significant amount of time must be spent not only effectively evaluating and overcoming various impairments, but also in demonstrating one's sincere commitment in assisting the client. The limitations of the witnesses, combined with the length of the time between childhood and the time of the offense and trial necessitates the lay witnesses be interviewed on more than occasion in order to obtain valid and reliable information.

5. The Mitigation Specialist is responsible for summarizing and analyzing documents and interview data, and for organizing and presenting information to the attorney and experts. Essential elements of this organization generally include preparation of chronologies and genograms. Chronologies are comprehensive, linear, documented summaries of all major conditions and life events and the effects of these life events on the client. Genograms are pictorial representations of family members revealing family histories of medical, psychological and social dysfunction.

6. Mitigation Specialists require special knowledge and skill in the areas of collecting hard to find records, interviewing impaired clients and witnesses, mental illness, substance abuse and addictions, trauma, the effects of childhood trauma, indicators of physical, emotional and sexual abuse, grief reactions and loss. A competent Mitigation Specialist generally has additional training in the areas of forensics and basic investigative skills. I have attended numerous national and state training conferences and seminars in all the areas mentioned above.

7. A cursory review of Thomas Shewtzuk's case reveals there are multiple factors which have tragically impacted his childhood and developmental years including a life long pattern of maternal and paternal physical neglect and abandonment, the incarceration of his biological father for murder when Thomas was four years old, physical abuse, sexual abuse as a young boy by an older adult male, the introduction to methamphetamine as young child by his biological mother who worked as a prostitute, school difficulties, learning disabilities, multiple DSS out of home placements of Thomas and his younger sisters after his mother lost custody, and a commitment to William S. Hall Psychiatric Hospital as a adolescent.

8. I have been asked by the attorney who represents Thomas Shewtzuk to be retained as Mitigation Specialist in the case of State of South Carolina vs. Thomas Robert Shewtzuk. As Mitigation Specialist in South Carolina, my fee is \$75.00 per hour. I anticipate it would take 100 hours to complete the necessary work in this case.

FURTHER THE AFFIANT SAYETH NAUGHT!

Dwight A. Glass
Dwight A. Glass

Sworn to and Subscribed before me
this 24th day of August, 2016.

Erica J. Russell
Notary Public of State of New York
My Commission expires 08/05/2017.



ERICA J. RUSSELL
Notary Public - State of New York
No. 01RU8287379
Qualified in Chautauque County
My Commission Expires August 05, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL
SESSIONS	)	
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
GS-18- ~~972~~ ,1030075	)	INDICTMENT NUMBERS: 2016-
		2015A1810300 603-605,
STATE OF SOUTH CAROLINA	)	~~2015 GS 18-951 through 954~~
	)	2016 GS 1800972
-versus-	)	
THOMAS SHEWTZUK,	)	AFFIDAVIT OF SUSAN KNIGHT, PH.D.
	)	
Defendant.	)	

COMES NOW THE AFFIANT, SUSAN KNIGHT, PH.D, and after being duly sworn, deposes and states as follows:

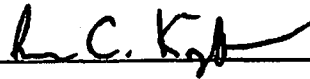
1. My name is Dr. Susan Knight. I am a clinical psychologist with specialization in forensic psychology, including board certification in Forensic Psychology through the American Board of Professional Psychology (ABPP). I am presently employed in private psychological practice wherein I conduct criminal and civil forensic evaluations for private and public legal entities, which includes testimony and consultation to federal and state court systems. I have previously served as a Clinical Assistant Professor in Psychiatry and Behavioral Sciences at the Medical University of South Carolina; and presently hold adjunct faculty positions at the Charleston School of Law, and Cornell Law School, where I teach forensic psychology.
2. I received my Ph.D. in Clinical Psychology from the University of Louisville in 2004. I completed my pre-doctoral internship in Forensic and Correctional Psychology at the Federal Medical Center in Butner, NC, with the United States Department of Justice. Subsequently, I completed my post-doctoral fellowship in Forensic Psychology within the Department of Psychiatry at the University of Southern California, Keck School of Medicine, in Los Angeles, CA. My CV, which provides my full qualifications, training, and publications, is attached.

3. Within the course of my forensic work, I have conducted pre and post-sentencing evaluations pursuant to *Miller v. Alabama*, 132 S. Ct. 2455 (2012), and per the holding of the South Carolina Supreme Court in *Aiken v. Byars*, 410 S.C. 534 (2014). Such evaluations focus on juveniles, ages 17 and younger, sentenced or pending sentence, to life without parole. Evaluations conducted for 'Miller' hearings can be extensive, due to their parallels to capital sentencing hearings. They involve multiple interviews with the defendant; psychological testing, as appropriate to the case; collateral interviews with family members and relevant others; and obtaining the following records for review, to include but not limited to, medical, psychiatric, academic, legal and correctional records. A mitigation specialist is typically retained for social history development, mitigation investigation, record collection, and assistance with collateral sources. Additional experts are consulted as dictated by case particulars.

After data collection, and relevant expert involvement, synthesis of the data and generation of a detailed written report for use in the hearing is completed. This type of extensive mitigation evaluation, with inclusion of all relevant parties and experts, typically takes anywhere from 12 to 18 months to complete.

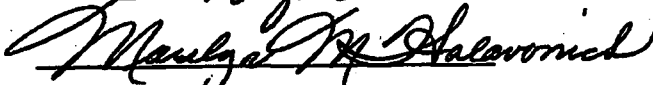
4. I affirm, under the penalty of perjury, that the foregoing is true and correct.

FURTHER THE AFFIANT SAYETH NAUGHT!


SUSAN C. KNIGHT, PH.D., ABPP

Sworn to and subscribed before me

This 23 day of August, 2016



NOTARY PUBLIC FOR THE STATE

OF SOUTH CAROLINA

MY COMMISSION EXPIRES: _____

MARILYN M HALAVONICH
Notary Public - State of South Carolina
My Commission Expires March 29, 2021

SUSAN C. KNIGHT, PH.D., ABPP

Telephone: (843) 637-5729; **Facsimile:** (843) 410-2802

Electronic Mail: knight@apsforensic.com

Mailing Address: 1739 Maybank Hwy, Ste. T-606, Charleston, SC 29412

EDUCATIONAL HISTORY:

September 2004 - August 2005	Postdoctoral Fellowship in Forensic Psychology University of Southern California Keck School of Medicine Dept. of Psychiatry & Behavioral Sciences USC Institute of Psychiatry & Law P.O. Box 86125 Los Angeles, CA (ACGME Accredited)
September 2003 - August 2004	Pre-doctoral Internship in Forensic Psychology U.S. Department of Justice (USDOJ)/Bureau of Prisons Federal Correctional Complex and Medical Center Butner, NC (APA Accredited Internship)
August 1999 - August 2004	Doctorate of Philosophy, Clinical Psychology University of Louisville, Louisville, KY Department of Psychological and Brain Sciences (APA Accredited Program)
August 1999 - May 2002	Master of Arts, Clinical Psychology University of Louisville, Louisville, KY Department of Psychological and Brain Sciences [Degree embedded within the Clinical Psychology Doctoral program, APA Accredited]
August 1994 - May 1998	Bachelor of Arts, Psychology, <i>Magna Cum Laude</i> Trinity University, San Antonio, TX

PROFESSIONAL LICENSURE:

- Psychologist, State of North Carolina, License #3407 [June 2007]
- Psychologist, State of South Carolina, License #1053 [May 2007]

BOARD CERTIFICATION:

- ABPP- Board certification in Forensic Psychology awarded by the American Board of Professional Psychology (ABPP) [April 2009]

PROFESSIONAL EXPERIENCE

**Clinical and Forensic Psychologist
Applied Psychological Services, LLC
1739 Maybank Hwy, Ste. T-606
Charleston, SC 29412**

August 2013 - Present

Responsibilities: Conduct comprehensive forensic psychological evaluations on a wide variety of criminal and civil issues, to include, but not limited to, competency to stand trial, criminal responsibility, violence risk assessments, sexual behavior assessments, sentencing/mitigation, and fitness for duty evaluations. Provide clinical therapeutic services to an adult outpatient population.

**Clinical Assistant Professor of Forensic Psychiatry
Community and Public Safety Psychiatry Division
Department of Psychiatry and Behavioral Sciences
Medical University of South Carolina
29-C Leinbach Drive
Charleston, SC 29407**

August 2013 - April 2014

Responsibilities: Conduct comprehensive forensic psychological evaluations on a wide variety of criminal and civil issues, and provide consultation to the county, state and federal court systems as necessary. Types of evaluations include competency to stand trial, criminal responsibility, violence risk assessments, sexual behavior assessments, and fitness for duty assessments for health care, public safety and transportation personnel. Provide instruction, teaching and supervision to forensic post-doctoral fellows, medical residents, interns and students on forensic and general clinical psychological issues.

**Assistant Professor of Forensic Psychiatry
Associate Director of the Forensic Psychiatry Fellowship
Director - Progressive Professionals Program (PPP)
Department of Psychiatry and Behavioral Sciences
Medical University of South Carolina
29-C Leinbach Drive
Charleston, SC 29407**

**January 2008-August 2013
July 2008-August 2013
November 2010-August 2013**

Responsibilities: Conduct comprehensive psychological forensic evaluations on a wide variety of criminal and civil issues, and provide consultation to the county, state and federal court systems as necessary. Types of evaluations include competency to stand trial, criminal responsibility, violence risk assessments, sexual behavior assessments, and fitness for duty assessments for health care, public safety and transportation personnel. Provide clinical therapeutic services (therapy and psychological assessment) to a general outpatient population as needed. Provide instruction, teaching and supervision to forensic post-doctoral fellows, medical residents, interns and students on forensic and general clinical psychological issues.

Clinical Psychologist
Grew, Morter and Hartye, P.A.
3141 John Humphries Wynd, Ste. 275
Raleigh, NC 27612

April 2007- November 2007

Responsibilities: Provided mental health services in a private practice setting to an outpatient population. Clinical duties included providing short and long term individual therapy, and conducting psychological assessments addressing a wide range of psychological issues. Forensic duties included conducting psycho-legal evaluations and providing consultation as needed for forensic issues.

Clinical Psychologist
Los Angeles County Department of Mental Health
Century Regional Detention Facility- Los Angeles County Jail
Women's Forensic Outpatient Program (WFOP)
11705 S. Alameda St.
Lynwood, CA 90262

September 2005-December 2006

Responsibilities: Provided mental health services to a correctional population, including diagnostic intake interviews, brief therapy, crisis intervention services and psychological assessments. Forensic duties included managing patients in the Misdemeanant Incompetent to Stand Trial (MIST) program, including competency restoration and consultation with the mental health court system.

Forensic Psychologist (Contract Basis)
Metropolitan Detention Center- Los Angeles
Federal Bureau of Prisons
535 N. Alameda St.
Los Angeles, CA 90012

September 2006- December 2006

Responsibilities: Conducted pre-trial and post-trial psychological forensic evaluations for the Federal Bureau of Prisons on a contract basis. Evaluations covered a variety of psycho-legal issues, including competency to stand trial, criminal responsibility, dangerousness evaluations and sentencing issues. Duties included interviews, psychological assessment, report writing and providing consultation and/or testimony to the Federal Court system as needed.

Forensic Psychologist
USC-Keck School of Medicine
Institute of Psychiatry, Law and Behavioral Science
Los Angeles, CA 90086-0125

September 2006- December 2006

Responsibilities: Conducted forensic evaluations for the juvenile court system in Los Angeles addressing a variety of psycho-legal issues. Duties included evaluations, report-writing and providing consultation to the Juvenile Court System.

Postdoctoral Fellow in Forensic Psychology
University of Southern California/Keck School of Medicine
Institute of Psychiatry, Law & Behavioral Science
P.O. Box 86125
Los Angeles, CA 90086-0125

September 2004 –August 2005

Responsibilities: Conducted psychological and legal evaluations for attorneys and courts related to criminal delinquency and dependency issues; evaluation, psychological assessment, and treatment of mentally disordered offenders, including outpatient sex offender treatment. Received specialized training on how to conduct psychological autopsies for the Los Angeles County Coroner's Office.

Pre-doctoral Clinical Psychology Intern
Federal Correctional Complex- Butner
Old N.C. Hwy 75
Butner, NC 27509

August 2003 - September 2004

Responsibilities: Worked in the forensic evaluation program at the Federal Medical Center and conducted federal pre-trial forensic evaluations which involved comprehensive psychological evaluation and report writing. Provided expert testimony to federal court. Worked in the Sex Offender Treatment Program (SOTP), an intensive, residential therapeutic program for male sexual offenders. Employed specialized assessment, didactic, and cognitive-behavioral techniques to evaluate, treat, and manage sexual offenders. Also conducted individual and group therapy, and assisted in managing the special needs of mental health inmates.

Graduate Student Therapist
Outpatient Psychiatry/Ambulatory Care Building
550 S. Jackson St.
Louisville, KY 40202

May 2002- May 2003

Responsibilities: Conducted individual and group psychotherapy as well as psychological testing with a variety of patients presenting at a local hospital for psychological treatment. Conducted initial intake interviews with potential patients presenting for medication and therapy; provided diagnosis, case formulation and treatment recommendations.

Clinic Assistant
University of Louisville/Psychological Services Center
Davidson Hall, Suite 210, Louisville, KY 40292

August 2000- June 2002

Responsibilities: Conducted initial assessment intake interviews with potential clients for the psychology clinic. Assisted in diagnosis, treatment recommendations, and disposition of clients to specialty clinic teams. Maintained client database and records for clinic operation. Coordinated clinic in-services (professional presentations) for students and psychological community at large. Maintained subject records and billing for ongoing research project.

Research Assistant
Central State Hospital/Dept. of Psychology
10510 La Grange Rd.
La Grange, KY 40223

August 1999 - July 2000

Responsibilities: Collected and analyzed data related to program evaluation from all disciplines (nursing, medical staff, psychologists, social workers and pastoral staff). Created and maintained comprehensive research database tracking all patients with a diagnosis of Mental Retardation and all patients with guardians

Caseworker / Case Manager
Crosspoint, Inc.
605 Augusta St.
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May 1998 - December 1998

Responsibilities: This facility provided a structured program of re-socialization for female adults primarily referred from federal correctional and health care facilities. Responsibilities included administration of direct services provided to clients on an individual and/or group basis. Consulted with, and managed interface to local support agencies when and where necessary on behalf of the client.

CLINICAL PRACTICA/PSYCHOTHERAPY EXPERIENCE

Graduate Student Therapist
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August 1999 - May 2003

Responsibilities: Conducted individual therapy sessions and a wide variety of full psychological assessments with outpatient clients (adults and children).

Doctoral Practicum Student (Assessment & Therapy)
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Responsibilities: Conducted psychological testing and individual therapy for adult male inmates housed in the Correctional Psychiatric Treatment Unit at a medium security state prison. Compiled and analyzed sex offender data in the Sex Offender Risk Assessment Unit (SORA) at Kentucky State Reformatory.

ACADEMIC APPOINTMENTS:

- **Clinical Instructor** August 2004 - September 2005
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University of Southern California
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PROFESSIONAL AFFILIATIONS

- American Psychological Association (APA) [1999 to Present]
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- South Carolina Psychological Association (SCPA) [2008 to Present]
- American Board of Professional Psychology (ABPP) [2009 to Present]
- Association for the Treatment of Sexual Abusers (ATSA) [2012 to Present]
- Association of Threat Assessment Professionals (ATAP) (2015 to Present)
- American Association for Sexuality Educators Counselors and Therapists (AASECT) [2012 to 2013]

POSTERS/PRESENTATIONS

1. Knight, S.C. & Einstein, G. (1996). *Aging and Retrieval Inhibition in Prospective Memory*. Paper presented at the National Convention of Undergraduate Research (NCUR) in the Spring of 1997 in Austin, TX.
2. Weaver, C.M., Bock, P., Knight, S. & Gretarsdottir, E. (1999, November). *Demographic Study of 1998 Jefferson County Kentucky Guardianship Population*. Poster presented at the annual meeting of the Kentucky Psychological Association, Louisville, KY. Poster was awarded second prize for graduate research.
3. Knight, S.C., Scanish, J., Fintel, T., & Meyer, R.G. (2002, August). *Characteristic of the Female Sex Offender*. Poster presented at the 2002 APA conference in Chicago, Illinois in the APLS (Division 41) of research.
4. Knight, S.C. (2006). *The Sex Offender's Brain: A review of the etiological evidence towards a neurobiochemical basis*. Lecture presented to faculty, staff and students at the University of Southern California, Department of Psychology, as part of the Continuing Education (CE) colloquia.
5. Mulbry, L. W. & Knight, S.C. (March 2008). *Competency to Stand Trial, Criminal Responsibility and Capacity to Conform*. Presentation to the Charleston County Solicitor's Office.
6. Knight, S.C. (September 2008). *Psychological Autopsy: Determining the Manner of Death Through Investigative Psychological Analysis*. Lecture presented to the Medical University of South Carolina, Department of Psychiatry, Division of Forensic Psychiatry, Day of Discovery conference.
7. Stroud, Z., Knight, S.C., Halavonich, R.H., & Mulbry, L.W. (October 2008). *Mass Shooters: An Antihero of our Time*. Presentation presented at the national American Academy of Psychiatry and Law (AAPL) conference in Seattle, WA.
8. Knight, S.C. (July 2009). *The MMPI-2: Fundamentals of Interpretation*. Lecture to the Medical University of South Carolina Psychology Internship Program
9. Knight, S.C. (November 2009). *The Disruptive Professional*. Presentation given to the Senior Medical Leadership Council of the South Carolina Hospital Association. Columbia, South Carolina.
10. Knight, S.C. (November 2009). *South Carolina Mental Health Law: How to Proceed with a Mentally Disordered Defendant*. Presentation to the South Carolina Bar Association Distance Learning Division. Columbia, South Carolina.

11. Knight, S.C. (November 2009). *Psychiatric Malpractice: A review of select South Carolina cases*. [Invited Speaker]. Presentation given at the Medical University of South Carolina, Forensic Interest Group Meeting. Charleston, South Carolina.
12. Knight, S.C. (January 2010). *South Carolina Mental Health Law: How to Proceed with a Mentally Disordered Defendant*. Workshop on competency to stand trial and criminal responsibility presented to attorney participants at the Medical University of South Carolina. Charleston, South Carolina.
13. Knight, S.C. (April 2010). *The Mentally Ill Offender: An Epidemic in Courts and Corrections*. [Invited Speaker]. Presentation at the 2010 Mental Health Professionals Collaboration held at the Medical University of South Carolina for mental health professionals statewide. Charleston, South Carolina.
14. Knight, S.C. & Mulbry, L.W. (October 21, 2010). *Automatism: A 15-year review of criminal appellate case law*. Scientific paper presentation at the national American Academy of Psychiatry and Law (AAPL) conference in Tucson, AZ.
15. Knight, S.C. (October 29, 2010). *South Carolina Mental Health Law: How to Proceed with a Mentally Disordered Defendant*. Workshop on competency to stand trial and criminal responsibility presented to the Berkeley County Public Defender's Office.
16. Knight, S.C. & Mulbry, L.W. (January 30, 2011). *School Shooters: A Unique Class of Violent Offenders*. [Invited Speaker]. Presentation to the South Carolina Psychiatric Association (SCPA) statewide conference in Charleston, SC.
17. Knight, S.C. (June 2011). *Legal Insanity and Competence*. [Invited Speaker]. Update in Psychiatry-Mental Illness, Victimization and Criminal Justice. A Forum for Clinicians, Policymakers, Judges, Attorneys and Law Enforcement. Charleston, South Carolina.
18. Knight, S.C. (June 2011). *Relationship Between Mental Illness and Criminal Behavior. Update in Psychiatry-Mental Illness, Victimization and Criminal Justice*. [Invited Speaker]. A Forum for Clinicians, Policymakers, Judges, Attorneys and Law Enforcement. Charleston, South Carolina.
19. Beck, B., Knight, S.C., & Mulbry, L.W. (October 2012). *Robotripping: Dextromethorphan's Link to Violent Crime, Rising Use and Emergent Legislation*. Poster presented at the national meeting of the American Academy of Psychiatry and Law (AAPL), Montreal, Canada.
20. Knight, S.C. (December 2012). *Sexual Predators: Pathology and the Law*. [Invited Speaker]. Judges and Attorneys Substance Abuse and Ethics Seminar, Medical University of South Carolina, Charleston, South Carolina.

21. Knight, S.C. (December 2012). *Legal Competence*. [Invited Speaker]. Judges and Attorneys Substance Abuse and Ethics Seminar, Medical University of South Carolina, Charleston, South Carolina.
22. Knight, S.C. (April 2013). *Legal Competence: Civil Competencies*. [Invited Speaker]. South Carolina Association of Probate Judge's Conference. Columbia, South Carolina.
23. Beck, B., Knight, S. C. & Mulbry, L.W. *Revisions in Gun and Mental Health Laws in the Wake of Newtown*. Poster accepted for presentation at the October 2013 national meeting of the American Academy of Psychiatry and Law (AAPL), San Diego, California.
24. Knight, S.C. (September 2013). *Workplace Violence: Assessment, Intervention and Prevention*. [Invited Speaker]. A Psychiatric Update: Annual conference held by the South Carolina Department of Mental Health.
25. Knight, S.C., Mulbry, L.W., Mullis, D. & Fields, C. (October 2013). *Guns and Psychiatry: Disarming the Mentally Ill*. Grand Rounds Presentation, Medical University of South Carolina, Department of Psychiatry and Behavioral Science.
26. Knight, S.C. (December 2013). *Ethical Considerations in Forensic Evaluations*. [Invited Speaker]. Judges and Attorneys Substance Abuse and Ethics Seminar, Medical University of South Carolina, Charleston, South Carolina.
27. Knight, S.C. (June 2014). *The Mentally Ill Offender: An Epidemic in Courts and Corrections*. [Invited Speaker]. National Judges Association: 35th Annual Education Conference. Charleston, South Carolina.

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ARTICLE: WHEN DOES A JUVENILE BECOME AN ADULT? IMPLICATIONS FOR LAW AND POLICY

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Text

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The U.S. Supreme Court has issued a series of landmark decisions regarding the culpability of juveniles under the age of eighteen and has increasingly referenced *developmental science* in these opinions. Still, the line between juvenile court jurisdiction and criminal court jurisdiction varies widely among state laws, as do the minimum ages for other legal or regulatory purposes. Although the operative age of "adulthood" typically falls somewhere between the ages of eighteen and twenty-one, it has been set lower in some important policy contexts, such as the age at which an adolescent is subject to criminal prosecution and punishment. Legal distinctions between juveniles and adults have been based on changing political climates and conventional wisdom rather than empirical evidence. Policymakers have drawn these lines without fully examining or understanding the *developmental* characteristics of these individuals and how similar they are to younger or older individuals in their behavior and judgment. Scientific evidence of human brain maturation shows continued development into the early twenties. In this Article, we summarize recent behavioral and neural findings on cognitive capacity in young adults (eighteen to twenty-one) and highlight several ways in which they bear on legal policies relating to the "age of adulthood."

Introduction

When does an individual become an adult? From a *developmental* perspective, adulthood is achieved when an adolescent successfully transitions to independence from parents or other caregivers. From a societal perspective, the achievement of adulthood coincides with changing expectations of when an individual should be financially independent, have completed formal education, or formed a family. The legal concept of adulthood is surprisingly difficult to [*770] define since it varies across policy contexts. Although legislatures have designated eighteen as the "age of majority," this line simply represents a "default" rule. An individual is classified as an adult at age eighteen unless the legislatures or courts have prescribed a higher or lower age in particular contexts. The "operative" age of adulthood is functionally lower than eighteen in the context of criminal punishment because every state permits at least some adolescents to be tried and punished as adults well before they turn eighteen. Meanwhile, many states recognize the continued vulnerability of young adults in various ways, such as by extending parental support obligations beyond eighteen. These different perspectives on adulthood raise two important questions. First,

have changing social practices and expectations about adulthood informed or altered laws and policies that define the rights and responsibilities of adulthood? Second, to what extent do the age boundaries drawn by these policies and laws reflect or contradict our scientific understanding of human development?

Designation of minimum or maximum ages for various legal purposes has largely been based on conventional wisdom and changing perceptions of the needs, capabilities, and rights of young people, as well as the needs and obligations of society. Nowhere is that observation more evident than in the rules governing criminal prosecution of children and adolescents. Under the doctrines of the common law, children under seven were not punishable, and children between seven and fourteen were presumed to lack criminal responsibility, with this presumption weakening as they approached fourteen. Thus children between seven and fourteen could be prosecuted if proven both to be guilty and to be able to appreciate the wrongfulness of their behavior. Today, the age of criminal responsibility of adolescents has been associated with the shifting designation of the boundaries between the respective jurisdictions of juvenile courts and criminal courts. Even today, young people are subject to prosecution and punishment as adults at the age of fourteen in most states (and even younger in some). Research on adolescent development has been used to support proposals to retain teenagers in juvenile court and to mitigate the severity of punishment for adolescents tried as adults. Recognizing that there is no developmentally informed magical demarcation at eighteen, contemporary proponents of criminal justice reform are also making the case for a rehabilitative approach to young adult offenders.

Criminal justice is not the only policy context reflecting the socially contingent legal boundaries bearing on the "legal" age of adulthood. The apparent incoherence is illustrated, on the one hand, by restricted access to alcohol (and increasingly, tobacco) before the age of twenty-one and, on the other, by access to contraceptives and abortions by young teenagers without parental knowledge or consent. What is one to make of social policies that end parental support obligations, and even foster care, at eighteen, while mandating health insurance coverage under parental health plans until age twenty-six? In the context of these variations, the so-called "age of majority" functions as a "default" - in most states, it is eighteen, unless the legislatures or courts have prescribed a higher or lower age in particular contexts. It is noteworthy, in this connection, that the "age of majority" was lowered from twenty-one to eighteen [*771] in all but two states in the early 1970s when the voting age was lowered, and that this sudden change of policy was not accompanied in any state by a comprehensive inquiry about the welfare consequences of lowering the age or the developmental literature that might bear on it.

The purpose of this Article is to examine the implications of recent developmental science for the legal definition of adulthood for ongoing reforms of the juvenile justice system and possibly for other social policies. One consideration in selecting a legally operative age in any given context is when adolescent behavior, and the underlying neural circuitry, can be said to have reached "maturity." This Article highlights the rapidly growing body of literature on adolescent development as well as an emerging body of research on young adults. The scientific research on adolescent development shows heightened sensitivity to rewards,¹ threats,² and social influences,³ which potentially renders adolescents more vulnerable to making poor decisions in these situations. The extension of this line of work to young adults suggests that young adulthood is a developmental period when cognitive capacity is still vulnerable to the emotional influences that affect adolescent behavior, in part due to continued development of prefrontal circuitry involved in self-control (see Figure 1). These findings may have policy implications in several legal domains. Most plausibly, these findings may reinforce and extend the developmental logic of reforms of the juvenile justice system already underway, and they may invite review and reconsideration of the age of adulthood in other policy contexts.

¹ E.g., Jessica R. Cohen et al., A Unique Adolescent Response to Reward Prediction Errors, 13 *Nature Neuroscience* 669, 670 (2010); Adriana Galvan et al., Earlier Development of the Accumbens Relative to Orbitofrontal Cortex Might Underlie Risk-Taking Behavior in Adolescents, 26 *J. Neuroscience* 6885, 6889-91 (2006); C.F. Geier et al., Immaturities in Reward Processing and Its Influence on Inhibitory Control in Adolescence, 20 *Cerebral Cortex* 1613, 1626 (2010); Linda Van Leijenhorst et al., What Motivates the Adolescent? Brain Regions Mediating Reward Sensitivity Across Adolescence, 20 *Cerebral Cortex* 61, 66-67 (2010).

² E.g., Michael Dreyfuss et al., Teens Impulsively React Rather than Retreat from Threat, 36 *Developmental Neuroscience* 220, 225-26 (2014).

³ See, e.g., Jason Chein et al., Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry, 14 *Developmental Sci.* F1, F7 (2011); Leah H. Somerville et al., Frontostriatal Maturation Predicts Cognitive Control Failure to Appetitive Cues in Adolescents, 23 *J. Cognitive Neuroscience* 2123, 2131-32 (2011).

Figure 1. Age of Majority in The Context of Recent Developmental Science

[SEE FIGURE IN ORIGINAL] [*772]

II. Adulthood and Juvenile Justice

A. Historical Perspective

Even a cursory review of the history of juvenile justice policy over the past century reveals dramatic fluctuations in the ways that American society perceives and treats adolescent offenders. But these shifts in public attitudes and justice policy have occurred largely as a consequence of changes in the social and political environment rather than as a result of an improved understanding of the adolescent. From the start of the twentieth century until the present day, there have been three distinct policy phases regarding juvenile offenders.⁴ First, at the turn of the twentieth century, the Progressive reform movement advanced a conception of juvenile offenders that separated them from their adult counterparts and urged a focus on their care and rehabilitation.⁵ Second, toward the end of the twentieth century, politicians, academics, and the media advanced a competing conception of the adolescent offender. They redefined adolescent offenders as a new, younger breed of criminal whose predatory conduct necessitated nothing less than adultlike interventions and punishment. The third phase in justice policymaking has begun to emerge in the last decade. Spurred in part by legal rulings, fiscal constraints, and developmental science findings, policymakers have begun to retreat from the earlier wave of punitive approaches in addressing adolescent behavior and have instead gravitated toward a more nuanced understanding of the developmental traits that distinguish adolescents from adults.

For nearly a century, the view that young offenders were distinct from adults and therefore deserving of differential and rehabilitative treatment for children held fast. But an increase in juvenile crime in the late 1980s and 1990s [*773] shook the public's confidence that youthful offenders were indeed less culpable than their adult counterparts and catapulted questions of juvenile crime control onto the national stage. Academics warned that a new breed of young offenders - "superpredators" - loomed dangerously on the horizon. Provocative images, more often reserved for children of color who committed crimes, pushed the public to fear a coming tide of "elementary school youngsters who packed guns instead of lunches."⁶ The media fueled alarm by treating individual incidents of violence as typical, leading the public to believe that the acts of juveniles were no longer delinquent; they were criminal. Capitalizing on mounting public fear, politicians adeptly collapsed the distinctions between young offenders and adult offenders. They insisted that a young offender's engagement in violent crime exhibited a certain depravity that meant the young person no longer deserved the protective environs of a juvenile system that focused on

⁴ Kim Taylor-Thompson, *Minority Rule: Redefining the Age of Criminality*, 38 N.Y.U. Rev. L. & Soc. Change 143, 147-48 (2014); see also Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 Cornell L. Rev. 383, 388-91 (2013) (describing the "emerging view of childhood and adolescence as distinct developmental stages").

⁵ Toward the end of the first phase, critics of the juvenile court began to question its informality, complaining that the rehabilitative goals of the Court were simply a cover for intervention and punishment without procedural safeguards for the child. So, the Supreme Court extended certain, but not all, constitutional protections afforded to an adult accused. See *In re Gault*, 387 U.S. 1, 56 (1967). But the extension of adultlike constitutional safeguards may have weakened the moral foundations of the juvenile court by supporting the view that courts should treat adolescents as adults. See, e.g., Nat'l Research Council, *Reforming Juvenile Justice: A Developmental Approach* 38 (Richard J. Bonnie et al. eds., 2013) ("Ironically, the procedural reforms that youth advocates had promoted appeared to support the legitimacy of an adversarial regime that ignored developmental differences between juveniles and adults."); Kim Taylor-Thompson, *States of Mind/States of Development*, 14 Stan. L. & Pol'y Rev. 143, 147 (2003) ("The more that juvenile legal institutions and procedures have begun to mirror their adult counterparts, the more difficult the task has become to distinguish between adolescents and adults in any meaningful way or to justify the continued existence of a separate system of adjudication for youths. Extension of adult-like constitutional status may have contributed to the perception that courts could treat adolescents as adults. That courts should treat adolescents as adults then deceptively seemed only a small step.").

⁶ John L. Dilulio, Jr., *The Coming of the Super-Predators*, Wkly. Standard, Nov. 27, 1995, at 23.

care and rehabilitation.⁷ Instead, the violent act seemed to imbue the offender with a degree of maturity that required more punitive controls. "Adult time for adult crime" became the rallying cry for dramatic policy changes that swept the country. Every state toughened its laws for young offenders and expanded transfer laws to allow or mandate the prosecution of juveniles in adult criminal courts. The changed conception of the young offender would upend an almost century-long tradition of differentiated treatment for the youthful offender.

B. Developmental Approach to Juvenile Justice Reform

Recently, policymakers have begun to revise their conceptions of adolescent offenders and to reconsider their reliance on punitive approaches. A few key factors seem to be in play. First, the dire predictions in the 1990s about future crime waves at the hands of out of control adolescents never materialized. Experts (including the originators of the superpredator theory) have since acknowledged that the superpredator theory was a myth, removing a critical foundational component for the perception of contemporary adolescents as more dangerous and more mature. Second, fiscal constraints flowing from the global recession have forced policymakers to pay closer attention to the cost of the punitive reforms they implemented with such ease in the latter part of the twentieth century. The economic pressures have provided some leverage for those advocating new approaches to juvenile justice reform.⁸ Third, recent neuroscience research and findings have suggested a neural basis for recognized developmental characteristics of adolescence. In fact, lawmakers are increasingly [*774] referencing developmental science to support juvenile justice reform.⁹

The U.S. Supreme Court has reinforced the view that a developmental perspective should guide our assessments of an adolescent offender's culpability and punishment. In a trio of cases in the past decade, the Court has recognized and relied on a body of developmental research that questions assumptions about adolescent responsibility and punishment. First, in 2005, the Court in *Roper v. Simmons* struck down the death penalty for young offenders under the age of eighteen because such a sentence constituted a violation of the Eighth Amendment's prohibition against cruel and unusual punishment.¹⁰ The Court made clear that the seriousness of the offense did not transform the young offender into an adult. Five years later, in *Graham v. Florida*, the Court built on the foundations of *Roper* and established a categorical ban against life without parole sentences for a juvenile offender convicted of a nonhomicide offense.¹¹ The *Graham* Court noted three significant developmental gaps between adolescents and adults: impulsivity linked to developmental factors, susceptibility to external pressures, and a still-developing identity. Indeed, what made these youthful traits salient in the justice context, according to the Court, was that they at once lessened a child's "moral culpability" and increased the probability that with time and attendant neurological development, the child's "deficiencies will be reformed."¹² Finally, in 2012, the Court, in *Miller v. Alabama*,¹³ held unconstitutional the mandatory imposition of life without parole sentences in homicide cases for all children under the age of

⁷ See, e.g., Alfred S. Regnery, *Getting Away with Murder: Why the Juvenile Justice System Needs an Overhaul*, 34 *Pol'y Rev.* 65, 65 (1985) ("[C]urrent policies used to address juvenile crime fail to hold offenders accountable and do not deter crime. At best, they are outdated; at worst, they are a total failure, and may even abet the crimes they are supposed to prevent.").

⁸ See Alex R. Piquero & Laurence Steinberg, *Public Preferences for Rehabilitation Versus Incarceration of Juvenile Offenders*, 38 *J. Crim. Just.* 1 (2010) (discussing the impact of cost on the public's perception of rehabilitation programs).

⁹ E.g., Task Force on Transforming Juvenile Justice, *Charting a New Course: A Blueprint for Transforming Juvenile Justice in New York State* (2009); Nat'l Research Council, *supra* note 5, at 43; Elizabeth S. Scott, "Children are Different": Constitutional Values and Justice Policy, 11 *Ohio St. J. Crim. L.* 71, 74-75 (2013) ("Lawmakers today are rethinking punitive policies that were adopted in a climate of fear and hostility toward juvenile offenders in the late twentieth century."); Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and Juvenile Justice Policy*, 83 *N.C. L. Rev.* 793, 796 (2005) ("Few lawmakers have addressed the impact of developmental immaturity on competence. Under contemporary juvenile justice regulation, however, this issue has become highly salient." (footnote omitted)).

¹⁰ 543 U.S. 551 (2005).

¹¹ 560 U.S. 48 (2010).

¹² *Graham*, 560 U.S. at 68-69 (quoting *Roper*, 543 U.S. at 570).

¹³ 132 S. Ct. 2455 (2012).

eighteen. The Court's ruling struck down statutes in twenty-nine states that mandated the imposition of life without parole sentences for children upon conviction of homicide. The Court made clear that failing to consider the mitigating qualities of youth in the assessment of culpability "contravened Graham's (and also Roper's) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children."¹⁴

When read as a whole, these three opinions craft a compelling argument. They insist that the justice system acknowledge that children differ from adults in ways that bear directly on the question of their culpability and their capacity [*775] for change. As importantly, what is significant about these opinions is their reliance on scientific studies of adolescent brain structure and functioning, as well as social *science* research of adolescent behavior, that confirm that teenagers are driven by circumstances and impulses,¹⁵ are vulnerable to the influences of their peers,¹⁶ are less capable of considering alternative courses of action and avoiding unduly risky behavior,¹⁷ and lack the self-control that almost all of them will gain later in life.¹⁸

C. What Is the Legally Operative Age of Adulthood in Criminal Justice?

The Supreme Court's rulings focused on the most severe punishments and did not address the implications of these rulings for adult criminal prosecution of juveniles. A review of state laws reveals that all states allow criminal prosecution of juveniles and many require it in certain classes of cases involving serious crimes. Twenty-three states currently have no minimum age for trying a child as an adult.¹⁹ Among states that set a minimum age for adult prosecution through transfer provisions, fourteen is the most common age.²⁰ Not only have these statutes ushered young children into the adult criminal justice system, but they do so disproportionately for youth of color. And these transfers occur largely without judicial review. Before the 1990s, judges held the responsibility for determining whether a child warranted adult court prosecution. But statutes in the 1990s began to narrow judicial discretion. In many jurisdictions, transfer is automatic based on the offense or at the sole discretion of the prosecutor. As a result, eighty-five percent of the determinations to send juveniles into the adult criminal justice system are not made by judges, but instead by prosecutors or legislatures.²¹ In the end, over 200,000 youth under the age of eighteen face prosecution as adults in criminal court annually.²² Despite their prevalence, transfer policies have not resulted from evidence

¹⁴ *Miller*, 132 S. Ct. at 2458 (emphasis added).

¹⁵ E.g., Laurence Steinberg, Adolescent Development and Juvenile Justice, 5 Ann. Rev. Clinical Psychol. 459, 472-73 (2009) [hereinafter Steinberg, Adolescent Development and Juvenile Justice].

¹⁶ E.g., Laurence Steinberg & Kathryn C. Monahan, Age Differences in Resistance to Peer Influence, 43 *Developmental Psychol.* 1531, 1540 (2007).

¹⁷ See, e.g., Elizabeth Cauffman & Laurence Steinberg, (Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable than Adults, 18 *Behav. Sci. & L.* 741, 756-57 (2000) (finding that "maturity of judgment" is correlated to "antisocial decision-making," but that responsibility, perspective, and temperance are more predictive than age alone).

¹⁸ See, e.g., Laurence Steinberg et al., Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model, 44 *Developmental Psychol.* 1764, 1774-76 (2008).

¹⁹ Howard N. Snyder & Melissa Sickmund, U.S. Dept of Justice, Juvenile Offenders and Victims: 2006 National Report 114 (2006), <http://www.ojdpo.gov/ojsaubb/nr2006/downloads/chapter4.pdf>.

²⁰ Id.

²¹ Jolanta Juskiewicz, Building Blocks for Youth, Youth Crime/Adult Time: Is Justice Served? 2 (2005), http://www.nljnl.org/uploads/digital-library/resource_127.pdf.

²² Jennifer L. Woolard et al., Juveniles Within Adult Correctional Settings: Legal Pathways and *Developmental* Considerations, 4 Int'l J. Forensic Mental Health 1, 4 (2005).

showing the effectiveness of [*776] such transfers. In fact, the opposite appears to be true: transfer policies do not deter²³ and have instead led to significant increases in recidivism across several jurisdictions.²⁴

A *developmental* perspective has important implications for the age at which adolescents should be subject to trial and punishment "as adults" in criminal courts. However, the literature raises questions about whether the sentencing of young offenders in criminal courts should follow a developmentally informed model, rather than the traditional "just deserts" model of criminal punishment. Some states are designing or reviving special sentencing arrangements for "young adult" offenders. If they do so, what age should these statutes set as the ceiling for such an ameliorative approach? At what age is the "youth discount" exhausted?

II. Definition of Adulthood for Different Social Policies and in Different Jurisdictions

Policy judgments about where to draw age lines relating to adulthood are highly contextual, ranging from ages fourteen to sixteen (medical decision making) to age twenty-one (purchase, use and possession for alcohol and firearms, fiduciary appointments, or most professional occupational licenses), and in contexts involving eligibility for financial and social support, even to the mid-twenties (e.g., inclusion in parental health insurance). In many contexts, a balance needs to be struck between young adults' interest in making their own choices and society's legitimate concerns about protecting the public health and protecting young people from decisions they may later regret.²⁵ The so-called "age of majority" functions as a default and every state sets the legal age for certain activities higher or lower for different policy purposes.²⁶

In recent years, the trend in the United States has been to take a more protective stance toward older adolescents and young adults, with particular concern for impulsive action, risk-taking, and vulnerability to psychopathology. [*777] This trend has been reinforced by a lengthening transition to economic independence and, as a consequence, delayed separation from parents and postponement of marriage and childrearing.²⁷ In the public health context, this protective trend is most clearly evident in legislation setting the minimum age for purchasing alcohol, marijuana, and tobacco.

A. Legal Age for Purchasing Alcohol

After the repeal of Prohibition in 1933, the vast majority of states set the minimum drinking age at twenty-one. However, when the national voting age was set at eighteen by the Twenty-Sixth Amendment in 1971, many states decided to lower the drinking age. This change in policy led to an increase in alcohol-related traffic fatalities among young adults aged eighteen to twenty.²⁸ Many states then re-raised the minimum age to twenty-one, and a robust literature showed that alcohol-related

²³ See Aaron Kupchik, *Judging Juveniles: Prosecuting Adolescents in Adult and Juvenile Courts* 2 (2006); Jeffrey Fagan et al., *Be Careful What You Wish for: Legal Sanctions and Public Safety Among Adolescent Felony Offenders in Juvenile and Criminal Court* 15-17, 69 (Columbia Law Sch., Pub. Law Research Paper No. 03-61, 2007), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=491202.

²⁴ Coal. for Juvenile Justice, *Childhood on Trial: The Failure of Trying and Sentencing Youth in Adult Criminal Court* 2 (2005); Benjamin Steiner & Emily Wright, *Assessing the Relative Effects of State Direct File Waiver Laws on Violent Juvenile Crime: Deterrence or Irrelevance?*, 96 *J. Crim. L. & Criminology* 1451, 1457-58 (2006); Fagan et al., *supra* note 23, at 15-17.

²⁵ See Inst. of Med., *Ending the Tobacco Problem: A Blueprint for the Nation* 150 (Richard J. Bonnie et al. eds., 2007); Nat'l Research Council & Inst. of Med., *Reducing Underage Drinking: A Collective Responsibility* 27-30 (Richard J. Bonnie & Mary Ellen O'Connell eds., 2004).

²⁶ Richard J. Bonnie & Elizabeth S. Scott, *The Teenage Brain: Adolescent Brain Research and the Law*, 22 *Current Directions Psychol. Sci.* 158, 158 (2013); see also Vivian E. Hamilton, *Immature Citizens and the State*, 2010 *B.Y.U. L. Rev.* 1055, 1129; Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 28 *Issues Sci. & Tech.* 67, 76 (2012).

²⁷ Inst. of Med. & Nat'l Research Council, *Investing in the Health and Well-Being of Young Adults* 83-84 (Richard J. Bonnie et al. eds., 2015).

²⁸ Alexander C. Wagenaar & Traci L. Toomey, *Effects of Minimum Drinking Age Laws: Review and Analyses of the Literature from 1960 to 2000*, *J. Stud. on Alcohol Supplement* 206, 206 (2002).

fatalities declined as a result.²⁹ In 1984, Congress induced all states to restore the minimum age to twenty-one by threatening to withhold a percentage of highway funds from noncompliant states.³⁰ Subsequent studies showed significant decreases in fatal crashes, alcohol-related crashes, and arrests for driving under the influence among young people.³¹ In a comprehensive report published in 2004, the National Research Council (NRC) and Institute of Medicine (IOM) proposed a "collective responsibility" for reducing underage drinking and driving given the widespread availability of and easy access by underage drinkers to alcohol, as well as the vulnerability of young people to addiction. The report emphasized enforcing drinking age laws more effectively through compliance checks, server training, zero tolerance laws, and graduated driver licensing laws, and highlighted the need for parents and other adults to take these laws seriously.

Notwithstanding the NRC and IOM report's reaffirmation of setting the minimum drinking age at twenty-one, political efforts are occasionally launched to reduce the minimum drinking age to eighteen or nineteen. Yet setting the minimum drinking age at twenty-one has reduced alcohol-related traffic crashes and alcohol consumption among youth "while also protecting drinkers from long-term negative outcomes they might experience in adulthood, including alcohol and other drug dependence, adverse birth outcomes, and suicide and homicide."³² The U.S. Task Force on Community Preventive Services recommends implementing and maintaining a minimum drinking age of twenty-one based on strong evidence of effectiveness, including a median sixteen percent decline in motor vehicle crashes among underage youth in states that increased the legal drinking age to twenty-one.³³

B. Legal Age for Purchasing Marijuana

The alcohol experience appears to have guided policymakers in states that have elected to legalize marijuana, where the age of purchase has uniformly been set at twenty-one. Although marijuana policy has been controversial since the 1960s,³⁴ recent developments have fundamentally changed the regulatory landscape and are likely to have profound effects on the epidemiology of marijuana use.³⁵ The voters of California legalized medical use of marijuana in 1996, and analogous laws have been enacted by more than twenty other states.³⁶ Colorado and Washington voters approved initiatives legalizing recreational marijuana use for people over twenty-one in 2012 and directing state legislatures to license the cultivation and distribution of marijuana and impose taxes on marijuana transactions.³⁷ Although the cultivation, distribution, and possession of marijuana for either medical or recreational purposes remain illegal under federal law, the U.S. Department of Justice has promulgated enforcement guidance to the U.S. Attorneys. That guidance allows for declining to enforce the Controlled Substances Act against persons who comply with the requirements of state law as long as the conduct allowed by the states

²⁹ *Id.* at 219.

³⁰ *Id.* at 206.

³¹ *Id.* at 219.

³² William DeJong & Jason Blanchette, *Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States*, 75 *J. Stud. on Alcohol & Drugs* S108, S113 (2014).

³³ Ruth A. Shults et al., *Reviews of Evidence Regarding Interventions to Reduce Alcohol-Impaired Driving*, 21 *Am. J. Preventive Med.* 66, 73-75 (2001).

³⁴ See Richard J. Bonnie & Charles H. Whitebread II, *The Marijuana Conviction: A History of Marijuana Prohibition in the United States* (1974).

³⁵ See *State Medical Marijuana Laws*, Nat'l Conf. St. Legislatures (Apr. 18, 2016), <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>.

³⁶ *Id.*

³⁷ See *id.*; *Marijuana Overview*, Nat'l Conf. St. Legislatures (Apr. 13, 2016), <http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>.

does not endanger overriding federal interests, such as preventing "distribution of marijuana to minors," "drugged driving[,] and the exacerbation of other adverse public health consequences associated with marijuana use." ³⁸

C. Legal Age for Purchasing Tobacco

The age of purchase for tobacco products also has come under scrutiny. Until the 1990s, the minimum purchase age (typically sixteen) varied substantially from state to state and was rarely enforced. In 1992, Congress enacted legislation known as the Synar Amendment that tied state eligibility for substance abuse prevention and treatment block grant funds to enforcement of youth tobacco access laws. Subsequent reports by the surgeon general ³⁹ and the [*779] IOM ⁴⁰ highlighted the importance of reducing youth initiation of smoking as a priority component of state tobacco control. In 1996, the U.S. Food and Drug Administration (FDA) promulgated its Tobacco Rule, establishing a federal minimum purchase age of eighteen and restricting tobacco advertising and promotion targeting adolescents. ⁴¹ Although the Supreme Court invalidated the Tobacco Rule in 2000, ⁴² Congress revived it in the Family Smoking Prevention and Tobacco Control Act of 2009, ⁴³ and the FDA reissued the rule in 2010. ⁴⁴ While codifying eighteen as the federal minimum age of purchase, Congress authorized the states to adopt a higher minimum purchase age and directed the FDA to convene an expert panel to assess the public health implications of raising the minimum purchase age for tobacco products. The IOM concluded that raising the age to twenty-one would produce substantial public health gains. ⁴⁵ New York City and a growing number of cities and counties have raised the minimum legal age for tobacco to twenty-one, and several states may do so in the coming years.

Although adolescent vulnerability to addiction and immaturity of judgment support these underage access restrictions for alcohol, marijuana, and tobacco, these *developmental* concerns do not resolve the policy question about the specific age at which the line should be drawn. This is not to say that the line should be drawn based solely on *developmental science* either. It is only to say that eighteen is not the only developmentally plausible place to draw the line.

III. When Does Cognitive Capacity "Mature"?

A. Development of Cognitive Capacity

The designation of eighteen as the "age of majority" by legislatures is predicated on the assumption that cognitive capacity is mature by this time (see Figure 1). A large *developmental* literature exists (see Figure 2) showing that performance of simple cognitive tasks reaches adultlike performance in speed and accuracy by the teen years. ⁴⁶ However, psychologists, ⁴⁷

³⁸ U.S. Dept of Justice, Memorandum from James M. Cole, Deputy Att'y Gen., to All U.S. Att'ys (Aug. 29, 2013), <https://www.justice.gov/isolap/resources/3052013829132756857467.pdf>.

³⁹ U.S. Dept Health & Human Servs., Preventing Tobacco Use Among Young People: A Report of the Surgeon General (1994).

⁴⁰ Inst. of Med., Growing up Tobacco Free: Preventing Nicotine Addiction in Children and Youths (Barbara S. Lynch & Richard J. Bonnie eds., 1994).

⁴¹ Food & Drug Admin., Compliance With Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents: Guidance for Industry 2 (2013), <http://www.fda.gov/downloads/TobaccoProducts/Labeling/RegulationsGuidance/UCM248241.pdf>.

⁴² *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 161 (2000).

⁴³ Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, *123 Stat.* 1776 (2009).

⁴⁴ 21 C.F.R. pt. 1140 (2016).

⁴⁵ Inst. of Med., Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products 8 (Richard J. Bonnie et al. eds., 2015).

⁴⁶ See, e.g., B. J. Casey et al., Clinical, Imaging, Lesion, and Genetic Approaches Toward a Model of Cognitive Control, 40 *Developmental Psychobiology* 237, 238 (2002) ("These studies show a nice *developmental* trend in the ability to ignore irrelevant flankers over the ages of 4 to 12 years that appears to reach adult levels by 12 years as indexed by mean reaction times and accuracy rates."); B. J. Casey & Kristina Caudle, The Teenage Brain: Self Control, 22 *Current Directions Psychol. Sci.* 82, 86 (2013) ("Our findings suggest that adolescents can show

neuroscientists,⁴⁸ [*780] and family and adolescent specialists⁴⁹ have called attention to evidence that capacities related to self-control and judgment in emotionally and socially charged situations may not mature until much later. These findings suggest a contextual basis for when an individual has "mature" cognitive capacity and suggest that psychological studies on cognitive capacity may have underestimated when it develops. Examining cognitive capacity in emotional contexts may more accurately reflect the emotionally charged situations in which young people often find themselves. These are the situations that are most relevant to risk-taking and impulsive behaviors that could expose them and other people to harm.

Figure 2. Cognitive Capacity Emerges During the Teen Years

(Casey & Caudle, 2013)

[SEE FIGURE IN ORIGINAL]

[*781]

B. Development of Cognitive Capacity Under Social and Emotional Influences

One of the most influential contexts for adolescents is the social environment. Social contexts impact behavior across development, but perhaps never as much as they do during the teen years.⁵⁰ Substantial evidence shows that teens are more oriented toward and influenced by peers than are either children or adults.⁵¹ The mere presence of a peer can lead to increased

remarkable restraint in controlling habitual responses but tend to fail when attempting to control habitual responses to salient positive cues in the environment. Specifically, we showed that adolescents have impulse control that is comparable to or even better than that of some adults in neutral contexts."); James T. Enns & Nameera Akhtar, A *Developmental* Study of Filtering in Visual Attention, 60 *Child Dev.* 1188 (1989) (examining the differences in filtering between children and adults); James T. Enns & Sharon Cameron, Selective Attention in Young Children: The Relations Between Visual Search, Filtering, and Priming, 44 *J. Experimental Child Psychol.* 38 (1987) (discussing the existing literature of age differences in priming, search/orienting, and filtering); Karen Paulsen & Margaret Johnson, Impulsivity: A Multidimensional Concept with *Developmental* Aspects, 8 *J. Abnormal Child Psychol.* 269, 275 (1980) ("The age-related finding seems consistent with assumptions about neurological/control development. Younger children were not able to inhibit motor movement as well as older children.... This is consistent with substantial evidence demonstrating that children generally become less impulsive with age and with the idea that maturational level greatly influences error scores." (citation omitted)); K. Richard Ridderinkhof et al., Sources of Interference from Irrelevant Information: A *Developmental* Study, 65 *J. Experimental Child Psychol.* 315, 336-37 (1997) ("Thus, the main conclusion drawn from the present study is that, rather than in perceptual filtering or in response preparation, the primary source of the *developmental* decrease in interference from irrelevant information was found in the speed or efficiency of processing in the S-R translation stage, in which the output of perceptual analysis is coupled to the preparation and execution of the motor response.").

⁴⁷ See, e.g., Steinberg, *Adolescent Development and Juvenile Justice*, supra note 15, at 470-71 (describing the impulse control problems present in adolescents).

⁴⁸ See, e.g., Casey & Caudle, supra note 46, at 86.

⁴⁹ See, e.g., Sally F. Goldfarb, Who Pays for the "Boomerang Generation"? A Legal Perspective on Financial Support for Young Adults, 32 *Hurv. J.L. & Gender* 45, 52 (2014); Vivian E. Hamilton, Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority, 77 *Brook. L. Rev.* 1447, 1507-10 (2012); Scott, supra note 9, at 85-87.

⁵⁰ B.J. Casey, Beyond Simple Models of Self-Control to Circuit-Based Accounts of Adolescent Behavior, 66 *Ann. Rev. Psychol.* 295, 304-05 (2015); Leah H. Somerville et al., The Medial Prefrontal Cortex and the Emergence of Self-Conscious Emotion in Adolescence, 24 *Psychol. Sci.* 1554, 1560 (2013); see also Steinberg, *Adolescent Development and Juvenile Justice*, supra note 15, at 468-69.

⁵¹ See, e.g., Amanda E. Guyer et al., Neural Circuitry Underlying Affective Response to Peer Feedback in Adolescence, 7 *Soc. Cognitive & Affective Neuroscience* 81, 82 (2012) [hereinafter Guyer et al., *Neural Circuitry*]; Amanda E. Guyer et al., Probing the Neural Correlates of Anticipated Peer Evaluation in Adolescence, 80 *Child Dev.* 1000, 1000 (2009) [hereinafter Guyer et al., *Probing the Neural Correlates*]; Carrie L. Masten et al., Relative Importance of Parents and Peers: Differences in Academic and Social Behaviors at Three Grade Levels Spanning Late Childhood and Early Adolescence, 29 *J. Early Adolescence* 773, 794-95 (2009); Steinberg & Monahan, supra note 16, at 1531.

risk-taking in teens that is not typically observed in individuals over eighteen.⁵² For example, adolescents are more likely to drive through a yellow light at an intersection during a video game when with a peer than when not.⁵³ Adolescents may engage in risky behaviors in order to fit in with a social group because of the importance of peer relationships, consistent with the higher number of crimes committed in groups by juveniles than by adults.⁵⁴

Adolescents also show a heightened sensitivity to incentives and rewards that can both diminish and enhance cognitive capacity.⁵⁵ Social cues associated with positive outcomes, such as a smiling face, can disrupt cognitive capacity as evidenced by more impulsive responses to these cues⁵⁶ (see Figure 3a), and teens as a group show less capacity for delayed gratification than adults.⁵⁷ However, teens show enhanced performance on decision-making tasks when either money [*782] or points are at stake and dependent on their performance.⁵⁸ Together these findings suggest that while *developmental* sensitivity to rewards may diminish cognitive control, it also may be harnessed to improve cognitive capacity.

Figure 3. Heightened Sensitivity to Social and Emotional Cues in Teens Relative to Children or Adults (Somerville et al. 2011; Dreyfuss et al. 2014)

[SEE FIGURE IN ORIGINAL]

It is often assumed that adolescents are fearless and perceive themselves to be invincible or immortal. Yet self-report findings suggest that adolescents overestimate their own risk to fatal outcomes from injury or illness relative to adults.⁵⁹ How do threatening situations differentially impact the capacity for self-control across development? The majority of studies addressing this question use faces with fearful expressions as cues of a potential threat, as a fearful face indicates a potential threat in the environment that triggers fear. Recent behavioral findings suggest that adolescents, unlike adults, show difficulty suppressing attention and action toward cues of potential threat, even when these cues are irrelevant to the task at hand.⁶⁰ Male

⁵² Chein et al., *supra* note 3, at F7-8; Margo Gardner & Laurence Steinberg, Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study, 41 *Developmental Psychol.* 625, 625-26 (2005); Alexander Weigard et al., Effects of Anonymous Peer Observation on Adolescents' Preference for Immediate Rewards, 17 *Developmental Sci.* 71, 75-77 (2014).

⁵³ See Chein et al., *supra* note 3, at F7-8; Weigard et al., *supra* note 52, at 71.

⁵⁴ Laurence Steinberg, The Influence of Neuroscience on US Supreme Court Decisions About Adolescents' Criminal Culpability, 14 *Nature Revs. Neuroscience* 513, 516 (2013); see also Philip R. Costanzo & Marvin E. Shaw, Conformity as a Function of Age Level, 37 *Child Dev.* 967, 972-74 (1966) (discussing that the impact of peers on behavior varies with age); Steinberg & Monahan, *supra* note 16, at 1531 ("The increased importance of peers leads adolescents to want to alter their behavior in order to fit in; because they care more about what their friends think of them, they are more likely to go along with the crowd to avoid being rejected.").

⁵⁵ Steinberg et al., *supra* note 18, at 1776; see also Galvan et al., *supra* note 1, at 6890-91.

⁵⁶ Somerville et al., *supra* note 3, at 2129.

⁵⁷ See Steinberg et al., *supra* note 18, at 1765-66, 1768.

⁵⁸ See Geier et al., *supra* note 1, at 1615, 1625; Michael G. Hardin et al., Inhibitory Control in Anxious and Healthy Adolescents Is Modulated by Incentive and Incidental Affective Stimuli, 50 *J. Child Psychol. & Psychiatry* 1550, 1553-55 (2009); Theresa Teslovich et al., Adolescents Let Sufficient Evidence Accumulate Before Making a Decision When Large Incentives Are at Stake, 17 *Developmental Sci.* 59, 61, 66-67 (2014).

⁵⁹ Lawrence D. Cohn et al., Risk-Perception: Differences Between Adolescents and Adults, 14 *Health Psychol.* 217, 221 (1995).

⁶⁰ E.g., Julia E. Cohen-Gilbert & Kathleen M. Thomas, Inhibitory Control During Emotional Distraction Across Adolescence and Early Adulthood, 84 *Child Dev.* 1954, 1961-63 (2013) ("Results of this study supported the prediction that younger adolescents, when required to exert inhibitory control over a potentiated response, are more readily disrupted by emotional information than are older adolescents and adults."); Jillian Grose-Fifer et al., Attentional Capture by Emotional Faces in Adolescence, 9 *Advances Cognitive Psychol.* 81, 81-83, 86 (2013) ("Our findings suggest that the ability to self-regulate in adolescents, as evidenced by the ability to suppress irrelevant information on a flanker task, is more difficult when stimuli are affective in nature.").

adolescents, especially, appear to be drawn to these cues of potential threat, impulsively reacting rather [*783] than withdrawing like male children or adults do ⁶¹ (see Figure 3b). Together these findings suggest a heightened sensitivity to peer influences, rewards, and threats during adolescence, especially during the teen years.

IV. When Does the Brain "Mature"?

Neuroscientific evidence has emerged that may help to explain adolescent-specific changes in behavior. These studies provide evidence of regional changes in brain structure, function, and neurochemicals during adolescence that are distinct from childhood and adulthood, and have been proposed to result in imbalances within brain circuitry ⁶² (see Figure 4). Specifically, noninvasive brain imaging and postmortem studies have shown continued regional development of the prefrontal cortex, implicated in judgment and self-control beyond the teen years and into the twenties. ⁶³ In contrast, evolutionarily older regions of the brain - such as the sensorimotor cortex, implicated in action, ⁶⁴ and the subcortical limbic regions, implicated in desire and fear - show earlier developmental changes that peak between ages thirteen and seventeen. ⁶⁵

A. The Imbalance Model of Adolescent Brain Development

A prominent neurobiological theory of adolescence is the imbalance model (see Figure 3). This model suggests that these asymmetric and dynamic changes in the structure and function of subcortical limbic and prefrontal cortical circuitry underlie the diminished capacity to exercise self-control to inhibit inappropriate actions, desires, and emotions in favor of appropriate ones. ⁶⁶ In [*784] social or emotionally charged situations, the limbic regions of the brain may hijack less mature prefrontal regions leading to an imbalance or overreliance on these emotional regions. This tension is presumably not observed in childhood because of a relative lack of maturity of these systems or in adulthood because of a relative maturity of these brain regions (i.e., balanced). With development and experience, connections between these regions are strengthened enabling the prefrontal cortex to "override" the emotional centers of the brain to diminish emotionally triggered behavior in favor of goal-oriented or socially acceptable behavior. ⁶⁷

Figure 4. The Imbalance Model of Adolescence

⁶¹ Dreyfuss et al., *supra* note 2, at 223, 226.

⁶² E.g., Casey, *supra* note 50, at 298-301; B.J. Casey et al., The Adolescent Brain, 28 Developmental Rev. 62, 73 (2008) [hereinafter Casey et al., The Adolescent Brain].

⁶³ E.g., Nitin Gogtay et al., Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood, 101 *Proceedings Nat'l Acad. Sci. U.S.A.* 8174, 8174 (2004); Kathryn L. Mills et al., The Developmental Mismatch in Structural Brain Maturation During Adolescence, 36 Developmental Neuroscience 147, 155-58 (2014); Zdravko Petanjek et al., Extraordinary Neoteny of Synaptic Spines in the Human Prefrontal Cortex, 108 *Proceedings Nat'l Acad. Sci. U.S.A.* 13281, 13284 (2011); Armin Raznahan et al., Longitudinal Four-Dimensional Mapping of Subcortical Anatomy in Human Development, 111 *Proceedings Nat'l Acad. Sci. U.S.A.* 1592, 1594-95 (2014); Elizabeth R. Sowell et al., Longitudinal Mapping of Cortical Thickness and Brain Growth in Normal Children, 24 *J. Neuroscience* 8223, 8228-30 (2004).

⁶⁴ See Jean-Pierre Bourgeois et al., Synaptogenesis in the Prefrontal Cortex of Rhesus Monkeys, 4 *Cerebral Cortex* 78, 78-79 (1994); Peter R. Huttenlocher & Arun S. Dabholkar, Regional Differences in Synaptogenesis in Human Cerebral Cortex, 387 *J. Comp. Neurology* 167, 176 (1997).

⁶⁵ See Bourgeois et al., *supra* note 64, at 90; Harry T. Chugani et al., Positron Emission Tomography Study of Human Brain Functional Development, 22 *Annals Neurology* 487, 494-96 (1987); Galvan et al., *supra* note 1, at 6886-87; Todd A. Hare et al., Biological Substrates of Emotional Reactivity and Regulation in Adolescence During an Emotional Go-NoGo Task, 63 *Biological Psychiatry* 927, 932 (2008).

⁶⁶ Casey, *supra* note 50, at 298-99; Monique Ernst et al., Triadic Model of the Neurobiology of Motivated Behavior in Adolescence, 36 *Psychol. Med.* 299, 300-01 (2006); Laurence Steinberg, A Dual Systems Model of Adolescent Risk-Taking, 52 Developmental Psychobiology 216, 216 (2010).

⁶⁷ Casey et al., The Adolescent Brain, *supra* note 62, at 66-68; B.J. Casey et al., Beyond Simple Models of Adolescence to an Integrated Circuit-Based Account: A Commentary, 17 Developmental Cognitive Neuroscience 128, 128-30 (2016).

[SEE FIGURE IN ORIGINAL]

Evidence for this model of adolescence comes from several imaging studies showing heightened activity in limbic regions of the brain during the teen years to cues of potential threat,⁶⁸ rewards,⁶⁹ and peers.⁷⁰ In contrast, activity in prefrontal control regions shows linear changes from childhood to adulthood and patterns of activity that are associated with overall cognitive performance.⁷¹ These findings suggest that imbalances in recruitment of cortical and subcortical neural circuitry may underlie adolescents' impulsive and risky behavior.

[*785]

B. Continued Brain Development During Young Adulthood

The protracted development of prefrontal circuitry beyond the teen years⁷² raises questions with respect to the approximate age at which an adolescent may be considered sufficiently mature to be regarded as an adult. Notwithstanding the substantial variation in social and legal policies across these ages, few studies have focused specifically on behavioral and brain changes in eighteen-to twenty-year-olds relative to older adults and teens. The few studies that have examined motivational and social influences on cognitive capacity in young adults have used varying age ranges and produced mixed results.⁷³ For example, while young adults over eighteen show little impact of peers on their decision making on a driving task,⁷⁴ they show less delay of gratification (i.e., choose immediate smaller rewards over delayed larger rewards) when they believe a peer is observing them.⁷⁵ Yet, they show better overall performance on gambling tasks in the presence of peers.⁷⁶ Thus, sensitivity to peers in young adulthood may share both overlapping and distinct effects to those observed in teens. This work highlights the importance of contextual influences, such as social and emotional arousal, on the development of behavior and brain function that may be particularly relevant for evaluating appropriate age cutoffs.

⁶⁸ See, e.g., Abigail A. Baird et al., Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents, 38 J. Acad. Child & Adolescent Psychiatry 195, 197-99 (1999); Casey, supra note 50, at 305-07; Guyer et al., Probing the Neural Correlates, supra note 51, at 1011; Hare et al., supra note 65, at 933-34; Christopher S. Monk et al., Adolescent Immaturity in Attention-Related Brain Engagement to Emotional Facial Expressions, 20 Neuroimage 420, 427-28 (2003).

⁶⁹ See, e.g., Emily Barkley-Levenson & Adriana Galvan, Neural Representation of Expected Value in the Adolescent Brain, 111 Proceedings Nat'l Acad. Sci. U.S.A. 1646, 1648-50 (2014); Galvan et al., supra note 1, at 6889-91; Geier et al., supra note 1, at 1621-26; Somerville et al., supra note 3, at 2129-31; Wouter van den Bos et al., What Motivates Repayment? Neural Correlates of Reciprocity in the Trust Game, 4 Soc. Cognitive & Affective Neuroscience 294, 300-03 (2009).

⁷⁰ See, e.g., Chein et al., supra note 3, at F7-8.

⁷¹ See, e.g., Dreyfuss et al., supra note 2, at 225-26; Chein et al., supra note 3, at F2; Somerville et al., supra note 3, at 2130-32.

⁷² See Gogtay et al., supra note 63, at 8177

⁷³ See, e.g., Chein et al., supra note 3, at F1, F4-7 ("Results suggest that the presence of peers increases adolescent risk taking by heightening sensitivity to the potential reward value of risky decisions."); Cohen-Gilbert & Thomas, supra note 60, at 217-20 ("Consistent with previous reports, adolescents in the present study demonstrated worse inhibitory control than emerging adults and adults, reflected by higher error rates on No-Go trials... Multiple developmental changes in cognitive processing contribute to reductions in impulsivity between adolescence and adulthood."); Karol Silva et al., Peers Increase Late Adolescents' Exploratory Behavior and Sensitivity to Positive and Negative Feedback, J. Res. Adolescence 1, 5-7, 9 (2015) ("Although late adolescents may engage in relatively more risky behavior when they are with their peers, they also may learn more about the environment in group settings than when they are alone. In this regard, our findings suggest that spending time with peers during adolescence may be a double-edged sword, increasing the odds that adolescents will behave recklessly, but also that they will learn from the consequences of their actions.").

⁷⁴ Chein et al., supra note 3, at F7-8.

⁷⁵ Weigard et al., supra note 52, at 76-77.

⁷⁶ Silva et al., supra note 73, at 4-5, 7-9.

In an effort to address aspects of these questions, members of the MacArthur Research Network on Law and Neuroscience examined cognitive capacity in emotionally charged and emotionally benign situations in young adults.⁷⁷ We focused specially on eighteen-to twenty-one-year-olds relative to younger (thirteen to seventeen) and older (twenty-two to twenty-five) ages. To discern specific emotional contexts that may impact cognitive control differently across development, we examined the impact of both brief and prolonged emotional states and of both positive and negative valence on cognitive control. Our premise was that these emotional contexts may relate more to emotionally charged situations relevant for legal policy judgments, such as those related to [*786] criminal responsibility, accountability, and public safety, than to emotionally benign situations.

We tested whether young adults would behave more similarly to adolescents (thirteen to seventeen) or adults (over twenty-one) in these emotionally laden contexts. Second, we tested whether prefrontal activity would differentiate performance levels between young adults from adults. In contrast, we predicted few differences in cognitive capacity between young adults and teens or adults in nonemotional situations. We used social cues of emotional expressions (smiling, fearful, neutral) as cues to assess the effects of brief emotional triggers on cognitive control. To assess prolonged emotional states on cognitive control, participants performed the cognitive control task while anticipating a negative event (loud aversive noise), positive event (winning up to \$ 100), or no event. These emotional events were unpredictable in an attempt to elicit sustained states of anticipation and did not relate to the individual's performance.

Our findings show that, relative to adults over twenty-one, young adults show diminished cognitive capacity, similar to that of adolescents, under brief and prolonged negative emotional arousal⁷⁸ (see Figure 5). This behavioral pattern was paralleled by less adultlike recruitment of prefrontal circuitry in teens and young adults, consistent with relatively protracted development of the prefrontal cortex into the early twenties.⁷⁹ In contrast, young adults' performance did not differ significantly from either teens or adults in nonemotional situations. Positive emotional arousal impacted teens more than either young adults or adults, underscoring the point that developmentally informed age lines may differ from one context to another.

Figure 5. Young Adults, Like Teens, Have Poorer Cognitive Control and Less Prefrontal Activity to Threat Cues than Adults. (Cohen et al. in press)

[SEE FIGURE IN ORIGINAL] [*787] Taken together, the findings suggest that young adulthood is a developmental period when cognitive capacity is still vulnerable to negative emotional influences. This diminished capacity is paralleled by immature engagement of prefrontal regions that are important for overriding emotionally triggered actions. The results are consistent with prior research implicating the importance of prefrontal control circuitry in regulating emotions.⁸⁰ Although these findings may be relevant for evaluating appropriate age cutoffs relevant to policy judgments relating to risk-taking, accountability, and punishment, they are presumably less relevant for setting minimum ages for voting or making medical decisions.

⁷⁷ MacArthur Found. Res. Network on L. & Neuroscience, <http://www.lawneuro.org/> (last visited June 1, 2016).

⁷⁸ Alexandra O. Cohen et al., When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts, 27 Psychol. *Sci.* 549, 549 (2016).

⁷⁹ See Gogtay et al., *supra* note 63, at 8176-79; Sowell et al., *supra* note 63, at 8826-28.

⁸⁰ See, e.g., Jason T. Buhle et al., Cognitive Reappraisal of Emotion: A Meta-Analysis of Human Neuroimaging Studies, 24 Cerebral Cortex 2981, 2984-87 (2014) ("Indeed, whether emotion generation and regulation necessarily rely upon distinct neural mechanisms remains an open question, given that partially overlapping prefrontal regions have been shown in prior work to support emotion generation, perception, experience, and regulation."); Jennifer A. Silvers et al., Curbing Craving: Behavioral and Brain Evidence that Children Regulate Craving When Instructed to Do So but Have Higher Baseline Craving than Adults, 25 Psychol. *Sci.* 1932, 1936 (2014) ("Older age predicted increased recruitment of right lateral prefrontal and bilateral posterior parietal cortices and decreased recruitment of subcortical structures implicated in reward and emotional processing, such as the VS and amygdala, during presentation of food pictures relative to fixation. Similar regions of interest (ROIs) were identified by linear and quadratic models of age." (citations omitted)); Justin L. Vincent et al., Evidence for a Frontoparietal Control System Revealed by Intrinsic Functional Connectivity, 100 J. Neurophysiology 3328 (2008) (discussing the frontoparietal control system).

Conclusions: How Can Developmental Science Inform Policy?

We began by asking whether social practices and expectations about "adulthood" had informed laws and policies that define the rights and responsibilities of adulthood, and whether age boundaries drawn by these policies and laws reflect emerging scientific understanding of human development. If we focus solely on state policies governing the minimum age for adult prosecution of young people in the United States, we would have to reply "no" to both questions. Nearly half the states have no minimum age for trying a child as an adult and, among those that do, fourteen is the most common age. Moreover, many jurisdictions automatically transfer children to the adult system even though prosecuting teenagers in criminal courts does not deter offending⁸¹ but rather increases recidivism.⁸² These findings have spurred reforms to keep more adolescents in juvenile courts by raising the age for transfer and by repealing mandatory transfers in favor of individualized decisions by juvenile court judges. More recently, reformers are also making the case for a rehabilitative, developmentally informed approach to young adult offenders eighteen to twenty-one, recognizing that there is no developmentally informed magical line of demarcation at eighteen. What should the age of eligibility be under young offender sentencing statutes? When should a "youth discount" be exhausted? These remain open questions.

[*788] The developmental science referenced in U.S. Supreme Court decisions regarding treatment of juvenile versus adult offenders over the past decade acknowledges immature cognitive capacity in juveniles as a mitigating factor in judgments of criminal culpability.⁸³ Scientific research has demonstrated that adolescents show heightened sensitivity to peer influences, rewards, and threats, potentially rendering them more vulnerable to making poor decisions in these situations.⁸⁴ Minimum legal ages have been imposed largely to protect young people from these vulnerabilities. Recent findings on young adults suggest that these same vulnerabilities affect young adults. Studies that fail to focus on emotional influences on cognitive capacity are likely underestimating developmental similarities between adolescents and young adults that have the most bearing on social and legal policies relating to risk-taking and accountability.

These findings of diminished cognitive capacity in negative emotional contexts in young adults reinforce and extend the developmental logic of reforms of the juvenile justice system already underway. Previous research on the diminished capacities of adolescents in self-control in emotionally laden contexts has supported arguments for raising the minimum age of criminal court jurisdiction to sixteen, keeping youth under eighteen in the juvenile court, and mitigating their punishment in criminal court. These new findings provide empirical support for extending the juvenile court's dispositional age to twenty-one or older and for reconsideration of sentencing statutes for young adult offenders. This work does not suggest that young people should not be held accountable for their actions, but rather that the boundaries of juvenile court jurisdiction and criminal court sentencing and punishment should be informed by developmental considerations.

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End of Document

⁸¹ Kupchik, *supra* note 23, at 2.

⁸² Fagan et al., *supra* note 23, at 15-17, 69.

⁸³ Alexandra O. Cohen & B.J. Casey, *Rewiring Juvenile Justice: The Intersection of Developmental Neuroscience and Legal Policy*, 18 *Trends Cognitive Sci.* 63, 63 (2014); Steinberg & Monahan, *supra* note 16, at 1541.

⁸⁴ See, e.g., Cohen-Gilbert & Thomas, *supra* note 60, at 1961-63 (discussing adolescents' responses to potential threats); Chein et al., *supra* note 3, at F7 (discussing the impact of social influences on adolescents); Dreyfuss et al., *supra* note 2, at 225-26 (discussing adolescents' responses to threats); Somerville et al., *supra* note 3, at 2131-32 (discussing the impact of social influences on adolescents); Galvan et al., *supra* note 1, at 6890-91 (discussing the impact of rewards on adolescents); Grose-Fifer et al., *supra* note 60, at 81-83, 86 ("Our findings suggest that the ability to self-regulate in adolescents, as evidenced by the ability to suppress irrelevant information on a flanker task, is more difficult when stimuli are affective in nature.")



COPY

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT NO. 2015-GS-18-0951-0954; -0972
)

STATE OF SOUTH CAROLINA

)

v.

)

ORDER

THOMAS ROBERT SHEWTZUK,
DEFENDANT.

)

)

)

)

2017 SEP 13 PM 2:41
CLERK OF COURT
JANET L. HARRIS

Pursuant to the Order of the South Carolina Court of Appeals, filed on May 11, 2017, remanding this case to the Circuit Court to reconstruct the record of the bench conferences that occurred during Thomas Shewtzuk's trial, a hearing was held on July 17, 2017, in Dorchester County. Glenn Justis, Esquire, of the First Circuit Solicitor's Office, was present on behalf of the State of South Carolina. Susan Barber Hackett, Esquire, of the Office of Appellate Defense, was present on behalf of Mr. Shewtzuk. The defendant was present for the hearing as well. This Court heard testimony from Leslie Sarji, who represented Mr. Shewtzuk at his trial, and Mr. Justis.

PROCEDURAL HISTORY

On July 9, 2015, a Dorchester County grand jury indicted Mr. Shewtzuk for murder, possession of a weapon during a violent crime, and two counts of kidnapping. On June 2, 2016, the grand jury indicted Mr. Shewtzuk on a third count of kidnapping. The State, represented by Mr. Justis and Kylie Ward, called the case to trial on September 6, 2016, before this Court and a jury. Ms. Sarji represented Mr. Shewtzuk. The jury found Mr. Shewtzuk guilty as charged. This Court sentenced Mr. Shewtzuk to life imprisonment without the possibility of parole for murder, five years' imprisonment for the weapon, and thirty years' imprisonment on two counts of kidnapping. There was no sentence imposed for one of the kidnapping convictions pursuant to S.C. Code Ann. § 16-3-910.

On September 16, 2016, Ms. Sarji filed and served the notice of appeal. On October 17, 2016, the Office of Appellate Defense ordered the trial transcript from Heather Landry, Circuit Court Reporter. On February 23, 2017, the transcript was received. On March 3, 2017, Ms. Hackett was assigned to represent Mr. Shewtzuk. Upon initial review of the transcript, Ms. Hackett realized the bench conferences had not been transcribed and that repeated assurances had been given that the bench conferences were being recorded and would be preserved as part of the record. Within the index, the court reporter made a “[n]ote regarding bench conferences.” According to the court reporter, “[t]he backup recordings used to capture the bench conferences were found to be unintelligible. This is due to the background noise that is played over the courtroom’s sound system during bench conferences that are held in the presence of a jury. Therefore, these are not included as part of the record as requested.”

On April 6, 2017, Ms. Hackett filed a motion for an order to reconstruct the record of the bench conferences at Mr. Shewtzuk’s trial. On May 1, 2017, the State filed its return. The State “concur[red] that a remand [was] appropriate to reconstruct the record” to preserve the appellate record. In short, the State had “no objection” to the “reasonable request for a remand for a reconstruction hearing limited to the bench conferences.” On May 9, 2017, Ms. Hackett filed a reply, noting the State’s agreement and providing additional information regarding the necessity of reconstructing the record to permit meaningful appellate review.

May 11, 2017, the Court of Appeals granted the request to remand for reconstruction of the record. In compliance with the appellate court’s order, this Court held a hearing on June 17, 2017. After considering the testimony from the witnesses presented at the hearing, this Court’s own review of the partial transcript, and this Court’s recollection of the trial proceedings, this Court makes the following findings.

FINDINGS

The first unrecorded bench conference occurred on page 37, lines 6-7 of the transcript. This Court finds that during this conference, Ms. Sarji preserved her request for additional jury *voir dire*. The written request for *voir dire* submitted by Ms. Sarji is attached to this Order. This Court declined to use the submitted *voir dire*, noting the questions asked adequately covered the concerns or questions raised by the defense.

The second unrecorded bench conference occurred on page 37, lines 9-10 of the transcript. This Court finds this conference concerned scheduling. It is likely that during this conference, this Court was explaining to defense counsel why she was not asking certain questions from the requested *voir dire*.

The third unrecorded bench conference occurred on page 43, lines 8-9. This Court finds this conference concerned scheduling as well. This finding is supported by the surrounding portions of the transcript revealing the seating of the jury immediately prior to the bench conference.

The fourth unrecorded bench conference occurred on page 55, lines 8-9. This Court finds this conference concerned the scheduling of the first witness to testify. Additionally, as it was almost 5 p.m., this conference likely concerned recessing for the day.

The fifth unrecorded bench conference occurred on page 55, lines 14-15. This Court finds this conference concerned the State, Mr. Justis, confirming the sequestration order. This conference possibly addressed scheduling as well.

The sixth unrecorded bench conference occurred on page 75, lines 8-9. This Court finds this conference concerned defense counsel's objection based on hearsay and speculation. This objection was overruled. While this Court is unable to recall the reason for the ruling, it is likely

this Court found the testimony was not hearsay as it was possibly a statement against interest because the State had asked the witness, Doug Vaughan, why the defendant was trying to sell a gun. The Court likely considered this to be more probative than prejudicial.

The seventh unrecorded bench conference occurred on page 82, lines 5-6. This Court finds that during this bench conference, defense counsel's objections to the potential testimony based on the grounds of hearsay and relevance were discussed and the objections were sustained. The witness was questioned about Mr. Shewtzuk's tattoos. To the extent the witness would have testified that Mr. Shewtzuk had a teardrop tattoo on his face and that such a tattoo meant he killed someone, this Court sustained defense counsel's objection. Ultimately, the State withdrew the question.

The eighth unrecorded bench conference occurred on page 88, lines 2-3. This Court finds this bench conference addressed defense counsel's objection based on relevance to purported testimony about Mr. Shewtzuk's employment. This Court sustained the objection. The State asked the witness, Kaitlin Dubois, whether Mr. Shewtzuk was employed at the time of the shooting. According to the State, the question was relevant to the State's theory that Mr. Shewtzuk was attempting to rob the deceased and would support the State's theory of Mr. Shewtzuk's alleged motive for selling the gun.

The ninth unrecorded bench conference occurred on page 100, lines 1-2. This Court finds this bench conference concerned defense counsel's objections to cell phone logs proposed to be entered into evidence by the State. The first objection from defense counsel concerned the date discrepancy between the records in the possession of the records custodian for Verizon, while testifying, and the records provided to defense counsel, which were obtained by the State using a search warrant. The second issue concerned the State organizing the text messages

chronologically and placing names by the phone numbers. When the State received the text messages from Verizon, the messages were not in chronological order and were identified by numbers only, not names. Therefore, the State created charts placing the messages in chronological order and associated the numbers with names. Defense counsel objected to the charts because the State could not prove the person whose name the state associated with the number was the person actually using the cell phone at the time of the sending and/or receiving of the text messages. Overruling the objection, this Court ruled the number would be referred to as "the number associated with the phone known to have been used by this person." However, the exhibit was admitted and the parties were allowed to argue their positions. The defense had the opportunity to argue that the fact that certain text messages were sent from a particular phone does not prove than a particular person sent the text messages.

The tenth unrecorded bench conference occurred on page 141, lines 23-24. This Court finds that during this bench conference, a break was scheduled.

The eleventh unrecorded bench conference occurred on page 145, lines 5-6. This Court finds that during this bench conference, the defense raised the issue of a witness, Kaitlin Dubois, committing perjury. To address this issue, the court reporter played the testimony of Ms. Dubois. This Court further finds the nature of this conference was adequately covered on the record.

The twelfth unrecorded bench conference occurred on page 191, lines 7-9. This Court finds this bench conference addressed defense counsel's objection to the admission of a cigarette butt and the results of forensic testing of the cigarette butt based on the State's failure to prove the chain of custody. This Court overruled the objection and permitted the introduction of the evidence. During the bench conference, defense counsel argued the State failed to establish a complete chain of custody as far as practicable to permit admissibility of evidence. The State

argued (1) that it need not prove each rung in the chain, (2) that the persons who collected the items and sealed them testified to sealing the package and giving it to SLED, and (3) the SLED agent testified there was no evidence of tampering to the package. The Court ruled that the probative value outweighed its prejudicial effect and any deficiencies would go to the weight of the evidence and not its admissibility.

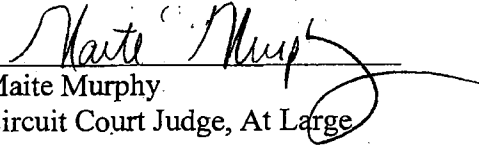
The thirteenth unrecorded bench conference occurred on page 242, lines 1-4. This Court finds this bench conference concerned scheduling. As mentioned earlier, an issue arose during the trial regarding a witness, Kaitlin Dubois, when the defense asserted that Ms. Dubois committed perjury regarding her contact with Mr. Shewtzuk. This matter was discussed during this bench conference as well, and, as discussed above, the matter was adequately covered on the record.

The fourteenth unrecorded bench conference occurred on page 291, lines 5-7. This Court finds this bench conference addressed the playing of the convenience store surveillance video that captured the shooting. The State asked this Court to inform those present in the courtroom that the video was graphic to enable individuals who did not wish to see the video to leave the room.

The fifteenth unrecorded bench conference occurred on page 294, lines 14-15. This Court finds this bench conference concerned defense counsel's objection to the admission of still shots from the video from the convenience store where the shooting occurred. Defense counsel objected that the still shots were inadmissible under Rule 403, SCRE, because they were inflammatory and unfairly prejudicial. The solicitor argued the photographs showed Mr. Shewtzuk's distinctive tattoos. This Court overruled the objection and permitted the introduction of the still shots by finding that their probative value outweighed its prejudicial effect.

CONCLUSION

Upon issuance of this Order, this Court has complied with the Order of the South Carolina Court of Appeals remanding this case to the Circuit Court to reconstruct the record of the bench conferences that occurred during Mr. Shewtzuk's trial.


Maite Murphy
Circuit Court Judge, At Large

August 31, 2017.

WITNESSES

A Smith

Dorchester County Sheriff
15-006388

ARREST WARRANT NUMBER
2015A1810300575

Arrested: June 18, 2015

ACTION OF GRAND JURY

TRUE BILL

Dawn J. Kelly
Foreperson of Grand Jury
Date: July 9, 2015

VERDICT

Guilty

CLERK OF COURT
DORCHESTER COUNTY

Cheryl Graham

SC Code: 16-3-10

2016 SEP -9 PM 1:58

CERTIFIED COPY

Wayne L...
Foreperson of Petit Jury
Date: 9-8-16

DOCKET NO. 2015GS18-0951

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

July 13, 2015 TERM

THE STATE
vs.

Thomas Robert Shewtzuk

Indictment for

Murder

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.

RECORD
2015 JUL -9 PM 1:31
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2015GS18-0951

As a Court of General Sessions, convened on July 9, 2015 the Grand Jurors of DORCHESTER County present upon their oath:

MURDER

That in Dorchester County on or about June 13, 2015, with malice aforethought, the defendant, Thomas Robert Shewtzuk did kill one Travis Aaron Gordon by shooting the victim in the head. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

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

A handwritten signature in black ink, appearing to read "Glenn P. Justis", is written over a horizontal line.

Glenn P. Justis, Solicitor

COUNTY OF Dorchester
 STATE VS.
Thomas Robert Shewtzuk
 AKA: _____
 Race: WHITE Sex: M Age: 19
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: Summerville, SC 29485
 DL#: 102024953 SID#: _____
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder

INDICTMENT/CASE#: 2015GS18-0951
 A/W#: 2015A1810300575
 Date of Offense: 6/13/2015
 S.C. Code § : 16-3-10
 CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ 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: Justis, Glenn P. SC Bar# 76696 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 life in prison 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: 9/13/16
☐ 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.

☐ 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 (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: _____ \$
 § 14-1-206 (Assessments 107.5 %) _____ \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 61.6 (Public Def/Probation) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114(BUI Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk: Cheryl Graham
 Court Reporter: Heather Pandey
 SCCA/217 (07/2016)

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, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: Walter Kemp
 Judge Code: 2166
 Sentence Date: 9/13/16

CLERK OF COURT
 DORCHESTER COUNTY
 2016 SEP - PH 1:58
 CERTIFIED COPY

WITNESSES

A Smith

Dorchester County Sheriff
15-006388

ARREST WARRANT NUMBER
2015A1810300603

Arrested: June 18, 2015

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: July 9, 2015

VERDICT

Guilty

CLERK OF COURT
DORCHESTER COUNTY

SC Code: 16-23-490

2016 SEP -9 PM 1:58

CERTIFIED COPY

[Signature]
Foreperson of Petit Jury
Date: 9-8-16

DOCKET NO. 2015GS18-0952

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

July 13, 2015 TERM

THE STATE
vs.

Thomas Robert Shewtzuk

Indictment for

Possession of a Firearm or Knife During
the Commission of a Violent Crime

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.

FILED - RECORDED
2015 JUL -9 PM 1:31
CHERYL GRAYHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2015GS18-0952

As a Court of General Sessions, convened on July 9, 2015 the Grand Jurors of DORCHESTER County present upon their oath:

**POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A
VIOLENT CRIME**

That in Dorchester County, South Carolina, on or about June 13, 2015, the Defendant, Thomas Robert Shewtzuk, unlawfully did possess a firearm described as a pistol during the commission of a violent crime, to wit: Murder. This offense in violation of Section 16-03-490, of the South Carolina Code of Laws, as amended.

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



Glenn P. Justis, Solicitor

COUNTY OF Dorchester
 STATE VS.
Thomas Robert Shewtzuk
 AKA:
 Race: WHITE Sex: M Age: 19
 DOB: SS#
 Address:
 City, State, Zip: Summerville, SC 29485
 DL#: 102024953 SID#:

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

In disposition of the said indictment comes now the Defendant who was
 TO: Possession of a Firearm or Knife During the Commission of a Violent Crime

in violation of § 16-23-490 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.

Justis, Glenn P. 7662 Defendant Attorney for Defendant SC Bar#
Justis, Glenn P. 7662 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: 9/8/16
☐ 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.

☐ 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 (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:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(f) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk
 Court Reporter:
 SCCA/217 (07/2016)

Cheryl Graham
Heather Candrix

INDICTMENT/CASE#: 2015GS18-0952
 A/W#: 2015A1810300603
 Date of Offense: 6/13/2015
 S.C. Code § : 16-23-490
 CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

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,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge Nate Murphy
 Judge Code: 2464
 Sentence Date: 9/8/16

2016 SEP -9 PM 1:55
 CLERK OF COURT
 DORCHESTER COUNTY
 RECEIVED COPY

WITNESSES

A Smith

Dorchester County Sheriff
15-006388

ARREST WARRANT NUMBER

2015A1810300604

Arrested: June 18, 2015

ACTION OF GRAND JURY

TRUE BILL

Dan L. Haley
Foreperson of Grand Jury
Date: July 9, 2015

VERDICT

Guilty

DORCHESTER COUNTY
CLERK OF COURT

2016 SEP -8 PM 1:58

Wanda L. Smith
Foreperson of Petit Jury
Date: 9-8-16

DOCKET NO. 2015GS18-0953

**The State of South Carolina
County of DORCHESTER**

COURT OF GENERAL SESSIONS

July 13, 2015 TERM

THE STATE

vs.

Thomas Robert Shewtzuk

Indictment for

Kidnapping

SC Code: 16-3-910

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.

FILED - RECORDER
2015 JUL -9 PM 1:31
CHERYL GRAMHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

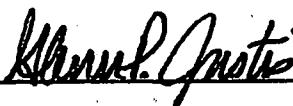
INDICTMENT
2015GS18-0953

As a Court of General Sessions, convened on July 9, 2015 the Grand Jurors of DORCHESTER County present upon their oath:

KIDNAPPING

That in Dorchester County, South Carolina, on or about June 13, 2015, the Defendant, Thomas Robert Shewtzuk, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Mary Miller, without authority of law. This offense in violation of Section 16-03-910, of the South Carolina Code of Laws, as amended.

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



Glenn P. Justis, Solicitor

COUNTY OF Dorchester
STATE VS.

Thomas Robert Shewtzuk

AKA:

Race: WHITE Sex: M Age: 19

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Summerville, SC 29485

DL#: 102024953 SID#: [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

INDICTMENT/CASE#: 2015GS18-0953

A/W#: 2015A1810300604

Date of Offense: 6/13/2015

S.C. Code §: 16-3-910

CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ 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: [Signature]
Justia, Glenn P.

76606
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 30 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: 9/18/14

☐ 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.

☐ 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 (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:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk: Cheryl Graham

Court Reporter: Heather Lindsay

SCCA/217 (07/2016)

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,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge: Kate' Murphy

Judge Code: 2166

Sentence Date: 9/18/14

2016 SEP -9 PM 1:55
 CERTIFIED COPY
 CLERK OF COURT
 DORCHESTER COUNTY

WITNESSES

A Smith

Dorchester County Sheriff

15-008388

ARREST WARRANT NUMBER

2015A1810300605

Arrested: June 18, 2015

ACTION OF GRAND JURY**TRUE BILL**

David Z. Kelly
 Foreperson of Grand Jury
 Date: July 9, 2015

VERDICT

Guilty

CLERK OF COURT
DORCHESTER COUNTY*Cheryl G. Smith*

DOCKET NO. 2015GS18-0954

The State of South Carolina
County of DORCHESTER
COURT OF GENERAL SESSIONS

July 13, 2015 TERM

THE STATE

vs.

Thomas Robert Shewtzuk

Indictment for

Kidnapping

SC Code: 16-3-910

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.

FILED - RECORDS
 2015 JUL -9 PM 1:31
 CHERYL G. SMITH
 CLERK OF COURT
 DORCHESTER COUNTY

2016 SEP -9 PM 1:58

CERTIFIED COPY

Foreperson of Petit Jury

Date: 9-8-16

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2015GS18-0954

As a Court of Gerferal Sessions, convened on July 9, 2015 the Grand Jurors of DORCHESTER County present upon their oath:

KIDNAPPING

That in Dorchester County, South Carolina, on or about June 13, 2015, the Defendant, Thomas Robert Shewtzuk, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Hetal Nehal Patel, without authority of law. This offense in violation of Section 16-03-910, of the South Carolina Code of Laws, as amended.

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


Glenn P. Justis, Solicitor

COUNTY OF Dorchester
STATE VS.

Thomas Robert Shewtzuk

AKA:

Race: WHITE Sex: M Age: 19

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Summerville, SC 29485

DL#: 102024953 SID#: [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

INDICTMENT/CASE#: 2015GS18-0954

A/W#: 2015A1810300605

Date of Offense: 6/13/2015

S.C. Code § : 16-3-910

CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095

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

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.

Attorney: Justin P. Justis

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 30 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: 9/8/16

☐ 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.

☐ 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 (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:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$ 3.75

TOTAL

\$128.75

Clerk of Court/ Deputy Clerk: Cheryl Graham

Court Reporter: Heather Landrum

SCCA/217 (07/2016)

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, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: Mark Murphy

Judge Code: 2116

Sentence Date: 9/8/16

2016 SEP 9 PM 1:58
CLERK OF COURT
DORCHESTER COUNTY

WITNESSES

A Smith

Dorchester County Sheriff
15-008388

ARREST WARRANT NUMBER
2016DOR19

Arrested: 0, 0

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: June 2, 2016

VERDICT

Guilty

Foreperson of Petit Jury
Date: 9-8-16

DOCKET NO. 2016GS18-0972

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

June 6, 2016 TERM

THE STATE
vs.

Thomas Robert Shewtzuk

Indictment for

Kidnapping

SC Code: 16-3-910

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.

FILED - RECORDED
2016 JUN -2 PM 2:00
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

CLERK OF COURT
DORCHESTER COUNTY
C. J. Shewtzuk

2016 SEP -9 PM 1:58

RECEIVED COPY

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

**INDICTMENT
2016GS18-0972**

**As a Court of General Sessions, convened on June 2, 2016 the Grand Jurors of
DORCHESTER County present upon their oath:**

KIDNAPPING

That in Dorchester County, South Carolina, on or about June 13, 2015, the Defendant, Thomas Robert Shewtzuk, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Travis Gordon, without authority of law. This offense in violation of Section 16-03-910, of the South Carolina Code of Laws, as amended.

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

A handwritten signature in black ink, appearing to read "Glenn P. Justis", is written over a horizontal line.

Glenn P. Justis, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Dorchester
STATE VS.
Thomas Robert Shewtzuk

AKA: _____

Race: WHITE Sex: M Age: 19

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: 102024953 SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: KidnappingINDICTMENT/CASE#: 2016GS18-0972A/W#: 2016DOR19Date of Offense: 6/13/2015S.C. Code § : 16-3-910CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or PLEADS

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ 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.

Attorney: Justin P. Justis, Glenn P. SC Bar# 76606 Defendant NO Attorney for Defendant per statute 14-3-910 SC Bar#
☒ State Department of Corrections, ☐ County Detention Center,

WHEREFORE, the Defendant is committed to the NO SENTENCE per statute 14-3-910
for a determinate term of _____ 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.☐ 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 (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: \$ _____
§ 14-1-206 (Assessments 107.5 %) \$ _____
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§ 56-5-2995 (DUI Assessment) \$12 \$ _____
§ 56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso 61.6 (Public Def/Probation) \$500 \$ _____
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25
§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____
§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: Cheryl Graham
Heather Landry

SCCA/217 (07/2016)

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,

Proviso 61.6 requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge Mark KempJudge Code: 2164Sentence Date: 9/8/16

2016 SEP 19 PM 1:55
CLERK OF COURT
DORCHESTER COUNTY
FILED COPY

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,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 8th day of August, 2018.

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,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 8th day of August, 2018.

RECEIVED

AUG 08 2018

SC Court of Appeals