

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Greenville County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

v.

TRISTIAN CUMMINGS,

RECEIVED
RESPONDENT,
DEC 20 2019
SC Court of Appeals

APPELLANT

APPELLATE CASE NO 2019-000665

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
-VS-)
)
TRISTIAN CUMMINGS,)
)
DEFENDANT.)
_____)

2016-GS-23-08773, 08778,
08779, 08780 & 08782

TRANSCRIPT OF RECORD

APRIL 8 - 10, 2019
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE MICHAEL G. NETTLES

APPEARANCES:

ATTORNEYS FOR PLAINTIFF:

WILLIAM McMASTER, ASSIST. SOLICITOR
ANDREW CULBREATH, ASSIST. SOLICITOR

ATTORNEY FOR DEFENDANT:

RODNEY RICHEY, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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Greenville County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME : Nettles Michael G.
 TRIAL TYPE : Criminal
 PANEL ID : NETTLES 4/8/19
 COURTROOM 101

State v. Cristian Cummings

DESCRIPTION : NETTLES 4/8/19

Sorted by: Random Nbr
 Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	GRT	REMARKS
✓1 Hill, Patrick D	108	W	M	()	()	()	WM
✓2 Brackett, Brooks A	245	B	M	()	()	()	BM
✓3 Herrera, Omar	105	H	M	()	()	()	HM
DX 4 Saadeh, Elias N	186	W	M	()	()	()	WM
DX 5 Lollis, Charles E	132	W	M	()	()	()	WM
SX 6 Simpson, Andrew B	194	W	M	()	()	()	WM
✓7 Tarrance, Susan J	204	W	F	()	()	()	WF
DX 8 Blanchard, Joseph E Jr.	21	W	M	()	()	()	WM
✓9 Kevorkian, Mark H	121	W	M	()	()	()	WM
○10 Gosnell, Bradley C	86	W	M	()	()	()	WM
✓11 Auvil, Daniel G	5	W	M	()	()	()	WM
DX 12 Snodgrass, Laura B	196	W	F	()	()	()	WF
✓13 Farley, Kristina L	71	W	F	()	()	()	WF
DX 14 Anglin, Benjamin M	3	W	M	()	()	()	WM
✓15 Lafountain, Sabrina I	124	M	F	()	()	()	OF
X16 Rohling, Tammy L CX	185	W	F	()	()	()	WF
✓17 Terlizzi, Beverly C (F)	209	W	F	()	()	()	WF
DX 18 Potter, Brian D	167	W	M	()	()	()	WM
✓19 Grant, Marcus L	87	B	M	()	()	()	BM
✓20 Blum, Madison C	22	W	F	()	()	()	WF
✓21 Burnette, Jeffery W (A)	31	W	M	()	()	()	WM
✓22 Bishop, Lisa G (A)	17	W	F	()	()	()	WF
○23 Jones-parker, Patricia L	119	W	F	()	()	()	
24 Vangieson, Michael P	218	W	M	()	()	()	

Greenville County Courthouse RANDOM STRIKE SHEET

JUDGE NAME : Nettles Michael G.

Sorted by: Random Nbr

TRIAL TYPE : Criminal

PANEL ID : NETTLES 4/8/19

DESCRIPTION : NETTLES 4/8/19

Trial

COURTROOM 101

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Ballentine, Bryant L	9	B	M	()	()	()	
26 Gamble, Shawn R	83	W	F	()	()	()	
27 Mayes, Robert Erskine	138	B	M	()	()	()	
28 Childs, Rebecca C	41	W	F	()	()	()	
29 Emmerich, Meghan	69	W	F	()	()	()	
30 Givens, Beverly B	243	W	F	()	()	()	
31 Rodriguez, Fulgencio E	183	H	M	()	()	()	
32 Coley, Robert C	45	W	M	()	()	()	
33 Wright, Kimberly D	236	B	F	()	()	()	
34 Handschumacher, Tammy I	94	W	F	()	()	()	
35 Bham, Kinnari J	16	A	F	()	()	()	
36 Layman, Erica S	128	W	F	()	()	()	
37 Traynham, Gerald A Jr.	211	W	M	()	()	()	
38 Cantrell, Samantha O	38	W	F	()	()	()	
39 Teague, Julie K	206	W	F	()	()	()	
40 Daves, Tracy M	53	W	F	()	()	()	
41 Nix, Selena H	155	W	F	()	()	()	
42 Igbeyi, Odiri	111	B	M	()	()	()	
43 Fornadley, Sarah E	76	W	F	()	()	()	
44 Moton, Gail R	146	B	F	()	()	()	
45 Partin, Westley G	161	W	M	()	()	()	

Total Number of Jurors:

45

** END OF REPORT **

1 MONDAY, APRIL 8, 2019:

2 **THE COURT:** Mr. Cummings, how you doing this morning?

3 **MR. CUMMINGS:** Doing fine, sir. How you doing?

4 **THE COURT:** I'm Michael Nettles. I'm the resident
5 judge from the Twelfth Judicial Circuit. I'm going to be
6 presiding over this term of court. And I understand that
7 your case is before me.

8 And one of the issues that I wanted to get
9 clarification on is your representation. And, of course, my
10 number one job is to ensure that you get a fair trial. And
11 one of the things that we've got to do is determine whether
12 or not you're going to represent yourself or whether or not
13 your public defender, your lawyer, is going to be your
14 lawyer. Which do you prefer?

15 **MR. CUMMINGS:** Well, I guess I have no choice for him
16 to represent me.

17 **THE COURT:** Okay. Well, you do have a choice. You can
18 represent yourself or you can have -- ask me to order you do
19 it yourself and confer with him for advice. You have an
20 absolute constitutional right to do it yourself. Might not
21 be a good idea to do that, but you have a right to do that
22 and you do have a choice. What do you prefer?

23 **MR. CUMMINGS:** I prefer that he represent me, sir.

24 **THE COURT:** I think that is a sound decision. Do you
25 have any questions of me?

1 **MR. CUMMINGS:** No, sir.

2 **THE COURT:** All right. Well, we'll proceed forward in
3 that fashion. And I'll allow you to go to the jury
4 qualifications to get the necessary information.

5 **MR. McMASTER:** Your Honor, William McMaster for the
6 State. When we come back up after jury qualifications we
7 would like to put some things on the record just to make
8 sure the record's clear on the offers and the state of the
9 representation of Mr. Cummings over the last three years.

10 **THE COURT:** Okay.

11 **MR. McMASTER:** We will be asking to do that before we
12 pick a jury.

13 **THE COURT:** All right. Well, do we have a record here
14 today? I mean, right now? Don't ---

15 **MR. McMASTER:** We can go ahead ---

16 **THE COURT:** --- we have a court reporter going?

17 **MR. McMASTER:** You want to go ahead and do that now?

18 **THE COURT:** Yeah.

19 **MR. McMASTER:** Your Honor, just the history, this event
20 occurred on 3/6 of '16. On 3/16 of '16 Susannah Ross was
21 appointed to represent Mr. Cummings. At that point in time
22 she requested discovery and an offer was sent to Mr.
23 Cummings on November the 2nd of '16. The offer was for a
24 conviction of murder, a plea of murder, a 35 year
25 recommendation.

1 The Defendant filed his first motion to have Ms. Ross
2 relieved on 6/5 of '17. That motion was denied by Judge
3 Young. The Defendant filed another motion to have Ms. Ross
4 relieved on 1/26 of '18. Judge Verdin denied that motion.
5 And then on 4/17 of '18 Ms. Ross actually filed a motion to
6 be relieved, and Judge Verdin granted that motion on 6/16 of
7 2018.

8 Mr. Richey was then appointed shortly thereafter. And
9 the Defendant was given the following offer; He was given
10 the offer of voluntary manslaughter -- a plea to voluntary
11 manslaughter and burglary, first. This was the same offer
12 that was given to the cooperating co-defendant.

13 There would be no recommendation by the State, that he
14 would be allowed to plead to voluntary and burglary, first,
15 reduced from murder. And other charges would be dismissed
16 such as attempted armed robbery, conspiracy and possession
17 of a weapon during the commission of a violent crime. The
18 Defendant rejected that offer.

19 The co-defendant pled to voluntary manslaughter and
20 burglary, first, and has agreed to testify against Mr.
21 Cummings. The case was put on the trial docket. And Mr.
22 Cummings was given the opportunity to plead again to
23 voluntary manslaughter, burglary, first, and attempted armed
24 robbery at this time.

25 No recommendation, again, would be made by the State.

1 Those sentences, it was our understanding, would run
2 concurrently, whatever he received. The Defendant rejected
3 that offer. And his attorney told me that I should bring
4 the Defendant before Judge Verdin, which I did on March 28th
5 of 2019 because Mr. Richey thought the Defendant wanted to
6 fire him.

7 At that time before Judge Verdin on March 28th of '19
8 Judge Verdin gave the Defendant the following options; He
9 could keep Mr. Richey as his attorney, he could represent
10 himself or he could hire a new attorney, but that attorney
11 must be ready to proceed on today's date, 4/8 of '19.

12 During the course of representation of the Defendant by
13 Ms. Ross and Mr. Richey I've had numerous conversations and
14 meetings with them about the case. Ms. Ross and I met
15 independently with the lead investigator, Mike Fortner, who
16 is here today. Ms. Ross requested specific GSR and DNA
17 testing, which the State complied with.

18 Mr. Richey and I have met to discuss the case and
19 reviewed the discovery together to ensure that Mr. Richey
20 had all discoverable materials including the materials that
21 were previously provided to Ms. Ross. Based on a page-by-
22 page review of all the information, we've confirmed all
23 discoverable materials have been provided.

24 After that meeting to review the discoverable materials
25 I met with Simeon Williams, who's the co-defendant. He made

1 a few changes to his original story. I've alerted Mr.
2 Richey to those changes. Those have been provided to him as
3 well.

4 And after that meeting to review the materials the
5 Greenville County Sheriff's Office interviewed a Shaquan
6 Fields. And a copy of that interview was made available to
7 Mr. Richey, additionally a copy of the police report where
8 Mr. Fields reported his pistol was stolen. And that pistol
9 was the one that we'll be presenting here in court today as
10 the murder weapon in the case before the Court.

11 That's kind of a quick background of where we are to
12 make sure that we've covered all that information, if that
13 becomes relevant at a later time, later proceeding.

14 We have -- last night we did make sure that Mr. Richey
15 got an additional 911 call that we thought we had previously
16 given to him, but we could not confirm that through our
17 documents. But I sent it to him again out of an abundance
18 of caution. Mr. Richey has reviewed that. He was aware of
19 this call, and he actually reviewed it with his client last
20 night again.

21 **THE COURT:** Mr. Richey, you're recognized. Anything
22 you'd like to take up with the Court at this time?

23 **MR. RICHEY:** No, Your Honor. All I'll say is during
24 this break I'm hopeful that the State would reinstate this
25 offer in this case. They have, you know, their policy is

1 they don't do that, but -- and my client has not been
2 willing to accept that offer, but while we have some time I
3 would really appreciate the State, if they'd reinstate that
4 offer in this case because I, based on facts, I believe that
5 that offer should be reinstated as representing my client,
6 looking out for his best interest.

7 **THE COURT:** All right. Well, I'll allow you to speak
8 with the solicitor's office about that. And, of course, I'm
9 not really in the position to force them.

10 **MR. RICHEY:** Yes, sir, I understand.

11 **THE COURT:** But I'll allow you the opportunity to speak
12 with them about that. And anything else from either side?

13 **MR. McMASTER:** Your Honor, I had instructed that if we
14 went forward here today, and we were successful with a
15 conviction, I would be asking for a life sentence. I did
16 tell him that. And I did tell Mr. Richey that. He is
17 correct, it's generally not our policy at trial time to open
18 up those offers again and certainly not once the case
19 starts.

20 I'm going to -- let me think about that during the
21 qualifications and -- and then we can decide how we want to
22 proceed.

23 **THE COURT:** Very good.

24 **MR. McMASTER:** Thank you, Your Honor.

25 **THE COURT:** All right. Mr. Richey, you've, I'm sure in

1 great detail, have gone over with your client what the
2 offers are, what the potential penalties are and the
3 ramifications of his decision.

4 **MR. RICHEY:** Yes, sir. I've gone over all that. And,
5 Your Honor, I think -- and I've told my client as lawyers we
6 give opinions about cases. And I made a recommendation to
7 him, didn't necessarily agree with it, but we went through
8 all the different scenarios on this case.

9 **THE COURT:** Very good.

10 **MR. McMASTER:** I believe that some of the hand of one
11 hand of all issues are hanging this up, possibly accomplice
12 liability and some felony murder issues. I think those have
13 probably been some of the hang-ups that Mr. Richey's had
14 with his client.

15 **THE COURT:** Very good.

16 **MR. McMASTER:** But that's kind of where we are.

17 **THE COURT:** All right. Well, I'll allow y'all to
18 confer. Is there anything else we need to take up before we
19 recess for the jury qualifications?

20 **MR. McMASTER:** Nothing from the State, Your Honor.

21 **THE COURT:** Very good.

22 **MR. RICHEY:** Nothing, Your Honor. Thank you.

23 **THE COURT:** We'll stand adjourned for a moment.

24 (Whereupon court was in recess at 10:11 am)

25 (Whereupon court reconvened at 2:01 pm)

1 **THE COURT:** Anything from the State before we proceed?

2 **MR. McMASTER:** Your Honor, just to follow up on what we
3 talked about in our previous hearing where Mr. Richey had
4 asked me if that offer was still on the table. I advised
5 him that I would allow that, the offer being plead to
6 voluntary instead of murder, burglary, first, and attempted
7 armed robbery, concurrent sentence, whatever he receives it
8 would run concurrently with no recommendation by the State.
9 And Mr. Richey indicated he went over that with his client.

10 His client -- he's gone over the potential sentences he
11 could get, and he has rejected that offer. So we're ready
12 -- the State's ready to go forward at this time.

13 **THE COURT:** Mr. Richey, I'll be glad to hear from you.

14 **MR. RICHEY:** Your Honor, that's correct. My client is
15 not entertaining any offers from the State. He wants to
16 proceed to trial.

17 I will tell the Court my client has also asked me to
18 make a motion -- he has a co-defendant in this case. And --
19 Simeon Williams. And he would like to have those cases --
20 the co-defendant and his case tried together instead of this
21 separate trial. And he's asked me to ask the Court to order
22 that both of them would be tried at the same time.

23 **THE COURT:** All right.

24 **MR. McMASTER:** Your Honor, ---

25 **THE COURT:** And is it correct that the co-defendant has

1 already pled guilty?

2 **MR. RICHEY:** Yes, sir, he has.

3 **THE COURT:** All right. Very good. And, of course, I'm
4 sure you've explained, Mr. Richey, that the Rules of
5 Procedure do not allow for someone to be tried when they
6 have already pled guilty. You've explained that to him ---

7 **MR. RICHEY:** Yes, sir, I told him it would be separate
8 trials, but he wanted me to bring this motion.

9 **THE COURT:** Well, there's not going to be a trial if
10 he's already pled guilty. But even if -- even if he had not
11 pled guilty, the State has the ability to try the case
12 separately or together. It would be their call in that
13 regard. He understands that ---

14 **MR. RICHEY:** Yes, sir, Your Honor.

15 **MR. McMASTER:** Your Honor, I don't think we have any
16 particular voir dire questions other than I would ask the
17 Court to just ask the jury if anyone is currently
18 represented or formerly represented by the McMaster Law
19 Firm. And I've talked to Mr. Richey. And, obviously, the
20 same thing with his firm, Richey and Richey.

21 **THE COURT:** All right. And there was one clerical
22 matter with regard to the indictment.

23 **MR. McMASTER:** Yes, Your Honor. On possession of a
24 weapon during the commission of a crime, it's actually
25 possession of a weapon during the commission of a violent

1 crime. That is what is in the body of the indictment. The
2 caption has crime.

3 We would ask that scrivener's error of violent be
4 inserted into the caption. But it does not change the body,
5 the substance or the charge that was presented to the grand
6 jury and indicted by the grand jury.

7 **THE COURT:** Mr. Richey.

8 **MR. RICHEY:** Thank you, Your Honor. I've reviewed that
9 and it is a scrivener's error. And I wouldn't have an
10 argument to make to that.

11 **THE COURT:** All right. And certainly he understands
12 what the nature of the charge -- and that's really the
13 essence of an indictment is he be informed of what the
14 charge is. And it's clear from reading the indictment that
15 he's informed in that regard.

16 **MR. RICHEY:** Yes, sir.

17 **THE COURT:** All right. Anything further from you, Mr.
18 Richey?

19 **MR. RICHEY:** No, sir.

20 **THE COURT:** Anything from the State?

21 **MR. McMASTER:** Nothing from the State, Your Honor.

22 **THE COURT:** We're ready for the jury. And if we could
23 bring 45 jurors up.

24 **MR. McMASTER:** Thank you, Your Honor.

25 (Whereupon State's exhibits 1 - 15 were marked for

1 identification)

2 **THE COURT:** All right. Let's come to order.

3 (Whereupon the jury panel entered the courtroom at 2:12
4 pm)

5 **THE COURT:** Ladies and gentlemen of the jury, I'm
6 Michael Nettles. I'm the circuit judge for the Twelfth
7 Judicial Circuit, which encompasses Florence and Marion
8 County. Thank you for being here today and thank you for
9 being here on time. Everyone looks well fed and very
10 excited to serve on jury duty. Thank you for your time and
11 your willingness to be here.

12 We have -- you have already engaged in the process of
13 qualification. Judge Maddox has completed that process.
14 And now we're going to engage in a procedure known as voir
15 dire.

16 And the focus of these questions are going to be
17 whether or not you are -- could be fair and impartial with
18 regard to the trial of this particular case given the
19 personalities involved in it, the lawyers and the witnesses.
20 I'm going to ask you questions in that regard. So I'll
21 remind you that you're still under oath. And I'm going to
22 recognize Mr. McMaster. You may call your first case.

23 **MR. McMASTER:** Your Honor, the State calls State versus
24 Tristian Xavier-Marian Cummings. The charges are murder,
25 attempted armed robbery, burglary, first, conspiracy and

1 possession of a weapon during the commission of a violent
2 crime. Those are indictment numbers 2016-GS-23-08778, 8780,
3 8782, 8779 and 8773.

4 **THE COURT:** Thank you, Mr. McMaster.

5 Ladies and gentlemen of the jury, I hold in my hand
6 these documents that are known as indictments. And I want
7 you to know from the very outset that these bear absolutely
8 no evidentiary value whatsoever.

9 As a matter of fact, as Mr. Cummings sits there at
10 Defense table, he's presumed to be just as innocent as me or
11 you. He need not testify, need not present any evidence.
12 The burden is on the State to prove these allegations. And
13 that's what an indictment is, is just a piece of paper that
14 starts this procedure. It bears no evidentiary value
15 whatsoever.

16 After being made aware of those constitutional
17 safeguards I'm going to engage in a process that we
18 discussed. It's known as voir dire. And I want to tell you
19 a little bit about the allegations.

20 The State alleges that on or about March 6th, 2016
21 there was an event that took place that gave rise to a
22 number of different charges. And it took place at 34
23 Burgess Avenue, Greenville, South Carolina on or about March
24 6th, 2016. And you've heard the solicitor delineate the
25 charges that arose out of that.

1 And I'm -- give you the bare bones, facts of the case
2 to determine whether or not you know something about that.
3 So bear that in mind. I'm going to ask the Defendant, Mr.
4 Cummings, if you could stand, turn around and face the jury
5 panel for one moment.

6 (Pause)

7 **THE COURT:** Thank you, Mr. Cummings. You may be
8 seated.

9 Is anyone related by blood or marriage, do you have a
10 close, social, personal or business relationship with Mr.
11 Cummings? If so, please stand.

12 (No response)

13 **THE COURT:** Let the record reflect that there is no
14 response in that regard.

15 There are a number of potential witnesses. And I
16 emphasize potential witnesses that may be called in this
17 particular case. And I'm going to ask you -- I'm going to
18 call the role. I want everyone to pay attention and ask
19 yourself whether or not you have a close, personal
20 relationship with them, whether or not you are related to
21 them by blood or marriage. And if so, I'm going to ask you
22 to stand and respond.

23 The potential witnesses are Tirissa Johnson, emergency
24 services, Agent Michael Stanton, DEA, Investigator Mike
25 Fortner, Greenville Sheriff's Office, Harold Robinson,

1 sheriff's office, Jeffery Heath, sheriff's office, Ivan
2 Rodriguez, sheriff's office, Kenneth Sandefur, sheriff's
3 office, Michael Nunez, sheriff's office, Riley Hope,
4 forensics division, NJ Downing, forensics division, Sergeant
5 Dar Shaw, forensics, Sergeant Hamilton, forensics, Simeon
6 Williams, April Green, Tyler Sturkie of SLED, Jackie Davis
7 of SLED, Jaganda (ph.) Kandala. That's an unusual name.
8 Can the State help me out with that one? Jagannadha ---

9 **MR. CULBREATH:** It is -- yes, Your Honor. Dr. Kandala.

10 **THE COURT:** Dr. Kandala. You still didn't help me out
11 with the first name.

12 **MR. CULBREATH:** I don't -- it's ---

13 **MR. RICHEY:** J. Kandala.

14 **MR. CULBREATH:** Janaga (ph.).

15 **THE COURT:** Okay. Very good. Well, I can handle
16 Kandala. I was working on the first name. All right.
17 Timothy Nafzinger, Dr. Michael Ward, medical examiner,
18 Jennie Coley, Melanie Watson, Kara Bennick, Kathy Lance,
19 James Armstrong of the crime lab. Any other potential
20 witnesses from the State?

21 **MR. McMASTER:** None from the State, Your Honor.

22 **THE COURT:** Any other potential witnesses?

23 **MR. RICHEY:** None.

24 **THE COURT:** Very good. All right..

25 Is anyone related by blood or marriage, do you have a

1 close, social, business or personal relationship with any of
2 these potential witnesses? If so, please stand. Yes,
3 ma'am. I'm going to ask you if you could come forward and
4 speak with me up here at the bench. And I'll ask you if you
5 could state your name and number, please, ma'am.

6 **JUROR:** Tammy Rohling, 185.

7 **THE COURT:** Thank you, Ms. Rohling.

8 (Whereupon a bench conference was held off the record)

9 **THE COURT:** She's excused.

10 **MR. McMASTER:** What was that number again, Your Honor?

11 **MADAM CLERK:** 185.

12 **THE COURT:** 185.

13 **MR. McMASTER:** Thank you.

14 **THE COURT:** Mr. McMaster, could you stand and identify
15 yourself and the members of your office.

16 **MR. McMASTER:** Yes, Your Honor. I'm William McMaster.

17 I'm the deputy solicitor here in Greenville County. We
18 cover the Thirteenth Judicial Circuit, which makes up of
19 Greenville and Pickens Counties. Seated at the table with
20 me is Deputy Solicitor Andrew Culbreath. And we have
21 Investigator Mike Fortner of the Greenville County Sheriff's
22 Office.

23 **THE COURT:** All right. Mr. McMaster is a Deputy
24 Solicitor. I would imagine at one point in time he might
25 have been in private practice. His wife is a lawyer with

1 the McMaster firm here in Greenville. Is anyone -- has
2 anyone ever been represented by the McMaster Law Firm or do
3 you have a current case with them? If so, please stand.

4 (No response)

5 **THE COURT:** No response.

6 Mr. Richey, I'm going to ask if you could stand and
7 identify yourself and the members of your law office.

8 **MR. RICHEY:** Thank you, Your Honor. I'm Rodney Richey.
9 I've practiced law for over 20 years with my wife, Lola
10 Richey. We have the firm Richey and Richey. Thank you.

11 **THE COURT:** Very good. Is anyone related by blood or
12 marriage, do you have a close, social, business or personal
13 relationship with Mr. Richey or his wife? Has he ever
14 represented you in the past or has his wife? Or do you have
15 an ongoing case with him? If so, please stand.

16 (No response)

17 **MR. McMASTER:** Your Honor, Mr. Culbreath's wife is also
18 an attorney in town. And we need to announce her firm that
19 she works at ---

20 **THE COURT:** Yes.

21 **MR. McMASTER:** --- as well, please.

22 **MR. CULBREATH:** That's at Wilson, Jones, Carter and
23 Baxley, Your Honor.

24 **THE COURT:** All right. And they have an office here in
25 Greenville, is that correct?

1 **MR. CULBREATH:** Yes, sir, they do.

2 **THE COURT:** All right. Is anyone related by blood or
3 marriage, do you have a close, social, business, personal
4 relationship with the members of that firm or do they
5 represent you? If so, please stand.

6 (No response)

7 **THE COURT:** All right. Very good.

8 Has any member of the jury panel formed or expressed an
9 opinion about any issue or matter involved in this case?

10 (No response)

11 **THE COURT:** I told you what the charges are. I told
12 you about the fact that allegedly took place on March 6,
13 2016 and the event allegedly took place on 34 Burgess
14 Avenue. Having been armed with that basic information does
15 anybody know anything about this case? Did you witness any
16 of the events which gave rise to these accusations? Or have
17 you read anything about it or seen anything about it in any
18 form of media? If so, please stand.

19 (No response)

20 **THE COURT:** Let the record reflect there's no response.

21 Is there any member of the jury panel who is aware of
22 any bias or prejudice towards either the State or the
23 Defendant in this case? If so, please stand.

24 (No response)

25 **THE COURT:** No response.

1 Is there any member of the jury panel who's served as a
2 member of the grand jury that issued the indictment in this
3 case? If so, please stand.

4 (No response)

5 **THE COURT:** No response.

6 Is there any member of the jury panel been a victim of
7 a violent crime? If so, please stand.

8 (No response)

9 **THE COURT:** No response.

10 Is there any member of the jury panel who is a member
11 of an organization whose primary purpose is the promotion of
12 law enforcement? There are a number of such groups. I
13 think every sheriff's department and throughout the State
14 has a sheriff's department association. There's
15 organizations such as MADD, Mothers Against Drunk Driving,
16 SADD, Students Against Drunk Driving, CAV, Citizens Against
17 Violence Crime. Is there any member of the jury panel who
18 is a member of any of these type organizations or do you
19 contribute to them? If so, please stand.

20 (No response)

21 **THE COURT:** No response.

22 Does any member of the jury panel know of any reason
23 whatsoever why you could not serve as a juror in this case
24 with particular emphasis being placed on your ability to be
25 fair and impartial to both the State and the Defendant in

1 this case? If so, please stand.

2 (No response)

3 **THE COURT:** Any additional questions from the State?

4 **MR. McMASTER:** Nothing from the State, Your Honor.

5 **THE COURT:** Any from the Defense?

6 **MR. RICHEY:** No, sir.

7 **THE COURT:** Very good. Madam Clerk, if you could give
8 us a jury. And the strikes are five and ten, five and ten.
9 And we will -- we will select two alternates. And there
10 will be one and two on each alternate. One and two on each
11 alternate.

12 **THE BAILIFF:** Your Honor, do you want them to come up
13 there or stand where they're at?

14 **THE COURT:** I'm going to ask if they could stand and
15 come and stand right in front of -- right here and turn
16 around and face the clock.

17 **MADAM CLERK:** Juror number 108, Patrick Hill.

18 (Whereupon juror 108, Patrick Hill, a white male, came
19 forward)

20 **MR. McMASTER:** Please present the juror.

21 **MADAM CLERK:** What says the Defendant?

22 **MR. RICHEY:** Please present the juror for the trial of
23 this case.

24 **MADAM CLERK:** Sir, if you would please take your things
25 and go into the jury box.

1 Juror number 245, Brooks Brackett.

2 (Whereupon juror 245, Brooks Brackett, a black male,
3 came forward)

4 **MADAM CLERK:** What says the State?

5 **MR. McMASTER:** Please present the juror.

6 **MADAM CLERK:** What says the Defendant?

7 **MR. RICHEY:** Please present the juror for the trial of
8 this case.

9 **MADAM CLERK:** Mr. Brackett, if you'll please go have a
10 seat in the jury box.

11 Juror number 105, Omar Herrera.

12 (Whereupon juror 105, Omar Herrera, an Hispanic male,
13 came forward)

14 **MADAM CLERK:** What says the State?

15 **MR. McMASTER:** Please present the juror.

16 **MADAM CLERK:** What says the Defendant?

17 **MR. RICHEY:** Please present the juror.

18 **MADAM CLERK:** Mr. Herrera, would you please take a seat
19 in the jury box.

20 Juror number 186, Elias Saadeh.

21 (Whereupon juror 186, Elias Saadeh, a white male, came
22 forward)

23 **MR. McMASTER:** Please present the juror.

24 **MADAM CLERK:** What says the Defendant?

25 **MR. RICHEY:** Please excuse the juror from the trial of

1 this case.

2 **MADAM CLERK:** Mr. Saadeh, if you'll please take your
3 seat back. You've been excused from this case.

4 Juror number 132, Charles Lollis.

5 (Whereupon juror 132, Charles Lollis, a white male,
6 came forward)

7 **MADAM CLERK:** What says the State?

8 **MR. McMASTER:** Please present the juror.

9 **MADAM CLERK:** What says the Defendant?

10 **MR. RICHEY:** Please excuse the juror.

11 **MADAM CLERK:** Mr. Lollis, please resume your seat.

12 Juror number 194, Andrew Simpson.

13 (Whereupon juror 194, Andrew Simpson, a white male,
14 came forward)

15 **MADAM CLERK:** What says the State?

16 **MR. McMASTER:** Please excuse the juror from service in
17 this case.

18 **MADAM CLERK:** Please resume your seat, Mr. Simpson.

19 Juror number 204, Susan Tarrance.

20 (Whereupon juror 204, Susan Tarrance, a white female,
21 came forward)

22 **MADAM CLERK:** What says the State?

23 **MR. McMASTER:** Please present the juror.

24 **MADAM CLERK:** What says the Defendant?

25 **MR. RICHEY:** Please present the juror.

1 **MADAM CLERK:** Ms. Tarrance, please have a seat in the
2 jury box.

3 Juror number 21, Joseph Blanchard, Jr.

4 (Whereupon juror 21, Joseph Blanchard, Jr., a white
5 male, came forward)

6 **MADAM CLERK:** What says the State?

7 **MR. McMASTER:** Please present the juror.

8 **MADAM CLERK:** What says the Defendant?

9 **MR. RICHEY:** You said 21, right?

10 **MADAM CLERK:** Yes, sir.

11 **MR. RICHEY:** Please excuse the juror.

12 **MADAM CLERK:** Please take back your seat, Mr.
13 Blanchard.

14 Juror number 121, Mark Kevorkian.

15 (Whereupon juror 121, Mark Kevorkian, a white male,
16 came forward)

17 **MADAM CLERK:** What says the State?

18 **MR. McMASTER:** Please present the juror.

19 **MADAM CLERK:** What says the Defendant?

20 **MR. RICHEY:** Please present the juror.

21 **MADAM CLERK:** Mr. Kevorkian, please have a seat in the
22 jury box.

23 Juror number 86, Bradley Gosnell.

24 (Whereupon juror 86, Bradley Gosnell, a white male,
25 came forward)

1 **MADAM CLERK:** What says the State?

2 **MR. McMASTER:** Please present the juror.

3 **MADAM CLERK:** What says the Defendant?

4 **MR. RICHEY:** Please present the juror.

5 **MADAM CLERK:** Mr. Gosnell, please take a seat in the
6 jury box.

7 Juror number 5, Daniel Auvil.

8 (Whereupon juror 5, Daniel Auvil, a white male, came
9 forward)

10 **MADAM CLERK:** What says the State?

11 **MR. McMASTER:** Please present the juror.

12 **MADAM CLERK:** What says the Defendant?

13 **MR. RICHEY:** Please present the juror.

14 **MADAM CLERK:** Mr. Auvil, please have a seat in the jury
15 box.

16 Juror number 196, Laura Snodgrass.

17 (Whereupon juror 196, Laura Snodgrass, a white female,
18 came forward)

19 **MADAM CLERK:** What says the State?

20 **MR. McMASTER:** Please present the juror.

21 **MADAM CLERK:** What says the Defendant?

22 **MR. RICHEY:** Please excuse the juror.

23 **MADAM CLERK:** Please take your seat. You've been
24 excused from this case.

25 Juror number 71, Kristina Farley.

1 (Whereupon juror 71, Kristina Farley, a white female,
2 came forward)

3 **MADAM CLERK:** What says the State?

4 **MR. McMASTER:** Please present the juror.

5 **MADAM CLERK:** What says the Defendant?

6 **MR. RICHEY:** Please present the juror.

7 **MADAM CLERK:** Ms. Farley, please have a seat over in
8 the jury box.

9 Juror number 3, Benjamin Anglin.

10 (Whereupon juror 3, Benjamin Anglin, a white male, came
11 forward)

12 **MR. McMASTER:** Please present the juror.

13 **MADAM CLERK:** What says the Defendant?

14 **MR. RICHEY:** Please excuse the juror.

15 **MADAM CLERK:** Mr. Anglin, please take your seat.

16 Juror number 124, Sabrina Lafountain.

17 (Whereupon juror 124, Sabrina Lafountain, other female,
18 came forward)

19 **MADAM CLERK:** What says the State?

20 **MR. McMASTER:** Please present the juror.

21 **MADAM CLERK:** What says the Defendant?

22 **MR. RICHEY:** Please present the juror.

23 **MADAM CLERK:** Ms. Lafountain, please have a seat over
24 in the jury box.

25 Juror number 209, Beverly Terlizzi.

1 (Whereupon juror 209, Beverly Terlizzi, a white female,
2 came forward)

3 **MADAM CLERK:** What says the State?

4 **MR. McMASTER:** Please present the juror.

5 **MADAM CLERK:** What says the Defendant?

6 **MR. RICHEY:** Please present the juror for the trial of
7 this case.

8 **MADAM CLERK:** Ms. Terlizzi, please have a seat over in
9 the jury box.

10 Juror number 167, Brian Potter.

11 (Whereupon juror 167, Brian Potter, a white male, came
12 forward)

13 **MADAM CLERK:** What says the State?

14 **MR. McMASTER:** Please present the juror.

15 **MADAM CLERK:** What says the Defendant?

16 **MR. RICHEY:** Please excuse the juror.

17 **MADAM CLERK:** Mr. Potter, please take your seat back.

18 Juror number 87, Marcus Grant.

19 (Whereupon juror 87, Marcus Grant, a black male, came
20 forward)

21 **MADAM CLERK:** What says the State?

22 **MR. McMASTER:** Please present the juror.

23 **MADAM CLERK:** What says the Defendant?

24 **MR. RICHEY:** Please present the juror.

25 **MADAM CLERK:** Mr. Grant, please have a seat over in the

1 jury box.

2 Juror number 22, Madison Blum.

3 (Whereupon juror 22, Madison Blum, a white female, came
4 forward)

5 **MADAM CLERK:** What says the State?

6 **MR. McMASTER:** Please present the juror.

7 **MADAM CLERK:** What says the Defendant?

8 **MR. RICHEY:** Please present the juror.

9 **MADAM CLERK:** Juror number 31, Jeffery Burnette.

10 (Whereupon juror 31, Jeffery Burnette, a white male,
11 came forward)

12 **MADAM CLERK:** What says the State?

13 **MR. McMASTER:** Please present the juror.

14 **MADAM CLERK:** What says the Defendant?

15 **MR. RICHEY:** Please present the juror.

16 **MADAM CLERK:** Mr. Burnette, please have a seat over in
17 the jury box.

18 Juror number 17, Lisa Bishop.

19 (Whereupon juror 17, Lisa Bishop, a white female, came
20 forward)

21 **MADAM CLERK:** What says the State?

22 **MR. McMASTER:** Please present the juror.

23 **MADAM CLERK:** What says the Defendant?

24 **MR. RICHEY:** Please present the juror.

25 **MADAM CLERK:** Ms. Bishop, please have a seat in the

1 jury box.

2 **THE COURT:** Ladies and gentlemen that remain in the
3 panel, we're going to ask that you -- I assume the procedure
4 in Greenville is that you call a number, and they'll tell
5 you when to report back.

6 **THE BAILIFF:** They go back downstairs.

7 **THE COURT:** Okay. Very good. Do things a little
8 differently here in Greenville. Y'all will go back
9 downstairs and follow the instructions of the bailiff.
10 Thank you very much.

11 (Whereupon the remaining jurors exited the courtroom)

12 **THE COURT:** Any objections to the jury selection
13 process from the State?

14 **MR. McMASTER:** Your Honor, we'll have a matter to take
15 up.

16 **THE COURT:** We do? Let's ask the jury to hold tight in
17 the hallway, if we could. Or at least remain downstairs.

18 Ladies and gentlemen of the jury panel, we're going to
19 ask that you retire to the jury room for one moment as we
20 take up a matter of law outside of your presence.

21 I'm going to ask that each of you abide by my
22 instruction. There'll be no discussion about the case.
23 Y'all don't know anything about it other than what the
24 charges are and just the bare bone facts. But it'd be
25 inappropriate for y'all to talk about anything having to do

1 with this case or anything having to do with the witnesses,
2 the personalities. I'm going to ask that y'all abide by
3 that instruction and you may follow the bailiff out to the
4 jury room.

5 (Whereupon the jury exited the courtroom at 2:41 pm)

6 **THE COURT:** Might counsel approach the bench for one
7 moment.

8 (Whereupon a bench conference was held off the record)

9 (Whereupon bench conference was ended)

10 **THE COURT:** Anything -- any objections from the
11 Defense?

12 **MR. RICHEY:** No, sir.

13 **THE COURT:** All right. Anything before we bring the
14 jury out?

15 **MR. McMASTER:** Nothing from the State, Your Honor.

16 **THE COURT:** All right. We're ready for the jury.

17 (Whereupon the jury entered the courtroom at 2:46 pm)

18 **THE COURT:** Ms. Beverly C. Terlizzi, yes, ma'am, I'm
19 going to ask you, if you could, to have a seat and change
20 chairs with this lady right here. I'm going to ask that you
21 serve as the forelady of this jury. If y'all could take
22 just a moment to switch chairs.

23 (Pause)

24 **THE COURT:** Ms. Terlizzi, am I saying your name
25 correctly?

1 **MS. TERLIZZI:** You are.

2 **THE COURT:** Ms. Terlizzi, you, like everyone else when
3 it comes -- after this case is tried, I charge you the law
4 and you begin deliberations, you, like everyone else is
5 going to have one vote, but you're going to have additional
6 responsibilities.

7 The first of which is if there are questions or
8 concerns that develop throughout this trial, I'm going to
9 ask that those questions or concerns be related to you, you
10 reduce them to writing, give it to the bailiff, and if it's
11 something I can help you with, I'll be happy to do that.
12 And that goes for the deliberation process as well. If
13 there are questions, reduce it to writing and give it to the
14 bailiff.

15 In addition to that, Ms. Terlizzi, you have one vote
16 just like everyone else, but you're going to be charged with
17 the responsibility of presiding over the deliberation
18 process. That essentially means that you're to ensure that
19 everybody's voice is heard.

20 I'm going to give y'all a little bit of instructions
21 with regard to your duties as a juror. First of all,
22 there'll be no discussion about the case whatsoever
23 throughout the trial of this case. There'll be times like
24 just a moment ago where we sent you to the jury room. You
25 can talk about Carolina/Clemson football, baseball. You can

1 talk about Greenville. You can talk about whatever you want
2 to talk about, impending spring weather, but do not talk
3 about anything having to do with this case.

4 I'm also going to give each of you instructions, and,
5 Madam Forelady, I'm going to ask that you enforce that rule.
6 There'll be no discussion. And if there is any discussion,
7 you're to report it to me, and we'll deal with it
8 immediately. No discussion about the case whatsoever.

9 In addition to that, you as jurors, when you go home,
10 your significant other, or co-workers or friends are going
11 to say, I understand you're on jury duty. Tell me about it.
12 This is one occasion where you don't have to answer that
13 question. As a matter of fact, I'm ordering that you not do
14 that.

15 Because if you think about it, they might have an
16 opinion about this particular type litigation, it might be
17 that they know some of the witnesses, they might know
18 something about this case. Do not discuss the case with
19 anyone.

20 And after the case has been deliberated, a verdict has
21 been rendered, you can talk to whoever you want to about it.
22 But the order is throughout the trial of this case, no
23 discussion whatsoever.

24 There is a thing, I hear tell, called social media. I
25 don't participate in it. There's Facebook, Tweeter,

1 Twitter, LinkedIn, all kind of things, Snapchat. That has
2 no place in this judicial system. Do not Tweet or Twit
3 about your whereabouts, or what you're doing or anything
4 about this case. Social media and this procedure do not
5 mix. Do not do that.

6 I don't anticipate that there will be any media
7 coverage about this case. However, if there were, I'm
8 going to ask that you divert your attention from that. Do
9 not pay attention to it because quite often the media gets
10 it wrong.

11 You're going to be here and y'all are going to hear
12 straight from the horse's mouth all of the evidence in this
13 case or the lack of evidence. And you need to base your
14 decision on what transpires here in this courtroom, not what
15 some reporter or some blogger might have to say about it.
16 Do not do that.

17 Ladies and gentlemen of the jury, we're about to begin
18 the trial of this case. I want to remind you that this is a
19 criminal case, the court of general sessions. It might be
20 that many of you have served on a jury before, maybe in a
21 civil case. Civil court deals with civil disputes between
22 individuals.

23 A good example of that would be an automobile accident,
24 a medical malpractice case, a contract dispute between a
25 homeowner and a builder. Those are things where the issue

1 that's being litigated is money. It's called the money
2 court.

3 This is different than that. This is where the State
4 of South Carolina is accusing someone of violating the
5 criminal codes of the State of South Carolina. And our
6 forefathers have established there's certain constitutional
7 safeguards that protect all of us as American citizens, the
8 first of which is that the Defendant, Mr. Cummings, as he's
9 seated there is presumed to be just as innocent as me or
10 you, the police officers or the solicitor. That's a
11 presumption that stays with him throughout the trial of this
12 case. That's the frame of reference that we start from.

13 The second constitutional safeguard is that the State
14 has the burden of proof. They're the ones that have the
15 financial wherewithal. They have the Greenville County
16 Sheriff's Department, they have SLED, they have the highway
17 patrol, they have all the law enforcement officers.

18 And they have the wherewithal to gather up the evidence
19 and bring it to you. And they're required to do that.
20 They're required to prove each and every element of this
21 offense.

22 And the third and, perhaps, the most important
23 safeguard is that the State has to meet the highest burden
24 of proof known to our judicial system. In a civil case if
25 the person -- if the doctor in a medical or a patient in a

1 medical malpractice case, alleging that the doctor did
2 something wrong, if you imagine with me, if you will, the
3 scales of justice where the lady is blindfolded from all
4 bias and all prejudice, and when the trial starts the scales
5 are even. After the trial is finished if the Plaintiff
6 tilts the scales ever so slightly in their favor, then you
7 would vote for the Plaintiff and give a recovery, because
8 after all, in that court, all you're debating about is
9 money.

10 But this court is different. It has to do with
11 people's very important constitutional safeguards, their
12 liberties. This is an important case. It's an important
13 case to the State, it's an important case to the Defendant,
14 it's an important case to you. You need to listen to the
15 evidence to determine what the facts are and apply it to the
16 law as I charge it to you.

17 I want to talk to you a little bit about how the trial
18 is going to progress. First of all, the Plaintiff, Mr.
19 McMaster, is going to have an opportunity to stand up before
20 you and tell you what this case is about, what he intends to
21 prove and his theory about the case.

22 The Defendant is going to have an opportunity to stand
23 up before you, talk about the evidence, and the law and any
24 defenses they might have. Of course, the Defendant need not
25 do that because y'all understand the law, the Defendant

1 doesn't need to do anything. The burden of proof rests
2 solely on the State of South Carolina. But if they elect to
3 give an opening statement, they can do so, but they're
4 certainly not required to do that.

5 The opening arguments or statements will be given. The
6 State goes first, then the Defense, if they elect to do so.
7 And then we'll begin the taking of evidence, the beginning
8 of the trial where we present evidence. And the Plaintiff
9 goes first. They have the burden of proof.

10 So they would call one witness right after the other.
11 They'll take an oath. They'll put their hand on the Bible,
12 swear to tell the truth. And the State, the solicitors will
13 ask them questions about relevant information in this case.

14 Then the Defense will have an opportunity to cross-
15 examine them about those very same matters. They will call
16 one case right -- one witness right after the other until
17 they've concluded. And then we'll take up some legal
18 matters outside of your presence.

19 And then the Defense will have an opportunity to
20 present any defense that they might have. But once again,
21 they aren't required to do that. And there's a reason
22 behind that because our forefathers have established our
23 judicial system that way.

24 And if you think about it, there's some very practical
25 reasons. Number one, the State has the ability to prove the

1 case. And, number two, quite often all of us in our
2 everyday lives have been accused of something where it's
3 absolutely impossible to prove your innocence. The United
4 States of America in a criminal proceeding, the defendant
5 doesn't have to prove anything for that very reason.

6 Ladies and gentlemen of the jury, after -- in the event
7 the Defense were to put up any witnesses, then the Plaintiff
8 will have an opportunity to present reply testimony if the
9 facts warrant that.

10 Ladies and gentlemen of the jury, you and I have
11 certain roles to fulfill in this case. I'm the arbiter of
12 the law. I preside over the proceeding. I determine what
13 evidence you get to hear. This is a proceeding that's
14 governed by the Rules of Evidence, the Rules of Criminal
15 Procedure. I decide what evidence you hear. And at the
16 conclusion of the case I'll charge you the substantive law
17 with regard to the charges that have been levied against the
18 Defendant.

19 Y'all have a -- y'all are judges in a different way.
20 Y'all are the ones who are going to listen to the evidence
21 in this case and determine what the truth is. In every case
22 tried before a jury there's a question of fact. And you're
23 going to have to resolve those questions of fact.

24 Ladies and gentlemen of the jury, necessarily you're
25 going to be called upon to weigh in on the credibility of

1 witnesses. I'm going to tell you a little bit about what
2 the law says in that regard, and I'll charge you in more
3 detail at the conclusion of the case.

4 But when a witness testifies you need to ask yourself
5 what opportunity they had to see and hear the things to
6 which they're testifying. And ask yourself whether or not
7 this witness has an interest or a bias in the -- in their
8 testimony, whether they have something to gain. Ask
9 yourself whether or not what they say is corroborated by
10 other evidence, and other witnesses or whether or not it's
11 contradiction of other evidence.

12 You can believe all of what a witness says, none of
13 what a witness says or a portion thereof. You're also --
14 are going to be given the opportunity and the law says that
15 you cannot only pay attention to what a witness says, but
16 you can pay attention to the way they say it.

17 All of us who have teenage children, sometimes it's
18 important to listen to what they say, but how they say it,
19 their demeanor. Take that into consideration and use your
20 good common sense in evaluating the credibility of the
21 witnesses as they testify.

22 Ladies and gentlemen of the jury, you're participating
23 in a time tested system. And you're going to be called upon
24 to listen to the evidence in this case and determine what
25 the true facts are and apply the facts to the law as I

1 charge it to you. This is an important case.

2 I'm going to ask that you not take notes given the
3 nature of the case and the length of the case. I'm going to
4 ask that you pay very close attention, but do not take
5 notes.

6 And I also want to admonish you from the very beginning
7 that at the conclusion of this case if I make an error with
8 regard to the law, those errors are easily corrected.
9 However, if you as a juror make an error with regard to the
10 findings of fact, quite often those errors can never be
11 corrected. So that's why it's important for you to pay very
12 close attention to the evidence as it comes from the witness
13 stand.

14 I'm going to ask that you pay very close attention.
15 This is an important case to everyone involved in this case.
16 It's a very serious case. I'm going to ask that you proceed
17 forward with a serious and contemplative mind.

18 Mr.. McMaster, you're recognized.

19 **MR. CULBREATH:** Your Honor, if it please the Court,
20 I'll provide the opening for the State.

21 **THE COURT:** Yes. You're recognized. Yes, sir. And
22 before we do that, I'm going to ask the jurors to stand and
23 raise your right hand and as the jury -- as the clerk
24 administers the oath.

25 **MADAM CLERK:** The correct response to this oath will be

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1 I will. You shall well and truly try the case 2016-GS-23-
2 8778, the State versus Tristian Xavier-Marian Cummings,
3 indicted for murder, 8782, burglary, 8780, attempted armed
4 robbery, 8773, conspiracy, and 8779 for possession of a
5 weapon during the commission of a violent crime and a true
6 verdict rendered according to the law and the evidence so
7 help you God.

8 **THE JURY:** I will.

9 **MADAM CLERK:** Thank you.

10 **THE COURT:** Mr. Culbreath, you're recognized.

11 **MR. CULBREATH:** May it please the Court? On March 6th,
12 2016 at about 1:15 in the morning at 34 Burgess Avenue, two
13 men walked up to the front door of Mr. Jeryl White. And to
14 give you a little description about where 34 Burgess is, if
15 you're familiar with Cherrydale, you're coming down Poinsett
16 kind of towards Travelers Rest and you come to the big
17 intersection, there's a Bank of America on your left, that
18 would be Burgess Avenue. And it just winds back into the
19 neighborhoods.

20 So about 1:15, like I said, in the morning, late --
21 early Sunday morning. Two individuals go to the front door,
22 knock on the door and Jeryl White comes to the door. Jeryl
23 White tells them, go away, get out of here. I'm going to
24 call the cops. So they go down the front steps.

25 And this is a -- it's a duplex, all right. So there

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1 are two residences on either side. And we're on the left
2 hand side. And it's kind of a straight, one bedroom duplex
3 with the kitchen and the living room kind of up front. And
4 there's a side door.

5 Well, these two individuals come down those stairs and
6 they walk around the corner towards the side door. One of
7 these individuals is armed with a pistol. They come up to
8 the side door, the armed individual begins to kick and beat
9 at this side door trying to gain entry. They're there to
10 rob Mr. White.

11 He kicks, and he kicks, and he gets through that door.
12 And the door comes down and the two individuals enter the
13 house. One of them goes off to the right. The one that's
14 not armed goes to the right. Goes into the kitchen area,
15 starts going through the cabinets looking for things,
16 looking for something to steal.

17 The one that's armed comes in, and he begins to look
18 for the owner, Mr. White. Now what he noticed, once he gets
19 inside, Mr. White has barricaded himself in a small bathroom
20 just to the left. The bathroom would be to the left and
21 then there would be a bedroom right across the hall. He
22 knows he's barricaded himself in there, and he's holding the
23 door.

24 What he doesn't know is Mr. White's seven-month
25 pregnant girlfriend is hiding under the bed across the hall

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1 in their bedroom on the phone with 911. This armed
2 individual starts ramming himself into the bathroom trying
3 to get into the bathroom while Mr. White is blocking the
4 door, bracing it with his shoulder.

5 Realizing he's not going to be able to get into that
6 bathroom, the armed individual steps back and fires a shot
7 through the center of the door, about midway, mid-level,
8 striking Mr. White. He's then able to get the door opened
9 up at which time he gets inside the doorway.

10 And, again, this is a small bathroom. Comes inside the
11 doorway, leans around and fires again, this time striking
12 Mr. White in the leg. The first shot went through the door,
13 hit Mr. White in the top left of his shoulder and became
14 embedded on the right hand side of his arm as he's up
15 bracing the door. As I said, the girlfriend's on the phone
16 with 911. About this time, sheriff's deputies arrive. The
17 first one on-scene -- or met very quickly moments later by a
18 second.

19 Now, this first one, Deputy Robinson, was on routine
20 patrol. He was out near the Bank of America, kind of in
21 that area of Cherrydale. When he got the call-out, just
22 turned around, came on down the road. He was there in
23 moments.

24 He gets out of his vehicle, goes over to the side door.
25 He puts the flashlight on and he sees light coming from the

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1 side door. And he sees the individual in the kitchen going
2 through the cabinets. So he holds up his pistol, tells him
3 to freeze.

4 At that same time the armed individual comes running
5 behind him. He sees him run through, past the doorway, down
6 through the living room and the kitchen and goes out the
7 front door. All right. But there's a Deputy Sandefur that
8 had just arrived as well. So Robinson calls out to
9 Sandefur, he's going out the front. Sandefur pursues,
10 chases the armed individual.

11 The individual's coming through the kitchen, and he's
12 holding this -- the unarmed individual at gunpoint. The
13 individual running from the back bathroom slams the gun down
14 on the counter on his way out the door. So they know the
15 gun's on the counter at that point. Sandefur, other
16 deputies, they pursue him into a wood-line behind the house.
17 They ultimately arrest him. They're both arrested.

18 The case here today, this week, the next few days, the
19 evidence we're going to present will prove to you beyond a
20 reasonable doubt that that armed defendant is Tristian
21 Cummings. We're going to show this to you through various
22 types of evidence.

23 We're going to give you witness testimony. We're going
24 to give you law enforcement testimony, maybe some
25 photographs, maybe audio recordings, physical evidence that

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1 you can see, and scientific evidence, the expert testimony
2 that you can listen to and read the reports.

3 There are all different manner of evidence that we are
4 going to present to you for your consideration. Just as the
5 Judge told you earlier, you're the decider of the facts. We
6 just present the evidence. And he will provide the law.

7 The standard of proof, as was mentioned before, is
8 beyond a reasonable doubt. We welcome that burden. That's
9 our job. Myself, as I mentioned before, Andrew Culbreath
10 and William McMaster, that's our role here is to provide you
11 with the evidence and allow you as jurors to do the most
12 important function in this case, and that's to use your good
13 everyday common sense, turn evidence into facts and render a
14 just and true verdict.

15 I know that jury service is an imposition on your daily
16 lives. Understanding, we'll be mindful of your time. And
17 we do appreciate both your time and attention in this case.

18 At the end of this case we'll get up and summarize some
19 of the evidence that's been presented. And then you'll be
20 asked to go back and render a verdict. And that will be on
21 the five charges. That will be conspiracy, attempted armed
22 robbery, burglary, first degree, and you'll hear more about
23 that from the Judge, murder, and possession of a weapon
24 during the commission of a violent crime.

25 As the Judge said, this is an important day, an

OPENING STATEMENTS - MR. RICHEY

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1 important trial. And we do thank you for your time and
2 attention.

3 **THE COURT:** Thank you, Mr. Culbreath.

4 **MR. RICHEY:** Thank you, Your Honor. May it please the
5 Court?

6 **THE COURT:** Mr. Richey, you're recognized.

7 **MR. RICHEY:** I'm not quite as smart as Mr. Culbertson
8 [sic]. And he probably doesn't have this ADHD that I have
9 where he can't sit still.

10 This case -- see, this is really simple. Reason why
11 you have to prove a case beyond a reasonable doubt is
12 because what Mr. Culbertson [sic] didn't tell you, we saw
13 him stand there and shoot the guy. We saw -- we sit there
14 -- we got a witness going to tell you he shot that guy,
15 okay?

16 So when it's not that case it becomes what me and my
17 wife always refer to, a connect the dots case. You know,
18 you got to connect this dot, this dot, this dot, this dot,
19 this dot, this dot to make it all fit well. That's why the
20 standard is beyond a reasonable doubt because that standard
21 says that you've got to connect all those dots.

22 I always use a thing like a little thing we were
23 growing up where you had the little picture and it said, you
24 know, gave you a question to answer, and you make up from A
25 to C, and you might go down to M, and when you done it all

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1 right, it was a pretty picture, and you colored it in. But
2 if you gave the wrong answer, you know, it deviated out. So
3 you didn't get the good picture.

4 And that's what this is all about. This is about --
5 this is about reasonable doubt. And it's -- and it's that
6 picture. And when you deviate from that picture -- and you
7 know if you -- you could have 50 questions to make that
8 pretty flower. If you miss one question on that little
9 connect the dot, if you answered it wrong, instead of your
10 flower going like this, it might go like this.

11 And that's what this case is. And that's what
12 reasonable doubt is. When the State comes in here, when
13 they come to court and they can't tell you, we got Mr.
14 McMaster and Mr. Culbertson [sic], they were standing there
15 and we saw him shoot him. When they can't do that, when
16 they can't do that, when they want -- Mr. Culbertson [sic]
17 told a great story, a great story, but when they can't do
18 that, that's why their burden's so high.

19 That's why for a defendant, if you choose to only
20 believe them, we have no chance. If you say, they said it,
21 we believe it, over. Because we don't have to prove
22 anything. We don't. We don't have to prove anything. It's
23 the State's burden.

24 And if -- if I believe -- I believe that that little
25 connect the dots, I don't believe they're going to be able

TIRISSA JOHNSON - DIRECT EXAMINATION BY MR. McMASTER

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1 to do it. I don't believe -- I believe there's going to be
2 evidence in this case that conclusively determine who shot
3 that gun, but it's not going to be here. It's not. It's
4 not.

5 And we ask you at the end of this case to find Mr.
6 Cummings not guilty. We think that's going to be the only
7 verdict you can have. We think that's going to be the only
8 verdict that you can have.

9 And so, unfortunately, you've got a case where you've
10 got to really listen. Unfortunately, you've got to really
11 listen. You've got to really listen because there's a lot
12 of dots that's got to be dot, dot, dot, dot, dot, dot, dot,
13 dot that's got to be connected. So you have to listen. And
14 I believe at the end of this case the State's not going to
15 be able to meet that burden.

16 **THE COURT:** Thank you, Mr. Richey. Mr. McMaster,
17 you're recognized.

18 **MR. McMASTER:** May it please the Court, Your Honor?
19 The State's going to call Tirissa Cummings [sic] as our
20 first witness, Your Honor.

21 **THE COURT:** Ms. Cummings.

22 **MR. McMASTER:** Tirissa Johnson, I'm sorry.

23 **THE COURT:** Yes, ma'am, please come forward. I'm going
24 to ask, if you could, approach the Bible there. Put your
25 left hand on the Bible and raise your right hand as the

TIRISSA JOHNSON - DIRECT EXAMINATION BY MR. McMASTER

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1 clerk administers the oath.

2 **Tirissa Johnson**, being

3 duly sworn testified as follows;

4 **MADAM CLERK:** Please take a seat. And once you're
5 seated, state your name for the record.

6 **THE COURT:** Yes, ma'am. I'm going to ask you to have a
7 seat in that witness chair. Pull up real close to that
8 microphone. Speak loudly, clearly and slowly in order that
9 we can hear everything that you have to say. And let's
10 start with your full name, please, ma'am.

11 **MS. JOHNSON:** Tirissa Johnson.

12 **THE COURT:** Thank you, Ms. Johnson. Mr. McMaster.

13 **Direct Examination by Mr. McMaster:**

14 Q. Ms. Johnson, where do you work at this time?

15 A. At the Greenville County Sheriff's Office within the
16 Communications Division.

17 Q. How long have you worked for Greenville County
18 communications?

19 A. Twenty years.

20 Q. And what's your role in that department?

21 A. My current main job is pulling all recordings, phone
22 and radios.

23 Q. So do you pull 911 calls? Is that something that you
24 would do in your job?

25 A. Yes, it is.

TIRISSA JOHNSON - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. How many dispatchers work in your area?

2 A. At any one given time there could be up to 12. There
3 are 12 positions.

4 Q. And what do the dispatchers do once the calls come in?
5 Tell us how that process works.

6 A. So they will answer the call. The first thing we
7 determine is the location, if it is within Greenville County
8 or municipality. The next thing is to determine what type
9 of assistance is needed whether it's police, fire or
10 ambulance. And then from there, if it is for the sheriff's
11 office, we begin entering the call, needing the location
12 first.

13 Q. And are those calls recorded?

14 A. They are.

15 Q. And how are those calls preserved for future dates like
16 today? How is that preserved?

17 A. They're stored on back-up and computers.

18 Q. Can those be digitally burned to a CD?

19 A. They can.

20 Q. And is it routine for police officers, investigators to
21 contact you to get copies of those 911 calls, cases they are
22 working on?

23 A. It is.

24 Q. And what do you do when you get a request for a 911
25 call or a copy of that -- what do you do with that for an

TIRISSA JOHNSON - DIRECT EXAMINATION BY MR. McMASTER

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1 investigator? Do you burn that to a CD?

2 A. I will burn an original copy that will get placed into
3 Property and Evidence. And then they get a copy to keep for
4 their case files.

5 Q. I'm going to show you what's been marked as State's
6 exhibit number 1. See if you can identify that for me,
7 please.

8 A. This would be the 911 calls that I had listened to and
9 have been recorded.

10 Q. In reference to this case?

11 A. It is.

12 Q. And how do you know that based on what you're looking
13 at there?

14 A. These are my initials with the date that I listen to it
15 and then again on the back, my initials.

16 **MR. McMASTER:** Your Honor, I've already shown this to
17 Defense counsel. I'd ask at this time that the 911 calls
18 from this incident be entered into evidence.

19 **THE COURT:** Any objection, Mr. Richey?

20 **MR. RICHEY:** No objection.

21 **THE COURT:** All right. It's into evidence without
22 objection.

23 **MR. McMASTER:** Thank you, Your Honor.

24 (Whereupon State's exhibit 1 was admitted into
25 evidence)

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 **MR. McMASTER:** I think that's all I need from this
2 witness, Your Honor.

3 THE COURT: Very good. Cross-examination.

4 **MR. RICHEY:** No questions.

5 **THE COURT:** You may step down. Thank you.

6 **MR. McMASTER:** I call April Green next. Your Honor,
7 we're going to set up our media cart here just ---

8 **THE COURT:** Very good. I'm going to ask you if you
9 could to place your left hand on the Bible and raise your
10 right hand as the clerk administers the oath.

11 April Green, being duly
12 sworn testified as follows;

13 **MADAM CLERK:** Please take a seat. Once you're seated,
14 state your name for the record.

15 **THE COURT:** Yes, ma'am. Pull up real close to that
16 microphone and speak loudly, clearly and slowly. Yes,
17 ma'am.

18 MS. GREEN: April Green.

19 Direct Examination by Mr. McMaster:

20 Q. What is your age, ma'am?

21 A. I'll be 37 this month.

22 Q. Thirty-seven?

23 A. (Affirmative nod).

24 Q. Did you have a relationship with the victim in this
25 case?

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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- 1 A. Yes, I did.
- 2 Q. And what was his name?
- 3 A. Jeryl White.
- 4 Q. And did he have a nickname that he went by as well?
- 5 A. Cincinnati.
- 6 Q. And back in March of 2016 where were you living at that
- 7 time?
- 8 A. 34 Burgess Avenue in Greenville.
- 9 (Pause)
- 10 Q. Can you see that?
- 11 A. Yeah, I can.
- 12 Q. All right. Can you point out 34 Burgess Avenue for us
- 13 there?
- 14 A. You want me to get up?
- 15 Q. Yes, please.
- 16 A. (Witness pointed on the map).
- 17 Q. Is that near the Cherrydale area?
- 18 A. Yes, it is.
- 19 Q. And how far down the road is -- where would the Bank of
- 20 America be if this was Burgess Avenue?
- 21 A. Not even a quarter of a mile.
- 22 Q. Okay. Right up this way?
- 23 A. Yes.
- 24 Q. Okay. So it's very close to the Bank of America,
- 25 Poinsett Highway area?

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 A. Yes.

2 Q. All right. You can have a seat. I'm going to show you
3 what's marked as State's exhibit 2 and let you identify that
4 for us. Can you identify this?

5 A. Yes. That's 34 Burgess Avenue.

6 Q. And what is that set up as? Is that ---

7 A. It's a duplex.

8 Q. A duplex?

9 A. Um-hum (affirmative).

10 Q. And you lived on the 34 side?

11 A. Yes.

12 Q. All right.

13 **MR. McMASTER:** Your Honor, at this time the State would
14 ask the Court to move into evidence State's exhibit number
15 2. I've shown it to Defense counsel.

16 **MR. RICHEY:** No objection.

17 **THE COURT:** All right. It's into evidence. And that's
18 State's exhibit?

19 **MR. McMASTER:** 2.

20 **THE COURT:** 2 is into evidence without objection.

21 **MR. McMASTER:** Thank you.

22 (Whereupon State's exhibit 2 was admitted into
23 evidence)

24 Q. How long had you been living at 34 Burgess back in
25 March of 2016?

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 A. About three months.

2 Q. About three months?

3 A. (Affirmative nod).

4 Q. And can you take us back to the early morning hours of
5 March the 6th of 2016 and tell us what happened and what you
6 were doing?

7 A. Yeah. We were actually in bed. I was in and out ---

8 Q. Please tell ---

9 A. --- of sleep.

10 Q. --- the jury who we is.

11 A. Me and Jeryl White, we were in bed. I was like in and
12 out of sleep, not completely asleep yet. He gets up and he
13 goes to the door. When he comes back he says, April, he
14 said, lock the door, ---

15 **MR. RICHEY:** Objection.

16 A. --- call the cops.

17 **THE COURT:** Sustained.

18 A. He ---

19 Q. Go ahead.

20 A. He told me to call ---

21 Q. And what did you do based on the conversation you had
22 with Mr. White? What did you do?

23 A. I locked the door and called 911.

24 Q. So you called 911?

25 A. Yes.

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. Were you afraid that anyone was at the door?

2 A. Yes, I was.

3 Q. And what do you do once you call 911? Where do you go
4 at that point in time?

5 A. I go back to the bedroom. It's in the far back. It's
6 the only bedroom in the duplex.

7 Q. And do you get -- where do you go in the bedroom?

8 A. To the back of -- well, at first I was beside the bed.

9 And I could hear them trying to get entrance to the house.

10 I got more scared, and I went to the end of the bed, you

11 know, I didn't know what I was going to do, where I was

12 going to hide. You know, I was seven months pregnant.

13 Q. And where did Mr. White go at this time?

14 A. He had went to the bathroom. And he had locked the
15 door.

16 Q. All right. And you indicated that you had called 911
17 at that time?

18 A. Yes, I had.

19 **MR. McMASTER:** And, Your Honor, at this time we're
20 going to -- we'd like to publish State's exhibit 1 that was
21 previously admitted into evidence, the 911 call.

22 **THE COURT:** You may.

23 (Whereupon State's exhibit 1, CD, was played for the
24 jury)

25 (Whereupon State's exhibit 1, CD, ended)

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. After that night, April, did you ever see Jeryl alive
2 again?

3 A. No.

4 Q. When you came out from under the bed did you go outside
5 at that time and walk through the -- the home?

6 A. No. I walked through the hallway of the house past the
7 bathroom into the living room area where the officer had
8 questions for me.

9 Q. And did you cooperate and give a statement to law
10 enforcement?

11 A. One hundred percent, yeah.

12 Q. Okay. I'm going to show you some photos, and I want
13 you to identify these for the Court. I've already shown
14 these to Defense counsel. But I'd like you to tell us what
15 we're looking at here. And you can just flip them one at a
16 time ---

17 A. Okay.

18 Q. --- and just describe what they are.

19 A. This is the side of the duplex.

20 Q. Okay.

21 A. This is the side ---

22 Q. State's exhibit 3 is what you're looking at?

23 A. Yes.

24 Q. State's exhibit 3.

25 A. Yes.

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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- 1 Q. And you recognize this as the side of the duplex?
- 2 A. Yes.
- 3 Q. And then what's number 4?
- 4 A. That's also the side of the duplex, ---
- 5 Q. State's exhibit ---
- 6 A. --- closer.
- 7 Q. --- 4?
- 8 A. Yes.
- 9 Q. Okay.
- 10 A. That's another ---
- 11 Q. This is State's exhibit 5. What does that show?
- 12 A. That shows the door actually kicked in to the side of
- 13 the duplex.
- 14 Q. Is the way -- is that the way it looked that night that
- 15 you were leaving?
- 16 A. After the incident, yes.
- 17 Q. And this is State's exhibit 6. Can you tell us what
- 18 this is?
- 19 A. It's another picture of the door kicked in.
- 20 Q. Tell us what we're looking at on State's exhibit 7.
- 21 A. That's a picture -- if you were standing in the bedroom
- 22 looking down the duplex into the hall, it shows you through
- 23 the hall, kitchen and living room.
- 24 Q. Okay. And State's exhibit 8.
- 25 A. That's a picture as if you were standing in the kitchen

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 area looking back towards the bedroom.

2 Q. All right. This is the way it looked that night?

3 A. Yes.

4 Q. And then State's exhibit 9.

5 A. That's if you were standing right at the door that had
6 been kicked in looking through the kitchen towards the
7 hallway.

8 Q. And State's exhibit 10.

9 A. It's just a picture as if you were standing in the door
10 that had been kicked in looking across the kitchen.

11 Q. And, again, this is the way it looked the night that
12 you left?

13 A. Yes.

14 Q. Okay. And State's exhibit 11.

15 A. That's a picture as if you were standing in the kitchen
16 looking at the front door.

17 Q. All right. And then State's 12.

18 A. That's a picture as you're standing near the kitchen
19 stove looking at the door that had got kicked in.

20 Q. And then I'm going to let you look at 13, 14 and 15.

21 Can you tell me what those are pictures of?

22 A. Those are all pictures of the bedroom.

23 Q. Is this the bed that you described earlier that you
24 were hiding under?

25 A. Yes.

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. Is there any other bedroom in this -- this home?

2 A. No.

3 **MR. McMASTER:** Your Honor, the State would ask to move
4 these exhibits, 3 through 15, into evidence at this time.

5 **MR. RICHEY:** No objection.

6 **THE COURT:** They're in evidence.

7 **MR. McMASTER:** Thank you.

8 (Whereupon State's exhibit 3 - 15 were admitted into
9 evidence)

10 **MR. McMASTER:** Your Honor, may we pull down the screen?

11 (Pause)

12 Q. State's exhibit 2 that's been entered into evidence
13 without objection, can you just tell the jury -- show the
14 jury what we're looking at here.

15 A. That's a picture of the duplex that we lived in. The
16 one right here is 34 Burgess.

17 Q. That open door right there?

18 A. Yes.

19 Q. All right. And -- All right. So this is State's
20 exhibit 3 that's already into evidence as well. Is this --
21 tell the jury what this is.

22 A. That's a picture of the side of the duplex from the
23 side at the other door.

24 Q. Now would this be -- what area would this be right
25 here?

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 A. That's the front door.

2 Q. And was there a -- some kind -- looks like some type of
3 structure here. What was outside the front door?

4 A. A porch.

5 Q. So there's a porch directly off the front -- front of
6 the house?

7 A. Yes.

8 Q. And then are there trees all up and down ---

9 A. Yes.

10 Q. --- this area?

11 A. Yes.

12 Q. Okay. And this is the side door that you were talking
13 about?

14 A. Yes.

15 Q. All right. This is number 4. This is -- what does
16 this appear to be?

17 A. It's another picture of the side door.

18 Q. Just a close-up of the side door?

19 A. Yes.

20 Q. And, again, the -- where would this side door go in --
21 what would go -- be on the other side of that side door if
22 you opened that door?

23 A. You'll go directly into the kitchen.

24 Q. Into the kitchen area? Was there anything in front of
25 the side door?

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 A. Yeah, we hadn't been using that door. It needed
2 replaced. But we had like a kennel in front of it, a
3 garbage can, things like that.

4 Q. So it had things stacked in front of it?

5 A. Yeah, several things.

6 Q. Okay.

7 A. I think there was like two bins.

8 Q. All right. So now I'm going to show you State's
9 exhibit 5. Can you tell the jury what I'm looking at here
10 from that night?

11 A. Yeah. That's a picture of the side door kicked in into
12 the kitchen.

13 Q. And this debris all through here, and you said the
14 trash can, ---

15 A. Yes.

16 Q. Is that what you're talking about ---

17 A. Yes.

18 Q. --- was in front of it?

19 A. The things that were in front of it, yeah.

20 Q. Okay. I believe this -- 6, is that just another view
21 of the same thing?

22 A. Yes.

23 Q. Okay. And there's material all over the house. Is
24 this material -- it wasn't usually like that, was it?

25 A. No. It was very clean.

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. Okay. All right. Now we're going to look at -- we're
2 looking at State's exhibit 7. Kind of tell us what view
3 we're looking at from here.

4 A. That's if you're standing at the bedroom door looking
5 down the hallway into the kitchen into the living room. The
6 bathroom is right to the right.

7 Q. And what would that be right there in State's exhibit
8 ---

9 A. That's the kitchen stove ---

10 Q. Okay. That's the stove right there?

11 A. Yes.

12 Q. Is there a counter beyond that?

13 A. Like past it?

14 Q. Um-hum (affirmative).

15 A. Not directly in front of it, no.

16 Q. Right. Not directly in front of it, obviously.

17 A. But, yeah, across like that separates the living room
18 and the kitchen.

19 Q. And that door we're looking at there, would that be the
20 front door?

21 A. Yes, that's the front door.

22 Q. All right. All right. Now, are we turned around now
23 looking back in the ---

24 A. Yeah. That's if you're standing in the kitchen area
25 looking down the hallway. The bathroom was to the left.

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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- 1 And the bedroom's straight back.
- 2 Q. And this is -- and this is 8 just for record-keeping.
- 3 This is State's exhibit number 8. And now it looks like a
- 4 -- like a -- some type of a ---
- 5 A. A bath ---
- 6 Q. --- robe or something in there.
- 7 A. A bathrobe.
- 8 Q. And a door in there. Was that door ...
- 9 A. No, that door wasn't in there.
- 10 Q. What door is that off of?
- 11 A. That's the door from the bathroom that they had to take
- 12 off the hinges to get Jeryl out.
- 13 Q. But that's the way it was when you left it that night?
- 14 A. That night, yes.
- 15 Q. Okay. All right. This is 9. It looks like we've got
- 16 a stove -- is this the stove you were talking about earlier?
- 17 A. Yes.
- 18 Q. And that's the hallway going to the -- going back to
- 19 the bedroom?
- 20 A. Yes.
- 21 Q. And, obviously, this is the side door again?
- 22 A. Yes.
- 23 Q. And is that the counter you were talking about ---
- 24 A. Yes.
- 25 Q. --- a minute ago? Now, past that counter, if we go

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 past that stove, if we go past that stove and come by that
2 counter, would it be here on my right hand side?

3 A. Yes.

4 Q. And where would I keep going if I kept going right past
5 that counter?

6 A. Into the living room.

7 Q. And from the living room could I exit your place?

8 A. Yes, out the front door.

9 Q. That would be the front door?

10 A. Yes.

11 Q. And that's the same door that we talked about a minute
12 ago that has the porch around it?

13 A. Yes.

14 Q. Okay. All right. Again, is this a picture of the dog
15 kennel you were talking about ---

16 A. Yes.

17 Q. --- in the kitchen area?

18 A. Yes.

19 Q. And, again, this is the way it looked that night? It
20 did not look like that before you called 911?

21 A. When I went to bed that night it did not look that way.

22 Q. Okay. I believe this is a better picture of what you
23 described a minute ago, the counter and then the front door?

24 A. Yes.

25 Q. And that's looking like if I was kind of at the stove

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 taking that picture, is that what we would be looking like?

2 A. Yes.

3 Q. All right. Is this the bedroom?

4 A. Yes.

5 Q. And it's the only bedroom in the house?

6 A. Yes.

7 Q. And this is where you were hiding?

8 A. Yes, under the bed.

9 Q. Were you hiding -- what area of the ---

10 A. I went to the foot of the bed.

11 Q. Right in here?

12 A. Yeah. And at some point I went under the bed from that
13 angle.

14 Q. All right. Now, you're pregnant at this time.

15 A. Yeah, seven months ---

16 Q. How far along are you?

17 A. Seven months pregnant.

18 Q. Okay. So how do you -- how do you get under this bed
19 at this point?

20 A. So the bed was sitting on blocks in each corner to hold
21 it up. I was able to lift it up off those blocks and slide
22 underneath it. You know, which it sat back down on me, but,
23 you know, that's the only place I felt I had to hide.

24 Q. So you went up under the ---

25 A. Yeah. I pushed it up off the blocks enough for me to

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 get underneath the bed.

2 Q. And is this where you were for the majority of the 911
3 call we just heard?

4 A. Yes.

5 Q. Okay. So how close in distance is this bedroom to the
6 bathroom?

7 A. One wall.

8 Q. So that's what you could hear? You could hear through
9 the wall?

10 A. The bed's up against the wall. And this wall is the
11 only thing that separates the bathroom and the bedroom.

12 Q. All right.

13 A. So you've got the head of the bed. It's directly up
14 against the wall.

15 Q. All right. State's 14 right here, is it -- are these
16 the blocks you were talking about?

17 A. Yes.

18 Q. Okay. So -- but you were down here at the foot of the
19 bed, is that correct?

20 A. Right.

21 Q. Where the corner is?

22 A. Right.

23 Q. All right. How long after Jeryl was murdered -- how
24 long after that did you have his baby?

25 A. He was murdered March the 6th of 2016. And Cayden was

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 born in May of 2016.

2 Q. Okay. Can you tell the jury what type of activities
3 Jeryl would have been involved in and why someone might have
4 wanted to come to his house?

5 A. Yes. He sold drugs. He was known to have drugs and
6 money, if not both.

7 Q. Okay. Was that common knowledge throughout the
8 community?

9 A. Yes, it was common.

10 Q. Did you and Jeryl usually live in that area of the
11 community?

12 A. Not normally. We'd been there about three months.

13 Q. And had you lived there previously, though, as well?

14 A. I had been there, just not as long-term.

15 Q. Gotcha. I assume he dealt with cash with -- when he
16 sold drugs?

17 A. Yes.

18 Q. And I assume he kept a supply of drugs in the house as
19 well?

20 A. A limited amount, yes.

21 Q. But he did have drugs?

22 A. Yes.

23 Q. He was able to sell out of the house?

24 A. Yes.

25 Q. In fact, you had become involved in that lifestyle at

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 one point, is that correct?

2 A. Yes.

3 Q. And before that lifestyle took over for you can you
4 tell this jury what -- what you did and a little bit about
5 yourself?

6 A. You want me to go back to ...

7 Q. Yeah, you can just start -- how this -- how you got
8 involved in this.

9 A. Well, I was in -- I was a nurse back in 2007, I think
10 it was. I had a car accident about a year after that. I
11 was put on pain pills and one thing led to the next. When I
12 couldn't get pain pills from the doctors, I was around
13 people that introduced me to things off the streets. And
14 you just meet different people. And that's how I ended up
15 meeting Jeryl.

16 Q. Did you meet him for drugs, initially?

17 A. Yes, initially, I did. But, you know, we didn't date
18 right when we first met. We'd known each other for about a
19 year.

20 Q. And, in fact, you've had convictions for drugs that you
21 pled guilty to, I believe, in November of '16, is that
22 correct?

23 A. Yes, I did.

24 Q. And you pled guilty to shoplifting as well?

25 A. Yes, I did.

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. Was that part of this lifestyle that you were living?

2 A. Every bit of it. Within that -- within that couple of
3 like four years time period for me, all that happened then
4 at that time.

5 Q. And can you tell this jury about your life today after
6 you pled guilty to those charges?

7 A. It's completely different. A hundred percent
8 different, other than an extra hundred pounds on me. I'm an
9 assistant general manager at my job. I have a beautiful
10 healthy son. Wouldn't take nothing for him. He'll be three
11 next month.

12 Q. And where do you live?

13 A. I live with my mother still.

14 Q. And where is that? In what -- what area of town do you
15 live? What ---

16 A. Do I have to give my exact ---

17 Q. No, you don't ---

18 A. --- location?

19 Q. --- have to give your exact address, no.

20 A. Okay. Well, it's in South Carolina in Greer.

21 Q. Okay. That's fine. And during the time that -- when
22 Jeryl was being shot, and the home was being robbed, and
23 burglarized and ransacked did you ever come out from under
24 the bed at that time?

25 A. When it was all taking place? I didn't come out from

APRIL GREEN - DIRECT EXAMINATION BY MR. McMASTER

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1 underneath the bed until the cops arrived.

2 Q. And from the time you heard the second shot, how long
3 was it after that that the cops arrived?

4 A. It was so fast. It was so fast. It couldn't have been
5 minutes.

6 Q. Do you recall how long it was between the first and the
7 second shot?

8 A. I can't.

9 Q. But you were on the phone the whole time?

10 A. Yeah.

11 Q. And the 911 reflects that, is that correct?

12 A. Right.

13 Q. When you -- in preparation for this case did you have a
14 chance to listen to this 911 call?

15 A. Yes, I did.

16 Q. And were you able to distinguish in that call where you
17 heard that initial shot?

18 A. Yes.

19 Q. And where in the call was that, if you recall?

20 A. When he was screaming for help, it was shortly right
21 after that.

22 Q. And then the next shot?

23 A. The next one I thought -- what I thought it to be was
24 not long before the cops got there. I don't know exactly
25 where it was on the tape. I just know it was not long

APRIL GREEN - CROSS-EXAMINATION BY MR. RICHEY

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1 before they got there.

2 Q. I mean, you heard the shot and the cops were there?

3 A. That's what it seemed like, yeah.

4 Q. All right. Answer any questions Mr. Richey may have.

5 **THE COURT:** Mr. Richey, you're recognized, cross-
6 examination.

7 **MR. RICHEY:** Thank you, Your Honor.

8 **Cross-Examination by Mr. Richey:**

9 Q. Ma'am, in 2016 when you said you pled guilty to all
10 these charges, in 2016 you still told the truth to the
11 police, correct?

12 A. Yes.

13 Q. Right, at the time all this happened. Even though you
14 had these convictions, you still told the truth, correct?
15 You still told the police the truth in 2016, right, about
16 what happened?

17 A. What incident?

18 Q. Let me rephrase that because -- it's not a trick
19 question. When this happened in 2006 [sic], right, ---

20 A. Um-hum (affirmative).

21 Q. --- and the police came out to the house, ---

22 A. Um-hum (affirmative).

23 Q. --- correct? You remember that?

24 A. Yes.

25 Q. And you talked to them, correct?

APRIL GREEN - CROSS-EXAMINATION BY MR. RICHEY

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1 A. Correct.

2 Q. And when you talked to them you told them the truth,
3 correct?

4 A. They didn't really ask any questions. It was -- they
5 told me what I was being charged with. They searched the
6 house.

7 Q. No, no. Let me -- when this incident occurred and you
8 were underneath the bed, ---

9 A. Oh, this incident?

10 Q. Yes, ma'am. And you came out from underneath the bed
11 and the cops came, correct?

12 A. Okay. Yes.

13 Q. You remember that?

14 A. Yes.

15 Q. And they talked to you about what happened, correct?

16 A. Yes.

17 Q. And you talked -- and you told them what happened,
18 correct?

19 A. Right.

20 Q. And you told them the truth, correct?

21 A. Yes.

22 Q. Even though you pled to this stuff, you told them the
23 truth, correct?

24 A. Yes, I did.

25 Q. And -- and at that time you didn't know who was in that

APRIL GREEN - CROSS-EXAMINATION BY MR. RICHEY

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1 house, you just knew someone was in it, correct?

2 A. Right.

3 Q. And so you cannot testify that Mr. Cummings was in that
4 house based on your knowledge that day, correct?

5 A. No.

6 Q. Thank you, ma'am.

7 **THE COURT:** Any redirect?

8 **MR. McMASTER:** Your Honor, we'd ask -- no, Your Honor.
9 We'd ask this witness be excused.

10 **THE COURT:** All right. You're free to leave.

11 Madam Forelady, ladies and gentlemen of the jury, we're
12 going to take about a five minute recess. I'm going to ask
13 that you retire to the jury room and refresh yourselves, but
14 do not discuss the case. Madam Forelady, I'm going to ask
15 that you enforce that rule. Everyone remain seated as the
16 jury exits the courtroom.

17 (Whereupon the jury exited the courtroom at 3:55 pm)

18 **THE COURT:** Anything from the State before we recess
19 for a moment?

20 **MR. McMASTER:** Nothing from the State, Your Honor.

21 **THE COURT:** Anything from Defense?

22 **MR. RICHEY:** Nothing, Your Honor.

23 **THE COURT:** We'll stand at ease for about five minutes.

24 (Whereupon court was in recess at 3:55 pm)

25 (Whereupon court reconvened at 4:06 pm)

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 **THE COURT:** Anything from the State before we bring the
2 jury out?

3 **MR. McMASTER:** No, Your Honor. Just from a scheduling
4 perspective, I'd like to get through my next three
5 witnesses, if we could, before we call it a night.

6 THE COURT: Let's see how it works.

7 MR. McMASTER: All right.

8 THE COURT: Anything from Defense?

9 MR. RICHEY: No, sir.

10 **THE COURT:** All right. Very good. We're ready for the
11 jury. We're probably going to knock off right at five.

12 **MR. McMASTER:** All right.

13 (Whereupon the jury entered the courtroom at 4:07 pm)

14 **THE COURT:** The State's recognized.

15 **MR. McMASTER:** Thank you, Your Honor. The State would
16 call at this time Deputy Robinson.

17 **THE COURT:** Deputy Robinson, please come forward and
18 place your left hand on the Bible and raise your right hand
19 as the clerk administers the oath.

20 **Harold Robinson**, being
21 duly sworn testified as follows;

22 **MADAM CLERK:** Thank you.

23 **THE COURT:** Pull up real close to that microphone and
24 have a seat. I ask that you speak loudly, clearly and
25 slowly in order that we can hear everything that you have to

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 say. And let's start with your full name. Do y'all need
2 this screen?

3 **MR. McMASTER:** We're going to need it ---

4 **THE COURT:** Okay. That was my question answered. Very
5 good. Thank you.

6 **DEPUTY ROBINSON:** My name is Harold Anthony Robinson.
7 I'm with the Greenville County Sheriff's Office in the
8 Investigative CID Unit.

9 **Direct Examination by Mr. McMaster:**

10 Q. And you've worked for the sheriff's office back in
11 2016?

12 A. Yes, sir.

13 Q. March of 2016?

14 A. That's correct.

15 Q. And in what capacity and duties did you have back in
16 March 6th of 2016?

17 A. I was assigned to uniform patrol, Echo Unit.

18 Q. And I'm going to take you back to the early morning
19 hours of March 6th, 2016. Can you tell the jury about the
20 call you received?

21 A. Actually the call -- I did not receive the call. I was
22 actually heading back to the LEC, the law enforcement
23 center. And when the call came out, due to my close
24 proximity, I decided that it would be best interest being
25 one road over to go to that call.

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. And can you tell us where you were located when you
2 received the call?

3 A. If the Zaxby's wasn't in the way, I could see the
4 house. That's how close I was.

5 Q. All right. So you were very close to Burgess Avenue?

6 A. That's correct. I was on Poinsett Highway just in
7 Cherrydale.

8 Q. And is that in Greenville County?

9 A. That's correct.

10 Q. So you were going to 34 Burgess Avenue, which is in
11 Greenville County?

12 A. That's correct.

13 Q. How long do you think it took you to get from where you
14 recognized the call on the radio to Burgess Avenue?

15 A. Eighteen seconds, 20 seconds.

16 Q. And how -- tell the jury how you approached that house
17 based -- well, let me back up. What was the nature of the
18 call you received?

19 A. It was a disturbance call. And I believe it came out
20 as someone maybe trying to get in through the door. And I
21 think there was another call that said that the neighbors
22 possibly were being robbed just before I pulled up.

23 Q. And now tell the jury, based on receiving that type of
24 information, how did you approach 34 Burgess?

25 A. Due to the close proximity of it, I figured it could be

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 actually in progress. I turned my -- all my lights off and
2 I used a -- pretty much a pin light to use going down the
3 road so I could see where I was going to find the address.

4 Q. And did you find the address?

5 A. I did.

6 Q. And how did you -- you said you didn't want to alert
7 anybody, so you turned your lights off.

8 A. That's correct.

9 Q. Tell the jury how you stopped your vehicle in order to
10 not alert anyone.

11 A. I downshifted my car into first so it would -- the
12 compression of the engine would slow the car down to a stop.
13 Then I rammed it into park so my brake lights wouldn't
14 activate.

15 Q. And did you do this to try to keep your --- your
16 presence ---

17 A. That's correct.

18 Q. You didn't want your presence known?

19 A. That's correct.

20 Q. And once you arrived at 34 Burgess what did you -- tell
21 the jury what you saw, what you did.

22 A. When I pulled up I realized it was a -- I thought it
23 was a smaller home at first, but it was actually a duplex
24 with dual split with one staircase the one side and another
25 staircase to the other side. It's pretty much a identical

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 twin, you know, but it was a duplex.

2 And as soon as I -- as soon as I pulled up and started
3 exiting my car and walking up to the left side of the home,
4 which in one of two side of the house, Deputy Sandefur
5 pulled up and actually pulled up and got up behind me out of
6 his vehicle.

7 Q. All right. Let me see if we can look at something so
8 you can describe this to the jury. Hold on one second.

9 **MR. McMASTER:** Court's indulgence, Your Honor, so I can
10 ...

11 (Pause)

12 Q. All right. When you got to the home -- is this -- do
13 you recognize this area on State's exhibit 2?

14 A. I do. That's 34 Burgess.

15 Q. And is that the front area there that has the door open
16 at this time?

17 A. That's correct. 34 Burgess is on the left hand side
18 with the door open.

19 Q. Now was the door open when you got there?

20 A. It was not.

21 Q. It was -- it was a closed door?

22 A. It was closed.

23 Q. And based on it being closed where did you -- what did
24 you do next? Where did you turn your attention to at that
25 point?

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 A. There's a door on the side of the home on the left hand
2 side. And the light was on, and the door appeared to be
3 opened, which there was no door ---

4 Q. I'm going to show you State's exhibit 3. Just look at
5 that for a second. Is that an accurate depiction?

6 A. That's correct. And it had light coming from the
7 outside as a light inside the kitchen.

8 Q. So you could -- you could see the light coming from
9 that area?

10 A. That's correct.

11 Q. And did any other deputy arrive on the scene while you
12 were there?

13 A. Yes. It was Deputy Sandefur.

14 Q. Okay. And tell us or tell the jury how you approached
15 that home.

16 A. Started out pretty much in the corner of the front left
17 hand corner of the home. And I kind of approached around to
18 the left hand side. Now there's tape up. And I kind of
19 went along the line of that tape.

20 And I positioned myself coming up on the tree. And it
21 gave me an angle where I could see into the -- into the
22 kitchen just before the steps, probably ---

23 Q. And just to be clear, the tape wasn't up there?

24 A. Yeah, the tape was not there.

25 Q. Correct.

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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- 1 A. That's correct.
- 2 Q. So you're down this tree-line here? Is that what ---
- 3 A. Yeah, ---
- 4 Q. Got to get in the middle of it. That tree-line down
- 5 there on your right?
- 6 A. That's correct. Just -- I went to the left of that
- 7 tree-line. And I swung out to approximately this area right
- 8 in here.
- 9 Q. All right. This'll be a little bit better. Okay. So
- 10 you were right in this area when you came around?
- 11 A. That's correct.
- 12 Q. Is that correct?
- 13 A. Um-hum (affirmative).
- 14 Q. And where is Deputy Sandefur at this time?
- 15 A. He's just behind me, probably a couple of feet.
- 16 Q. And do you have communications at this time between
- 17 each other?
- 18 A. Yes.
- 19 Q. And were these hand signals or are you talking?
- 20 A. We're just -- we're talking.
- 21 Q. Okay. How far is he from you, probably?
- 22 A. Five foot.
- 23 Q. And tell the jury what type of maneuver you would --
- 24 you would call this as you approached the door.
- 25 A. It's a law enforcement term, slicing the pie. You may

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 have heard it in movies, slicing the pie. You're basically
2 just cutting the corner so you have an advantage looking in
3 so someone can't see out.

4 Q. And did you -- and did you see someone -- did you see
5 anyone in that doorway?

6 A. I did.

7 Q. And ---

8 A. Correction, just inside the doorway in the kitchen.

9 Q. All right. Could that -- did that person appear to see
10 you at that time?

11 A. He did not.

12 Q. All right. I'm going to show you 4 just to get a
13 little closer up view of this where we are here. So we're
14 right in this -- you're right in this area now?

15 A. Right where the green patch is is ---

16 Q. Right in there?

17 A. --- where right where I'm at because I remember the
18 tree coming up, and I kind of had to do a -- make sure I
19 didn't hit my head.

20 Q. So you're looking kind of -- then you're kind of at an
21 angle looking in at the -- at a suspect inside?

22 A. That's correct.

23 Q. And at that point can you tell us or tell the jury what
24 you did? How did you approach the door?

25 A. We started making loud call-outs and just at the bottom

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 of the steps to a -- let me see your hands, get on the
2 ground, let me see your hands to a black male wearing a red
3 shirt or a jacket and black pants.

4 Q. Okay.

5 **MR. McMASTER:** Would you mark this, please, State's 16.

6 (Whereupon State's exhibit 16 was marked for
7 identification)

8 Q. I'm going to show you what's marked as State's 16. Can
9 you identify that?

10 A. Yes. That would be a good representation of the guy
11 that was inside going through the cabinets with the red
12 shirt and the -- I remember the stripes that was on the
13 shirt.

14 Q. And this individual was in the kitchen area?

15 A. That's correct, going through cabinet drawers.

16 Q. And that's the clothing he had on at the time?

17 A. That's correct.

18 **MR. McMASTER:** Your Honor, I'd ask -- I've shown number
19 16, State's exhibit 16 to Defense counsel. I'd ask at this
20 time that it be entered into evidence.

21 **MR. RICHEY:** No objection.

22 **THE COURT:** It's into evidence.

23 (Whereupon State's exhibit 16 was admitted into
24 evidence)

25 Q. So this is the co-defendant at this time?

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 A. That's correct..

2 Q. Mr. Williams?

3 A. That's correct.

4 Q. All right. And he's in that photo. I think he had a
5 hood on. That's exactly the way he was dressed that night?

6 A. I believe so. I know the shirt and everything is the
7 shirt. I couldn't remember if he had the hood up or down,
8 though.

9 Q. All right. So you see Mr. Williams in the kitchen?

10 A. I do.

11 Q. Does he make any movements or do anything?

12 A. When I challenge him, let me see your hands, he
13 actually complies and puts his hands up and he stands in the
14 kitchen.

15 Q. So you're holding the gun on him in the doorway?

16 A. That's correct.

17 Q. Like this?

18 A. That's correct.

19 Q. And Sandefur is ---

20 A. He's just ---

21 Q. --- right in here?

22 A. --- right behind me. I believe he's to my right ---

23 Q. All right.

24 A. --- because of the tree.

25 Q. All right. So he's close by, too?

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 A. That's right.

2 Q. So you're holding him with a gun, he's got his hands
3 up?

4 A. Um-hum (affirmative).

5 Q. Do you see him do anything?

6 A. Yes. The kitchen's very small. It's probably just the
7 size of this bench, if you can imagine. You have the stove
8 to the right of -- Sabian is his first name, I believe.

9 Q. Simeon?

10 A. Simeon. He stands up, hands up, let me see your hands.
11 He kind of leans back and looks to the right. He mumbles
12 something, hey, let's go, or we got to get out of here, or
13 something along that line.

14 Q. What happens after you hear him say those words?

15 A. A black male, all black runs around behind him through
16 the kitchen, he looks at me, I call out 41 Bravo for
17 emergency assistance, and he has a silver metallic firearm
18 on his hands, slams it on the counter and shoots out the
19 front door.

20 Q. All right. And do you tell Sandefur to do anything at
21 this point?

22 A. Yes. I say -- I tell Sandefur behind me, I was like,
23 hey, he's going out the front door, he just -- he had a gun.

24 Q. And is the gun -- and the gun is pointing at you at the
25 time that you're ---

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 A. Yeah, very briefly. It was a quick -- it was a quick
2 interaction between us. And I went back focusing on the
3 primary that I saw going through the cabinets.

4 Q. And what does the primary do at that time?

5 A. He -- he complies and actually gets on the ground. And
6 I had him at gunpoint for the -- pretty much the duration of
7 -- probably good eight minutes til someone else got there.

8 Q. Do you ever go outside and pursue the subject that went
9 out the front door?

10 A. I do not.

11 Q. And can you hear on your radio who's in pursuit?

12 A. Yes. I know it's Sandefur because I've actually
13 watched him go. And he said he -- I believe he said he was
14 in pursuit on the radio.

15 Q. And were there other deputies in the area when you --
16 when you did that?

17 A. They -- they were. They were coming. We got there
18 really fast. And they were still -- we kind of beat them to
19 the punch there.

20 Q. When we say really fast, I mean, have you been on a lot
21 of these type calls before?

22 A. I have. And I've never -- I have never encountered one
23 where we actually catch the people inside that quickly. I
24 mean, it was -- I don't know the call time exactly, but it
25 was within 30 seconds we were there.

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. I want to show you what's previously into evidence as
2 State's 11. Can you tell me about that photo and what I'm
3 looking at right there?

4 A. I would basically be standing where I walked in and saw
5 one of the primaries in the red standing there with his
6 hands up. And he would be -- the front door would be to the
7 left. So that's facing -- that's in the kitchen facing
8 towards the front door.

9 Q. So when the Defendant came by you, he puts the -- puts
10 the gun down on this counter?

11 A. That's correct. The counter is -- as soon as you walk
12 in the side door, the counter runs along the right pretty
13 much separating the kitchen to the living room. And that's
14 just right in the living room. That's where the counter
15 where the gun was slammed down at.

16 Q. So State's exhibit 9, when you initially get there, Mr.
17 Williams, the guy in the orange that we're talking about,
18 he's right in this area?

19 A. That's correct, right -- right next to the stove.

20 Q. And that's the hall in there?

21 A. That's correct.

22 Q. And so he's standing in this area. And which way does
23 the second -- the Defendant, Mr. Cummings, which way does he
24 come out of this area?

25 A. From left to right.

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. So he's coming out of the hall going this way?

2 A. That's correct.

3 Q. And is this the counter right here that we talked
4 about?

5 A. Yes, that's part of the top of the countertop.

6 Q. And is that where -- and is that where you seen him put
7 the gun down?

8 A. Yeah, slammed it.

9 Q. So it would be with his right hand going out?

10 A. That's correct.

11 Q. And he gets to the front door. Can you see him at the
12 front door at this time?

13 A. I kind of lose sight of him just a tad bit, just maybe
14 two seconds. And I'm actually -- was going to go in to kind
15 of get a better look and see what this guy -- my other
16 primary guy's doing, but very -- just slight glimpse of him
17 going out the front door.

18 Q. Okay. But you described what he had on that night?

19 A. That's correct, all black.

20 Q. And I assume the door -- at the front it took him a
21 minute to get out the door? At the front door?

22 A. Yes.

23 Q. So ---

24 A. 'Cause to my knowledge the reason we didn't go in the
25 front door because it looked like it was shut when we --

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 when we pulled up. So we'd have to open the door up.

2 Q. So if Sandefur's close to you, right over your right
3 hand shoulder, and you're Mr. Williams and got your hands
4 up, he's right over the right hand shoulder here, ---

5 A. Um-hum (affirmative).

6 Q. --- he's going to have to run back around the front of
7 the -- the house?

8 A. That's correct.

9 Q. And around that porch area?

10 A. That's correct.

11 Q. So that's going to be just a few seconds?

12 A. Yes.

13 Q. Would it be about as long it would take for the
14 Defendant to open the front door?

15 A. That's correct.

16 Q. Once Sandefur's in pursuit you said other deputies
17 started to arrive at that point in time?

18 A. That's correct.

19 Q. And did EMS arrive?

20 A. They did eventually.

21 Q. And what were your duties once you had Mr. Williams,
22 the gentleman in orange here in custody, what did you do at
23 that time?

24 A. Once he was -- once he was in custody, he was actually
25 transported to another vehicle. I actually did not put him

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 in handcuffs and put him into a car.

2 Q. Um-hum (affirmative).

3 A. Are you asking during that time-frame?

4 Q. What were your duties after he's in custody? What were
5 your duties at the scene?

6 A. I just kind of assisted, briefed the lieutenants,
7 sergeants or captains that may have pulled up that night.

8 Q. Well, tell the -- tell the jury, I mean, they probably
9 don't know what it's like. What's the scene -- what happens
10 when you've got a murder scene like this? What's going to
11 go on in there?

12 A. Typically in a critical incident, usually you have some
13 supervisor show up, forensics will show up. The scene will
14 be roped off, taped off with crime scene tape. EMS will
15 arrive. They'll try to provide aid. They'll try to take
16 some statements from everyone on the scene.

17 It was not until later on that I realized that April
18 Green was in the back of the house due to the radio traffic
19 and the -- I believe the dispatchers said they have tunnel
20 vision, which that's correct. There was a lot of stuff
21 going on. And we didn't realize that she was in the back
22 during all of this -- during this ---

23 Q. Did you go back toward the bathroom area after Mr.
24 Williams was in custody?

25 A. That's correct. And -- sorry, I should have added

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 that. We went towards the back to try to clear the home.

2 And when we rounded the corner from the kitchen going into

3 the small hallway, there's the bathroom to the left. We

4 tried to open up the door, but the victim was actually

5 laying to a position where we couldn't open the door.

6 At that point I went to my car to try to get some

7 tools. And there were other deputies on-scene, they had

8 took the door off very fast to get the door off because his

9 body was positioned where we couldn't open the door. It was

10 an inward -- it was -- the door opened inward into the

11 bathroom.

12 Q. So the door is taken off and put back in the bedroom at

13 that point?

14 A. That's correct.

15 Q. And he is in the -- in the bathroom area?

16 A. That's correct.

17 Q. Which way are his feet -- kind of describe to the jury

18 ---

19 A. I believe -- I believe the feet, from what I can

20 remember, you walk into the bathroom, you have the toilet

21 and the bathtub. And his feet was up next to the bathtub.

22 And his head was more positioned up against the door to the

23 bathroom.

24 Q. And did he -- he ever respond to you?

25 A. He was not responsive at all.

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. And did you have some first aid in your car or attempt
2 to get first aid?

3 A. Yes. I attempted to get first aid to get some -- I
4 thought I had some quick clot to -- for bullet wounds, but I
5 did not.

6 Q. And did you find -- did you see when you were in there
7 -- you said you saw the pistol. Was it on the counter when
8 you left -- when you were at the scene?

9 A. That's correct.

10 Q. The scene was secure ---

11 A. That's correct. The pistol was still on the counter.

12 Q. And how about the shell casings? Can you tell us about
13 the shell casings?

14 A. There was a shell casing that was on the stove on the
15 very back right hand corner of the stove behind the -- it
16 has four eyes on top of the stove. On the back right hand
17 corner of the stove there was a -- I believe it was a .45
18 caliber shell casing.

19 Q. And did that -- did that shell casing stay on the stove
20 or did it get moved around?

21 A. From my knowledge, I believe when other deputies were
22 trying to provide aid and get him out, I think it got
23 knocked off, actually.

24 Q. And did they -- did it get knocked off in the floor?

25 A. That's correct. Got knocked off on the floor in the

HAROLD ROBINSON - DIRECT EXAMINATION BY MR. McMASTER

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1 immediate area where they were actually trying to provide
2 aid just because it was a bigger area to -- to do that.

3 Q. And you're talking about a small hallway here?

4 A. Yeah. Small -- this room is bigger than the house
5 altogether. I mean, it's a very small house.

6 Q. And you're pulling -- and deputies are pulling the
7 victim down that small hallway?

8 A. That's correct.

9 Q. And is that where EMS, in the kitchen there, EMS
10 arrives and is that where aid is given?

11 A. Yes.

12 Q. Did you have any other interactions with Mr. Cummings
13 or Mr. Williams that night?

14 A. I did not.

15 Q. Now, you're in CID today?

16 A. That's correct.

17 Q. Back then you were in uniform patrol?

18 A. That's correct.

19 Q. And we hear about body cameras, ---

20 A. Um-hum (affirmative).

21 Q. --- things like that?

22 A. That's correct.

23 Q. Back in March of '16 were there any body cameras?

24 A. There were a couple in testing, but other than that,
25 no, they weren't mass issued to anyone.

HAROLD ROBINSON - CROSS-EXAMINATION BY MR. RICHEY

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1 Q. And that was regular -- that's regular equipment now?

2 A. Yes.

3 Q. But back in March of '16 they did not have that?

4 A. For uniform patrol in that division, yes, it's regular
5 issued equipment.

6 Q. But not back then?

7 A. No, it was not.

8 Q. Okay.

9 (Whereupon State's exhibit 17 was marked for
10 identification)

11 Q. I'm going to show you State's 17. Can you identify
12 that photograph?

13 A. Yes. That was a photograph taken the night of the
14 incident on March 6th. And that would be very similar to
15 the subject that ran past the initial subject inside the
16 kitchen.

17 Q. And is that the type clothing that he had on?

18 A. Black male with all black.

19 Q. If you'll answer any questions Mr. Richey has.

20 **THE COURT:** Mr. Richey.

21 **MR. RICHEY:** Thank you, Your Honor.

22 **Cross-Examination by Mr. Richey:**

23 Q. If Mr. Williams -- if I said he was not in that house
24 that night, that wouldn't be true, would it?

25 A. (No response).

HAROLD ROBINSON - CROSS-EXAMINATION BY MR. RICHEY

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1 Q. That would not be true, would it?

2 A. I guess if ---

3 Q. If I -- let me ask -- if I said to you Mr. Williams was
4 not in that house that night, that would not be a true
5 statement, correct?

6 A. If he was not in the house?

7 Q. Yes. If I told you he wasn't in that house that night,
8 that would not be true, right?

9 A. I mean, I don't know who he was at the time. So ...

10 Q. Well, knowing what you know now, would that be a true
11 statement? Knowing what you know right now about him, would
12 that be a true statement?

13 A. Due to everything that happened, I would say that he
14 was in the house.

15 Q. Right. So that wouldn't be true, correct?

16 A. I guess. Yes, that's correct.

17 Q. Okay. Okay. Was there a dog there at that house that
18 you were aware of?

19 A. Not that I know unless it got crushed by the door
20 kicked in. I have no idea.

21 Q. So you don't know whether a dog was shot or anything
22 like that?

23 A. I have no idea.

24 Q. Okay. But you don't recall any, right?

25 A. I don't recall a dog at all.

HAROLD ROBINSON - CROSS-EXAMINATION BY MR. RICHEY

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1 Q. And -- and this picture, you said -- you said it was
2 similar to the guy, correct? Is that what you just answered
3 when he had that picture?

4 A. What picture?

5 Q. When he showed you the photo of the gentleman by the
6 car, you said that was similar to the guy that night,
7 correct?

8 A. State exhibit 17, is that correct?

9 Q. Yeah.

10 MR. McMASTER: That's not in evidence yet.

11 MR. RICHEY: Oh, okay.

12 MR. McMASTER: I had him identify it.

13 MR. RICHEY: Okay.

14 Q. But this photo right here, you said it was similar to
15 that guy, right?

16 A. That's correct, black male all black.

17 Q. Okay. And -- and let me -- in terms of investigations,
18 you -- you know how to investigate a case, right?

19 A. I'd like to think so.

20 Q. Yeah, right. That night -- that gun -- you said that
21 the guy had the gun in his hand and he placed it down,
22 correct?

23 A. At the time I was not in investigations, but, yes, he
24 actually with his right hand, he slammed it on the counter.

25 Q. Oh, okay.

HAROLD ROBINSON - CROSS-EXAMINATION BY MR. RICHEY

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- 1 A. Not placed, but slammed.
- 2 Q. Okay. Slammed on the counter.
- 3 A. That's correct.
- 4 Q. Okay. You know that -- that apprehending that subject
- 5 quickly, quickly is important, correct?
- 6 A. I agree with you ---
- 7 Q. For a number of reasons?
- 8 A. I'll agree with you on that, yes.
- 9 Q. And -- and one of the reasons by getting them quickly
- 10 is if he had that gun in his hand and he fired it, that
- 11 would be important for a test you have, correct?
- 12 A. I believe so.
- 13 Q. And so if he fires it and he leaves, I'm assuming
- 14 within a minute -- y'all got him within five minutes, y'all
- 15 had the person that ran out of the house, correct?
- 16 A. That's correct.
- 17 Q. And so it is critical to know whether that person --
- 18 getting that person because that test can be done to
- 19 determine whether he fired that gun, correct?
- 20 A. I'm not a forensics expert, so I don't -- I don't know
- 21 how long it would take to do a gunshot residue. Is that
- 22 what you're asking?
- 23 Q. Yeah. But you're familiar with the test, right?
- 24 A. I am familiar with the test.
- 25 Q. And you are familiar that it is very important that you

HAROLD ROBINSON - CROSS-EXAMINATION BY MR. RICHEY

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1 get that guy quickly, right?

2 A. I have never administered that test before. So I would
3 agree with that, that's correct.

4 Q. Right. And you don't want the guy to get anywhere to
5 wash his hands, correct?

6 A. That's correct.

7 Q. Okay. All right. And you were there pretty quickly,
8 right? This was a quick thing for you, right?

9 A. Like I said, I can't tell you the exact second, but,
10 yes, it was within 30 seconds.

11 Q. Yeah, this is a anomaly, y'all get there and it
12 happens, correct?

13 A. Yes, that's correct.

14 Q. Okay. And you were able to see in the house, correct?

15 A. I am.

16 Q. And you never saw Mr. Cummings fire or shoot that
17 gentleman, did you?

18 A. No, but I did see him run from the bathroom where he
19 was located.

20 Q. Okay. But you ---

21 A. Correction, the area.

22 Q. Okay. My question is did you see him fire the gun and
23 shoot the guy?

24 A. I did not.

25 Q. Okay. Hold on.

HAROLD ROBINSON - REDIRECT EXAMINATION BY MR. McMASTER

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1 (Pause)

2 Q. And -- and at the time -- at the time that this
3 gentleman ran out of the front -- the front door, you kind
4 of lost sight of him, correct?

5 A. Yes, I did.

6 Q. Okay. You didn't follow to the point where he was
7 caught, correct?

8 A. No, that ---

9 Q. Okay. Thank you. Answer any questions Mr. McMaster
10 has for you.

11 **MR. McMASTER:** Just ---

12 **THE COURT:** Mr. McMaster.

13 **MR. McMASTER:** --- redirect.

14 **Redirect Examination by Mr. McMaster:**

15 Q. It's the same individual, though, Mr. Cummings, that
16 you saw run down the hall and placed the gun on the counter,
17 though, is that right?

18 A. That is correct.

19 Q. And that area where he was coming from is where the
20 bathroom's located?

21 A. Correct.

22 Q. Thank you.

23 **THE COURT:** All right. You may call your -- you may
24 step down. You're free to leave if you'd like to do so.
25 And you may call your next witness.

KENNETH SANDEFUR - DIRECT EXAMINATION BY MR. McMASTER

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1 **MR. McMASTER:** Deputy Sandefur.

2 **THE COURT:** Yes, sir. Please come forward. I'm going
3 to ask you, if you could, to place your left hand on the
4 Bible and raise your right hand as the clerk administers the
5 oath.

6 Kenneth Sandefur, being
7 duly sworn testified as follows;

8 **MADAM CLERK:** Thank you.

9 **THE COURT:** Have a seat in the witness chair. Pull up
10 real close to that microphone. Speak loudly, clearly and
11 slowly in order that we can hear everything that you have to
12 say. And let's start with your full name, Officer Sandefur.

13 **DEPUTY SANDEFUR:** My name is Deputy Kenneth Charles
14 Sandefur.

15 Direct Examination by Mr. McMaster:

16 Q. And, Deputy Sandefur, who are you working for?

17 A. I work for the Greenville County Sheriff's Office.

18 Q. And back in 2016, March 6th of 2016, who were you
19 working for then?

20 A. The Greenville County Sheriff's Office.

21 Q. And in what capacity were you in at that time?

22 A. I was a uniform patrol deputy with Bravo Platoon.

23 Q. And what were your duties in ---

24 A. General patrol, answer calls for service, anything that
25 came out through dispatch.

KENNETH SANDEFUR - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. All right. I'm going to take you back to the early
2 morning hours of March 6th, 2016. Did you receive a call?

3 A. I did.

4 Q. And what was the nature of that call?

5 A. It was a possible burglary in progress at 34 Burgess
6 Avenue in Greenville County, South Carolina.

7 Q. And did you respond?

8 A. I did.

9 Q. And when you got there was another deputy on the scene?

10 A. Yes.

11 Q. And who was that?

12 A. Deputy Robinson.

13 Q. And did you come in the same way Robinson did or how
14 did you get there?

15 A. I don't remember exactly which direction. I think I
16 came from his opposite direction and passed him and turned
17 around. So I actually passed the house, turned around and
18 came right to him.

19 Q. Would that have been around Perry -- around Perry
20 Avenue area ---

21 A. Yes.

22 Q. --- that you would have come in?

23 A. Yes.

24 Q. And how long do you think it took you to get to the
25 scene from the time you received the call?

KENNETH SANDEFUR - DIRECT EXAMINATION BY MR. McMASTER

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1 A. When he walked out his driver's door, I pulled up.

2 Q. That fast?

3 A. So within -- I would say within the same amount of

4 time-frame, 30 seconds.

5 Q. And I think y'all were different platoons in ---

6 A. Yes.

7 Q. But y'all worked together and trained together, ---

8 A. Yes.

9 Q. --- is that correct? And do you recall how you
10 approached the home at that time?

11 A. I -- I followed Deputy Robinson in. I was just behind
12 him. We both noticed that the front door was closed, so we
13 went -- we started to try to circle the house just to see
14 doors, windows, anything broken.

15 Q. And he mentioned the two-side of the house. Can you
16 tell the jury kind of which side that is? The one, two-
17 side?

18 A. If you're on the road facing the house, if the mailbox
19 is on the road and you're standing at it, if you look at the
20 front door, that's the one. If you look at the left side,
21 it's the two. The back is the three, and the right side is
22 the four.

23 Q. So you use these types of codes to talk to each other
24 when ---

25 A. Yes.

KENNETH SANDEFUR - DIRECT EXAMINATION BY MR. McMASTER 109

1 Q. --- you arrive ---

2 A. Instead of saying left, right, just the one, two, and
3 the two, three, three, four.

4 Q. And did you proceed to the two-side of the house?

5 A. I did.

6 Q. And what did you encounter when you got to the two-side
7 of the house? What did you see? Tell the jury what you
8 saw.

9 A. As I was coming to the -- coming around to the left
10 side of the house, five or ten feet away from Deputy
11 Robinson, I saw that the -- there was some light coming out
12 of the side door. And I didn't get to the point where I
13 could see in, but I saw Deputy Robinson draw his gun and
14 start giving commands to someone.

15 So I pulled out my gun and came to him, a little bit
16 closer to him. And then he told me, somebody's running.
17 And he said, somebody's running, they have a gun.

18 Q. And were you able to see -- hold on one second. So you
19 didn't know -- you didn't know who was holding the gun at
20 that time?

21 A. I did not.

22 Q. And is Deputy Robinson -- does he move to the front of
23 that doorway?

24 A. He -- He's still trying to maintain some cover, but
25 he's at a point where his gun is pointed at an individual.

KENNETH SANDEFUR - DIRECT EXAMINATION BY MR. McMASTER

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1 But he's still trying to stay away from being shot.

2 Q. And what's the person, that individual doing in the
3 kitchen in there?

4 A. The first person, the Mr. -- co-defendant, Mr.
5 Williams, in the red shirt with the white stripes, he stops.

6 Q. Okay.

7 A. That's the only one I saw. And then I was told that
8 ---

9 **MR. RICHEY:** Object to the hearsay.

10 **THE COURT:** Sustained.

11 Q. And what did you do after you had -- you were notified
12 from Deputy Robinson, what did you do at that point in time?

13 A. He told me the guy was running toward the front. So
14 I'm around the side of this front porch, the front door, and
15 I start running to it. And the suspect comes right out of
16 the -- the Defendant comes right out of the front door, and
17 I start giving commands for him to get on the ground as I
18 have my gun pointed at him.

19 Q. So he's -- is he coming down the front steps of the
20 house?

21 A. Yes.

22 Q. And were you able to identify the type clothing he had
23 on?

24 A. Yes, I was.

25 Q. And what type of clothing was that?

KENNETH SANDEFUR - DIRECT EXAMINATION BY MR. McMASTER

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1 A. It's all black, exactly in that picture.

2 Q. All right. I'm going to ---

3 A. Exactly as that picture describes.

4 Q. Can you identify ...

5 A. That is the Defendant, Tristian Cummings.

6 Q. Well, okay. Go ahead and point him out then.

7 (Whereupon the witness points to the Defendant)

8 A. It's the gentleman in the all white suit.

9 Q. Is that the gentleman you saw come out of the front
10 door?

11 A. It is.

12 Q. And is that the gentleman that was eventually taken
13 into custody?

14 A. It is.

15 Q. All right. Let's -- we got a little bit ahead of
16 ourselves, but we're going to ---

17 **MR. McMASTER:** Your Honor, at this time I've shown
18 State's exhibit 17 to Mr. Richey. I'd ask it be entered
19 into evidence at this time.

20 **MR. RICHEY:** No objection.

21 **THE COURT:** It's into evidence.

22 (Whereupon State's exhibit 17 was admitted into
23 evidence)

24 Q. All right. I want to look at -- got a glare on there.
25 It's got too much of a glare. I can show it to the jury,

KENNETH SANDEFUR - DIRECT EXAMINATION BY MR. McMASTER

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1 though. Now, as far as this clothing he's got on here, can
2 you tell me when this picture was taken?

3 A. This picture was taken immediately once he was put in
4 handcuffs off of Perry Avenue. And he was -- he was picked
5 up right off the ground, and a car pulled up, and he was
6 walked straight to the car, maybe 15, 20 feet away from
7 where we got him in handcuffs.

8 Q. And that's the clothing he had on when he came out of
9 the front door?

10 A. Yes, sir.

11 Q. Did you ever see him with a weapon?

12 A. I did not.

13 Q. You did not? All right. Grab a seat. Let's talk
14 about when we leave the front door. Let's talk about the
15 front door area. Tell the jury kind of what goes on, how do
16 you pursue someone like this. Explain it to them so that
17 they can understand.

18 A. As he's coming out of the front door, I still had my
19 gun pointed. I start giving him commands to get on the
20 ground, to stop, and he does not. And since he starts
21 running, I'm not going to continue running while -- with my
22 gun pointed out at him. That way I don't trip and
23 accidentally shoot. So I put my gun back in my holster.

24 Then I gave chase around -- if you're looking at the
25 front of the house, we went around to the right, the number

KENNETH SANDEFUR - DIRECT EXAMINATION BY MR. McMASTER

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1 three -- the number four-side, excuse me. And we continued
2 into a very, very thick briar patch. At one point we both
3 trip. And the Defendant, Mr. Cummings, lands on the ground,
4 and he lands on his back. And I'm yelling at him, I'm
5 standing directly over the top of him yelling at him to --
6 to get on his back so I can get him in handcuffs. And he
7 continuously refuses.

8 Q. All right. Slow down one second. Can you identify --
9 can you identify -- you might have to kind of lean up, 34
10 Burgess is here.

11 A. This is ---

12 Q. Will you come down again, please. I think it might be
13 easier for the jury. All right. There's 34 Burgess here.
14 And we're talking about the front door is here.

15 A. Yes.

16 Q. And you're over here on this side.

17 A. Yes.

18 Q. Now, which way does the Defendant go -- show the --
19 show the jury.

20 A. Once Deputy Robinson tells me that the Defendant is
21 running, he comes out the front door right here. I'm
22 standing here. I have to go around this front porch that
23 you saw in the picture. And I tell him to get down on the
24 ground, he doesn't.

25 I start giving chase directly around here past this

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1 white car. And we go straight into this here, which is the
2 thick wood-line of briars. And that's where I first -- we
3 first fall, and I try and get him in cuffs the first time.

4 Q. And just to be clear, this is an aerial photo?

5 A. Yes.

6 Q. You're not necessarily saying that white car was there
7 that night?

8 A. I have no ---

9 Q. You're just saying that's the direction?

10 A. Yes.

11 Q. Okay.

12 A. Yes, past this ---

13 Q. So into this head of trees here, is this ---

14 A. Yes.

15 Q. --- where you're talking about?

16 A. Toward Perry Avenue, which is right here.

17 Q. All right. And so there's a head of trees in there?

18 A. Yes.

19 Q. And you said that's where the briars and vines are?

20 A. Like Vietnam thick. It was ---

21 Q. All right.

22 A. --- ridiculous.

23 Q. So you -- are you able to keep up with him in there?

24 A. We -- once we get into them, we both trip up. He falls
25 on his back. And then I'm directly over him yelling at him

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1 to get on his back so I can get him in handcuffs. He

2 doesn't do it, so I pull out my ASP baton.

3 I'm not in a -- I'm not in a position where I can get
4 down on top of him because I'm still wrapped up -- my legs
5 are wrapped up in vines, and I'm getting cut up. I got cut
6 up all over my whole body from these ---

7 Q. Was anybody else there at this point? I mean, ---

8 A. Not yet.

9 Q. --- is this just -- just the two of you?

10 A. Not yet. It's just the two of us. And he won't comply
11 with anything I'm saying. So I got out my ASP baton, and I
12 started hitting him on his -- on the thick portions of his
13 leg. I believe it was this right leg. Still will not
14 comply.

15 Starts yelling that I can't breathe, and I have asthma
16 or something like that. I get on my radio, and I start
17 telling everybody that I'm in the woods behind the house.
18 And nobody can see me. It's -- it's after one in the
19 morning, it's dark.

20 So I got out my flashlight. And it has a strobe
21 function where if I push it one time, it just -- it strobes.
22 And I tell everybody on the radio, look for my flashlight.
23 And everybody starts coming to me.

24 And I have multiple units. I have a K-9 handler coming
25 with a dog, two or three other deputies, everybody's running

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1 toward us at that point. And as soon as they start getting
2 close, I can see them, and I can hear them starting to run.

3 And the Defendant hops up and takes off into the briars
4 again. So I give chase once again. It's so thick and we
5 can't see. I had to -- I had to cover my face and shut my
6 eyes just to barrel through the briars.

7 And it comes up to -- I believe this is the fence. I
8 believe there's a fence-line. It's probably a four foot
9 tall fence that's just chain-link. And we get past the
10 tree-line and it's probably, maybe ten feet of grass to an
11 opening, then the tree -- the fence-line, and the Defendant
12 hops over the fence.

13 By that time everybody's already ran past me because
14 I'm still getting tripped up in these briars. I got people
15 running past me. And I believe it's Deputy Robinson -- once
16 the Defendant hopped the fence and came out in the front of
17 ---

18 Q. Would it be Robinson?

19 A. Deputy Rodriguez, excuse me. Deputy Rodriguez passed
20 me, hopped the fence. And I believe he got the Defendant in
21 cuffs right here in front of this house. This is one
22 property right here, the house with a shed. Same as this is
23 a house, this is the back of its property.

24 Q. So you have him -- you have him down on the ground, but
25 he's not complying on his stomach?

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1 A. Right. I'm not ---

2 Q. He's on his back.

3 **MR. RICHEY:** I'm going to object. This is leading.

4 **THE COURT:** Sustained. Ask direct questions.

5 Q. Well, tell the jury how you -- why you had to -- you
6 said you had to use the ASP baton. How were you going to
7 put him in cuffs? Tell them what you would normally do.

8 A. I was going to -- I was using my ASP baton to inflict
9 pain to get pain compliance.

10 Q. Okay. What were you trying to accomplish ---

11 A. I was trying to get him to go over on his back.

12 Q. And ---

13 A. Once he got onto his back, I could get my knee into his
14 back and I could put his handcuffs -- or his hands behind
15 him. I can get him in cuffs, and then it's all done. But
16 he refused.

17 He was on his back, looking face-up at me with his
18 hands out. If I go down to him, he could take my gun, and
19 he could do whatever he wanted to. So we don't do that.

20 Q. You do not get on the ground?

21 A. That's why we cuff people on their -- on their stomach.
22 That way we can go into the back.

23 Q. Now were you able to see who went over this four foot
24 fence you're talking about?

25 A. Yes.

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1 Q. Who went over the four foot ---

2 A. It was the Defendant, Tristian Cummings.

3 Q. And were you able to see a deputy go over that fence?

4 A. Yes.

5 Q. Who went over the fence?

6 A. Deputy Rodriguez was the first one to go over.

7 Q. And where are you at this point? Are you able to get
8 over the fence?

9 A. I'm still -- I'm still working my way there. I kept
10 getting tripped up by the vines. And we had pretty much
11 made a path that the other deputies could go through by
12 then. So I'm still trying to get over the fence, exhausted.
13 And Deputy Rodriguez gets over the fence first.

14 Q. All right. You can grab a seat back there. Do you --
15 you said Deputy Rodriguez took him into custody, I think is
16 what you said?

17 A. Yes.

18 Q. And what happens after he's taken into custody?

19 A. As soon as he was put into handcuffs, I get over to him
20 coming around the back side of the house, and I almost
21 passed out. I thought I had a concussion from something.
22 So I sat down on the ground and had like a really bad
23 headache. And EMS came and eventually took me to the
24 hospital.

25 Q. So you ended up at the hospital that night as well?

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1 A. Yes.

2 Q. And while you're waiting to go to the hospital, is that
3 when the photograph that's in evidence, I think, with no
4 objection, number 17, I think it was, is that when that
5 photograph was taken?

6 A. Yes.

7 Q. And so that's after -- and is he -- is that the same
8 person that you saw -- that photograph, is that the same
9 person you saw come out of that front door?

10 A. That's the same person I chased the entire time, fell
11 through the vines with, hopped the fence, the exact same
12 person.

13 Q. How long a period of time was this?

14 A. This is a matter of a minute and a half, two minutes
15 max. And the distance that we -- that we ran couldn't have
16 been 200 yards, if that.

17 Q. And is this the same person you saw Deputy Rodriguez
18 take into custody?

19 A. It is.

20 Q. And the same person you saw put into that patrol car?

21 A. It is.

22 Q. As far as body cameras are concerned, today -- tell the
23 jury what you do today with the sheriff's office.

24 A. Today I'm a deputy with the K-9 Services Unit.

25 Q. And ---

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1 A. I have a dog.

2 Q. --- does everyone have a body-cam today, pretty much?

3 A. Almost the entire sheriff's office has body cameras.

4 Q. Back in 2016 were there body cameras?

5 A. I was the only one -- I might have been maybe one of

6 three out of the sheriff's office that had a body camera.

7 Q. Was it a demonstrator type body ---

8 A. It was. Just one that they were testing to see if they

9 wanted to use it or not.

10 Q. And describe to the jury what yours today looks like

11 versus what that one looked like then.

12 A. The ones we have today is pretty much a thick rectangle

13 camera that just mounts to wherever we want it on our -- on

14 our vest or on our clothes. Just wherever we can put a

15 magnet and attach it to.

16 The one I had then had that kind of device, but it also

17 had a chord with a camera that mounted on your shoulder.

18 And it just kind of clipped -- it clipped to this here. So

19 if you ran or moved too fast or if any -- you got in any

20 kind of fight, it just fell off. And that's what ended up

21 happening with this -- in this case.

22 Q. Did you ever have a body camera activation in this --

23 in this matter?

24 A. I did not. We got there so quickly, I never even -- I

25 never even had a chance to turn it on. When we walked up to

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1 the house, and then a matter of seconds later I was in
2 chase.

3 Q. But -- and you indicated that it was the kind -- well,
4 you don't use them anymore, ---

5 A. Right.

6 Q. --- but this kind clipped on your shoulder?

7 A. Yes. It went from a module that's mounted, had a
8 chord, and just attached to wherever you could hook it. And
9 it fell -- it fell off and was dangling behind me the entire
10 chase.

11 Q. And as far as -- being in uniform patrol I assume
12 you've been on numerous home invasion, burglary, first, type
13 cases, is that correct?

14 A. Yes, sir.

15 Q. Have you ever been to one where you got there this
16 fast?

17 A. No. This is probably the one and only.

18 Q. Answer any questions Mr. Richey has, please.

19 A. Yes, sir.

20 Q. Thank you.

21 **THE COURT:** Cross-Examination.

22 **Cross-Examination by Mr. Richey:**

23 Q. Sir, this -- you got there pretty quick, correct?

24 A. Yes, sir.

25 Q. And the person -- you saw the person coming out the

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1 front door, correct?

2 A. I did. Yes, sir.

3 Q. And so you don't know to what degree that person was in
4 that home, correct?

5 A. I do not.

6 Q. You just know you saw somebody come out the door,
7 right?

8 A. Yes, sir.

9 Q. Okay. And -- and that person that you saw come out the
10 door, you had a continuous eye on that person, correct?

11 A. Yes, sir.

12 Q. And -- and you were in the courtroom with the other
13 officer, you understand about the preservation of evidence,
14 correct?

15 A. Yes, sir.

16 Q. And you understand how critical it is in a firearm case
17 is to get the person who fired that gun quickly, correct?

18 A. Sure.

19 Q. Because that gunpowder residue is -- is some important
20 evidence, isn't it?

21 A. Yes, it is.

22 Q. Okay. And -- and it's consistent -- wouldn't it be
23 consistent or would it be logical if someone fired that gun
24 that -- the test is on the hand, correct?

25 A. Yes.

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1 Q. Okay. And that hand test is pretty critical --

2 critical because that gun is held like this, right?

3 A. Yes, sir.

4 Q. And by your training and experience you believe that

5 that is the best source to tell who shot a firearm, other

6 than an eyewitness, correct?

7 A. I am not forensics. I don't -- I can't say that GSR

8 testing is going to make a case or not.

9 Q. But it's pretty important, right?

10 A. Yes.

11 Q. And it's something that you would preserve, correct?

12 A. Yes, sir.

13 Q. And if you come in a firearm case, that's the kind of

14 evidence you want, right?

15 A. Yes, sir.

16 Q. And preferably you want it on the hand, correct?

17 A. Yes, sir.

18 Q. Okay. Thank you.

19 **Redirect Examination by Mr. McMaster:**

20 Q. You fired a gun earlier in the day -- in the night

21 barehanded, could you have GSR on your hands from that?

22 A. Yes, sir.

23 Q. Say you could have that?

24 A. Absolutely.

25 Q. So you could cover it up with a glove, but it could

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1 still have GSR from an earlier shot, is that correct?

2 A. Yes, sir.

3 **MR. McMASTER:** That's all I have.

4 **THE COURT:** You may step down.

5 A. Yes, sir.

6 **THE COURT:** All right. We -- Madam Forelady, ladies

7 and gentlemen of the jury, we're going to recess for the

8 evening. I'm going to ask that you be back at 9:30, 9:30

9 sharp in the morning.

10 Once again, do not discuss the case amongst yourselves

11 or with anyone else. Do not pay any attention to any news

12 coverage that might or might not take place and no social

13 media. Thank you. We'll see you at 9:30, 9:30 sharp in the

14 morning. Thank you very much.

15 (Whereupon the jury exited the courtroom at 4:53 pm)

16 **THE COURT:** Anything from the State before we recess

17 for the evening?

18 **MR. McMASTER:** No, Your Honor.

19 **THE COURT:** Anything from Defense?

20 **MR. RICHEY:** No, Your Honor.

21 **THE COURT:** All right. We'll stand at ease til 9:30,

22 9:30 sharp. I'll be here a little bit early if there are

23 any concerns, but we're going to start right at 9:30. Have

24 everybody ready.

25 **MR. McMASTER:** We'll be ready. Thank you, Your Honor.

1 **MR. RICHEY:** Thank you, Your Honor.

2 (Whereupon court was in recess at 4:53 pm)

1 Tuesday, April 9, 2019:

2 (Whereupon court reconvened at 9:16 am)

3 **THE COURT:** Please be seated. Good morning, everybody.

4 **MR. McMASTER:** Good morning.

5 **THE COURT:** Anything from the State before we proceed?

6 **MR. McMASTER:** Your Honor, the State has been informed
7 that Mr. Cummings has refused transport to be here today.
8 We are having someone from the jail to go ask him again.
9 And then that person could come and testify with direct
10 knowledge that Mr. Cummings has refused transport and does
11 not -- no longer wants to participate in the trial.

12 **THE COURT:** All right. Very good. I'll be glad to
13 hear from Defense.

14 **MR. RICHEY:** Your Honor, that's my understanding about
15 what's going on at the time. I would say that the solicitor
16 -- someone's going to ask him whether he wants to come or
17 not. It's my understanding the Court would proceed -- can
18 we approach for one second, Your Honor?

19 **THE COURT:** Yes.

20 (Whereupon a bench conference was held off the record)

21 (Whereupon the bench conference was ended)

22 (Whereupon court was in recess at 9:19 am)

23 (Whereupon court reconvened at 9:23 am)

24 **MR. McMASTER:** The State is ready to proceed. We've
25 been informed now that Mr. Cummings has decided -- that he

1 is walking toward transport, but whether he'll make the
2 decision to come all the way, we don't know. He refused to
3 come out of his cell this morning.

4 The State's ready to proceed, Your Honor. We have our
5 witnesses here. We have our -- next four witnesses are all
6 here. So we're ready to go.

7 **THE COURT:** All right. What's the Defense's position?

8 **MR. RICHEY:** Your Honor, I would ask the Court to
9 continue or not start the case until he's actually in the
10 building. And -- because it's my understanding that he's --
11 that they're going to get him, that he's going to transport,
12 is going to be here. So I'd ask the Court to wait. I think
13 it's 20 minutes for him to be here and to participate in his
14 case because my understanding he is now coming.

15 **THE COURT:** Now what you think about him -- of course,
16 he's tried to fire two or three lawyers. He tried to fire
17 you.

18 **MR. RICHEY:** Yes, sir.

19 **THE COURT:** What do you think about him yanking around
20 the Court and just dictating the schedule? What do you
21 think about that?

22 **MR. RICHEY:** Your Honor, of course, I don't agree with
23 that position that my client has taken on any of this stuff.
24 And I share the frustration that the Court may have with him
25 because I've had it a lot. But, unfortunately, as an

1 officer of this court, to represent him, you know, I would
2 have to take that position.

3 But I understand the Court, that the Defendant has had
4 an opportunity to be here on time, he's had an opportunity
5 to cooperate, not just in the timing, but his representation
6 and everything. But I believe that asking the Court to wait
7 20 minutes is something that I should do for this record.

8 (Pause)

9 **THE COURT:** Is the foreman of the jury -- forelady of
10 the jury in?

11 **THE BAILIFF:** No, they're not -- they meet downstairs
12 and then we bring them up here. They haven't gotten here
13 yet.

14 **THE COURT:** I got you.

15 **THE BAILIFF:** They're probably -- they're all down
16 there on the way up, probably, but they're not in the ---

17 **THE COURT:** All right. Well, when the forelady gets
18 here -- when the jury gets here, as soon as they get here, I
19 would like to speak with the forelady.

20 **THE BAILIFF:** In here?

21 **THE COURT:** Yes. And if they aren't coming, tell them
22 to come on.

23 **THE BAILIFF:** Sir?

24 **THE COURT:** If they aren't -- if they have not already
25 started the journey up, tell them to go ahead and start.

1 **THE BAILIFF:** As soon as they get here, they come up
2 here. So they wait ---

3 **THE COURT:** All right.

4 **THE BAILIFF:** --- til they all get here, and then they
5 bring them up at one time.

6 **THE COURT:** All right.

7 **THE BAILIFF:** So as soon as they get here, they come
8 up.

9 (Pause)

10 (Whereupon State's exhibits 18 and 19 were marked for
11 identification)

12 **THE COURT:** Upon review of the law, the only criminal
13 case where I can compel a defendant to appear would be a
14 capital case. So he has an absolute constitutional right
15 not to be here if he elects to do so. I will ---

16 (Whereupon the forelady entered the courtroom at 9:29
17 am)

18 **THE COURT:** Yes, ma'am. I wanted to let you know that
19 we are going to be starting here shortly. We're here.
20 We've got some matters of law that we need to take care of
21 outside of your presence. Thank you for being here and
22 being here on time.

23 There's some legal matters that we have to tend to
24 that's beyond our control. We've got to do that. If y'all
25 just bear with us and be patient. Thank you very much. But

1 we're working.

2 **MADAM FORELADY:** Okay.

3 **THE COURT:** We're not just keeping y'all waiting.

4 We're very sensitive to the fact that y'all have other
5 places you need to be.

6 **MADAM FORELADY:** Okay.

7 **THE COURT:** And we're moving as efficiently as we can.

8 **MADAM FORELADY:** All right. Appreciate it.

9 (Whereupon the forelady exited the courtroom at 9:30
10 am)

11 **THE COURT:** All right. So as soon as the Defendant
12 gets here, if someone will notify me, and we will begin at
13 that time. But, Mr. Richey, I'm going to ask that you have
14 a discussion with him and explain that he -- if he doesn't
15 want to come, he doesn't have to.

16 **MR. RICHEY:** Yes, sir.

17 **THE COURT:** He's got an absolute right to be here. If
18 he elects not to be here, he needs to understand that the
19 trial is going to go forward without him. He will remain in
20 detention. And in the event the jury were to return a
21 verdict of guilty, he will be brought back into the court,
22 and he will be sentenced.

23 **MR. RICHEY:** Yes, sir.

24 **THE COURT:** And he will be forced to come to court for
25 the sentencing, okay?

1 **MR. RICHEY:** Yes, sir.

2 **THE COURT:** All right. Anything -- anything before we
3 stand at ease?

4 **MR. RICHEY:** No, sir.

5 **THE COURT:** All right.

6 **MR. McMASTER:** Nothing from the State, Your Honor.

7 **THE COURT:** All right. And let me know just as soon as
8 he's here, and we'll ---

9 **MR. RICHEY:** Yes, sir.

10 **THE COURT:** We'll stand at ease.

11 (Whereupon court was in recess at 9:31 am)

12 (Whereupon State's exhibits 20 - 23 were marked for
13 identification)

14 (Whereupon court reconvened at 10:11 am)

15 **THE COURT:** Please be seated. Mr. Cummings, I'm going
16 to ask you, if you could, to stand, please. I understand
17 that initially when they came to transport you this morning
18 you elected not to come, is that correct?

19 **MR. CUMMINGS:** No, sir. My understanding the CO was
20 supposed to come back to get me, but he never came. Then
21 the sergeant came and asked me was I -- did I want to come
22 and continue with the trial.

23 **THE COURT:** Okay. Well, I was informed and believed
24 that they offered to transport you, but you elected not to
25 come.

1 You need to understand this, my job is to ensure that
2 you get a fair trial. And you do not have to participate in
3 this proceeding if you elect not to do so. You've got a
4 constitutional right not to do that.

5 However, the trial's going to go forward without your
6 participation. We'll have transport there, you'll be here,
7 you'll be here on time, and we're going to proceed forward
8 in that fashion.

9 If you elect not to come, the trial is going to go
10 forward just as if you were here. And it's going to go --
11 go forward. And you've got an absolute constitutional right
12 to stay in the jail cell if you elect to do so. We -- I'm
13 not going to force you to do that. I don't think that I
14 can.

15 However, if the trial goes forward and you're
16 exonerated, you'll be turned loose. But if you're
17 convicted, you will show up here for sentencing. Do you
18 understand that? You'll be forced to do that. Do you
19 understand that?

20 **MR. CUMMINGS:** Yes, sir.

21 **THE COURT:** All right. And do you understand that when
22 they come, you know, we've had jurors waiting, all of these
23 lawyers have been waiting, I've been waiting on you to show
24 up. And this is your warning. And if you decide not to
25 participate, we're going on without you. Do you have any

1 questions about that?

2 **MR. CUMMINGS:** No, sir.

3 **THE COURT:** All right. And -- very good. All right.

4 Anything from the State before we proceed?

5 **MR. McMASTER:** Nothing from the State, Your Honor.

6 **THE COURT:** Anything from the Defense?

7 (No response)

8 **THE COURT:** Anything from the Defense?

9 **MR. RICHEY:** No, sir.

10 **THE COURT:** All right. We're ready to proceed.

11 (Whereupon the jury entered the courtroom at 10:14 am)

12 **THE COURT:** Madam Forelady, ladies and gentlemen of the

13 jury, thank y'all for being here and being here on time.

14 And thank you so much for your patience.

15 I want y'all to know that we are very well aware of the
16 fact that y'all have other places you'd rather be. And in
17 this proceeding y'all are the ones that are not really
18 getting meaningfully compensated to be here.

19 I want to let you know there were some legal matters
20 that we had to tend to outside of your presence. And thank
21 you for your patience. And we were here doing work. We
22 weren't ignoring you. But thank you for your patience. And
23 we'll proceed forward as efficiently as we can. Mr.
24 McMaster, you're recognized.

25 **MR. McMASTER:** Thank you. May it please the Court? We

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1 call Ivan Rodriguez, please.

2 **THE COURT:** Yes, sir. If you could come forward. I'm
3 going to ask you, if you could, place your left hand on the
4 Bible and raise your right hand as the clerk administers the
5 oath.

6 **Ivan Rodriguez,** being
7 duly sworn testified as follows;

8 **MADAM CLERK:** Thank you.

9 **THE COURT:** Have a seat in the witness chair. Pull up
10 real close to that microphone. Speak loudly, clearly and
11 slowly in order that we can hear everything that you have to
12 say. And, officer, if you could state your full name,
13 please, sir.

14 **MASTER DEPUTY RODRIGUEZ:** Yes, sir. Master Deputy Ivan
15 Rodriguez.

16 **THE COURT:** Very good. Mr. McMaster.

17 **Direct Examination by Mr. McMaster:**

18 Q. And where do you work, master deputy?

19 A. Greenville County Sheriff's Office.

20 Q. And were you working back at Greenville County
21 Sheriff's Office back in March the 6th, 2016?

22 A. Yes, sir.

23 Q. And what -- in what capacity were you there?

24 A. Uniform patrol, Echo -- or Bravo Platoon. I'm sorry.

25 Q. And what were your duties at that time?

IVAN RODRIGUEZ - DIRECT EXAMINATION BY MR. McMASTER

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1 A. Answer calls for service, 911 calls, things like that.

2 Q. And I'm going to take you back to March the 6th, 2016.

3 Did you receive a call in reference to Burgess Avenue?

4 A. Yes, sir.

5 Q. And can you tell this jury what you did ---

6 A. Sure.

7 Q. --- after you received that call?

8 A. The call came in as a possible burglary in progress.

9 Someone was trying to kick in -- kick in the door. And
10 several units were dispatched. I was not. I just began to
11 make my way towards that residence.

12 Q. And how long did it take you to get there, do you
13 think?

14 A. At first I was driving priority, which is just without
15 lights and sirens. And then once -- as it started to
16 escalate and we started getting more information from the
17 call, I initiated my lights and sirens. And it probably
18 took me two or three minutes to get there.

19 Q. All right.

20 A. Pretty quickly.

21 Q. And when you arrived what was going on at that point in
22 time?

23 A. As I arrived I noticed Deputy Fuller with our K-9 unit
24 running toward the back of several of the houses. He was
25 running with his K-9 partner. And I followed because we had

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1 heard that Deputy Sandefur was chasing somebody towards the
2 rear of the residence.

3 Q. And did you get -- did you join in the chase?

4 A. I did. I followed in behind. I noticed Sandefur
5 standing in a thick, very thick briar -- a patch of briars.
6 And he was holding the baton, hitting something towards the
7 ground. And as I got closer, I noticed the Defendant stand
8 up.

9 Q. All right. And I'm going to ask you to step down, if
10 you would.

11 **MR. McMASTER:** Judge, may he step down?

12 Q. And you've identified this area?

13 A. Yes, sir.

14 Q. And can you kind of show the -- show the jury -- as
15 you're speaking, just make sure she can hear you.

16 A. Sure.

17 Q. If you can kind of identify for the jury kind of where
18 you were as you gave chase and where you were in this briar
19 thicket.

20 A. So I'm not exactly sure which house I was behind, but
21 the chase itself took place back over this way somewhere
22 behind the residence, in this big thick patch of briars.
23 And I ended up somewhere back here.

24 I'm not sure which way around the house because I never
25 actually saw the house. I just followed whichever -- or

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1 Deputy Fuller, who was running towards the back. So
2 somewhere in this general area back here.

3 Q. And you just testified that you saw Deputy Sandefur
4 with his baton out at that point?

5 A. Yes, sir.

6 Q. And then you said you saw the Defendant jump up. What
7 happened after that?

8 A. So as he -- when he jumped up he immediately went
9 towards the fence that, I believe, is back this way and
10 leaped over the fence. I continued behind Deputy Fuller who
11 had his K-9. He was attempting to try to put the K-9 over
12 the fence, but due to a drop that was on the other side, he
13 didn't. So I went around him and continued over the fence
14 and continued the chase that way.

15 Q. And how long did you continue the chase at that point?

16 A. So what's further after that -- as I got over the fence
17 I -- due to the severity of the crime, I took out my county
18 issued firearm, began to clear around -- because for a brief
19 second he went around a shed building, a little shed in the
20 back. So I continued around the shed.

21 As I made it around the shed I noticed him on an
22 adjacent fence, which, I think or believe was on this side
23 of the -- on this back side over here. And I continued past
24 the opening of the fence where I followed him and he
25 eventually tripped over a small tricycle. And that's when I

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1 gave him commands to stay on the ground.

2 Q. All right. You can grab your seat back. Thank you.

3 And so he never -- you were never able to stop him from
4 running. He tripped? Is that your testimony?

5 A. Yes, sir.

6 Q. And at that point in time you were able to close the
7 distance?

8 A. Correct. I gave him -- I pulled my firearm out and
9 gave him loud, verbal commands. I didn't know if he still
10 had the firearm on him. I just knew that there was a
11 firearm.

12 So I pointed my firearm at him, gave him loud, verbal
13 commands to stay on the ground, which he refused and began
14 to stand up, at which point I jumped on top of him and
15 gained control of his arms until other deputies arrived and
16 we were able to put him in handcuffs.

17 Q. And where did you take him after you put him in
18 handcuffs?

19 A. So we had -- we had another deputy pull up with his
20 vehicle on Perry Avenue, I believe it was, and pull up and
21 we immediately just stood up -- I put him there, took
22 pictures or photographed him and put him inside the vehicle.

23 Q. And I'm going to show you what's previously been
24 entered into evidence, State's exhibit 17, it was entered in
25 evidence. Can you identify that photograph and who that is?

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1 A. Yes, sir, that's the Defendant.

2 Q. And was that the clothing that he was wearing when you
3 took him into custody?

4 A. Yes, sir.

5 Q. And did you -- you said you took him back to the patrol
6 car, is that correct?

7 A. Yes, sir.

8 Q. And what were your duties after you took him to the
9 patrol car?

10 A. For a brief moment I just stayed there until he was
11 taken to the hospital.

12 Q. And why was he taken to the hospital?

13 A. I believe he was complaining about some -- his legs
14 were hurting. And so they took him to the hospital to get
15 evaluated.

16 Q. Did you have any other duties in relationship to this
17 case?

18 A. No, sir.

19 Q. Answer any questions Mr. Richey may have.

20 A. Yes, sir.

21 **THE COURT:** Mr. Richey, you're recognized, cross-
22 examination.

23 **MR. RICHEY:** Thank you, Your Honor.

24 **Cross-Examination by Mr. Richey:**

25 Q. If you could step down for a second. What direction

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1 were you coming to get to the scene?

2 A. In my vehicle or ---

3 Q. Yes, sir, your vehicle.

4 A. So I come from this side.

5 Q. Okay. And coming out of this side, is the front door
6 of that house here or there?

7 A. So I never actually saw the residence. I never at all
8 saw the house. By the time that I got there, Deputy
9 Sandefur and Deputy Fuller were already in chase. And I
10 just followed in behind them.

11 Q. All right. And looking at this map, these cars -- the
12 cars are parked here toward these residences, correct?

13 A. Yes, sir.

14 Q. Okay. So it'd be safe to say that the front of these
15 residences could be right here, right?

16 A. I would assume in most houses, yes, ---

17 Q. Okay.

18 A. --- they are facing the road.

19 Q. And this chase that you had, you said it was back in
20 this area?

21 A. Correct, yeah, in this big thicket of briars.

22 Q. So the person -- so it was some path this way, correct?

23 A. Yes, sir. I would assume, yes.

24 Q. And it's -- it's more than likely that that path was
25 not from this direction around, it was more from that

IVAN RODRIGUEZ - CROSS-EXAMINATION BY MR. RICHEY

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1 direction?

2 A. I can't really testify to what a person would do when
3 they're running ---

4 Q. Yes.

5 A. --- from somebody. So what my -- my assumption is that
6 he ran, and they continued, and I followed.

7 Q. Right. And all of this was done back here, correct,
8 from when -- when you got in it?

9 A. When I got in this, he was already back here.

10 Q. Right. It was all in the back right here, right?

11 A. Yes, sir.

12 Q. Okay. And this residence -- you didn't see the
13 residence, but this residence, we would assume would have a
14 back door? Would that be a safe proposition?

15 A. I don't know. I mean, I think you know as well as I
16 do, not all houses are built the same.

17 Q. Yes, sir. Hold on one second.

18 (Pause)

19 **MR. RICHEY:** No further questions.

20 **THE COURT:** Any redirect?

21 **MR. McMASTER:** No, Your Honor. I ask that this witness
22 be excused.

23 **THE COURT:** You're free to leave.

24 A. Thank you, Judge.

25 **THE COURT:** Mr. McMaster, you may call your next.

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1 witness.

2 **MR. McMASTER:** Thank you, Your Honor. The State calls
3 Simeon Williams.

4 **THE COURT:** Yes, sir. Please come around. I'm going
5 to ask, if you could, to place your left hand on the Bible
6 and raise your right hand as the clerk administers the oath.

7 **Simeon Williams,** being
8 duly sworn testifies as follows;

9 **MADAM CLERK:** Thank you.

10 **THE COURT:** Come around. And I'm going to ask you, if
11 you could, to have a seat in the witness chair, please, sir.
12 Pull up real close to that microphone. I'm going to ask you
13 to speak loudly, and clearly and slowly in order that we can
14 hear everything that you have to say. And let's start with
15 your full name, please, sir.

16 **MR. WILLIAMS:** Simeon Williams, sir.

17 **THE COURT:** Thank you. Mr. McMaster.

18 **MR. McMASTER:** Thank you, Your Honor.

19 **Direct Examination by Mr. McMaster:**

20 Q. And, Mr. Williams, are you the co-defendant of Tristian
21 Cummings?

22 A. Yes, sir.

23 Q. And how old are you?

24 A. Twenty-eight, sir.

25 Q. How far did you go in school?

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1 A. Ninth grade.

2 Q. All right. I'm going to take you back to the night of
3 March the 5th -- March 5th, early -- early in the night of
4 March the 5th. Can you tell me where you were on March the
5 5th?

6 A. (No response).

7 Q. The night -- the early night before this event
8 happened, where were you?

9 A. Fleetwood, sir.

10 Q. Okay. Fleetwood, tell the jury where -- that's
11 Fleetwood -- it's called Fleetwood. Where is it located?

12 A. Like Augusta Road.

13 Q. Is it a good distance from where you actually lived?

14 A. It's far.

15 Q. Where did you actually live at that time?

16 A. [REDACTED] Avenue.

17 Q. All right. And at -- that night on the 5th, early
18 night of the 5th did you come in contact with the Defendant,
19 Tristian Cummings?

20 A. Yes, sir.

21 Q. All right. Did you see him -- where did you see him?

22 A. Fleetwood, sir.

23 Q. And did you talk to him that night?

24 A. Yes, sir.

25 Q. And did you -- do you have a -- you were saying his

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1 name was Tristian Cummings. Do you have a nickname that you
2 use for him?

3 A. They call him Dula (ph.).

4 Q. Dula?

5 A. Yes, sir.

6 Q. Okay. Is that what you would have called him that
7 night?

8 A. Yes, sir.

9 Q. And what condition was Tristian Cummings in the night
10 that you saw him at Fleetwood?

11 A. I don't know, sir.

12 Q. How did he look? How was he acting?

13 A. (Negative nod).

14 Q. Had he been in any altercations?

15 A. I think so.

16 Q. Why do you think so?

17 A. Something happened to his mouth, sir.

18 Q. And particularly what part of his mouth? Tell the
19 jury.

20 A. Teeth.

21 Q. Did he have -- what about his teeth?

22 A. Like his teeth got knocked out.

23 Q. And this is before you went to 34 Burgess Avenue?

24 A. Yes, sir.

25 Q. And was he -- was he -- was that bothering him that his

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- 1 teeth had been knocked out?
- 2 A. Yes, sir.
- 3 Q. And what was he saying about that?
- 4 A. He was just mad.
- 5 Q. And did he talk about needing any money that night?
- 6 A. Yes, sir.
- 7 Q. Tell the jury about why he needed money. What he told
- 8 you.
- 9 A. He said he owed somebody some money.
- 10 Q. Who did he owe?
- 11 A. I think some Jamaicans or something.
- 12 Q. Do you remember how much he owed them?
- 13 A. No, sir.
- 14 Q. Now, how did you get from Fleetwood to [REDACTED]? Or
- 15 to Burgess Avenue?
- 16 A. Friend, sir.
- 17 Q. A who?
- 18 A. A friend.
- 19 Q. And you rode in the friend's vehicle?
- 20 A. Yes, sir.
- 21 Q. And was anybody with you in that vehicle?
- 22 A. Yes, sir.
- 23 Q. Who was with you?
- 24 A. My homeboy Quan, and Shawn and Dula.
- 25 Q. And that's Mr. Cummings?

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- 1 A. Yes, sir.
- 2 Q. And he was with you?
- 3 A. (Affirmative nod).
- 4 Q. And can you tell the jury where y'all went that night?
- 5 A. Went to [REDACTED] Avenue, my house.
- 6 Q. And how long had you lived at [REDACTED] Avenue?
- 7 A. I'd say like a year.
- 8 Q. Do you remember what time y'all left to go to [REDACTED]
- 9 [REDACTED] Avenue?
- 10 A. No, sir.
- 11 Q. Were you under the influence that night?
- 12 A. Yes, sir. I was on drugs, sir.
- 13 Q. You were using drugs that night?
- 14 A. Yes, sir.
- 15 Q. And do you recall anything happening in the vehicle
- 16 while you were riding in the car?
- 17 A. (Negative nod).
- 18 Q. Yes or no?
- 19 A. Yes.
- 20 Q. All right. What did you -- what did you see happen in
- 21 the car that night? Was a -- did you see any pistols or
- 22 firearms?
- 23 A. Yes, sir.
- 24 Q. Who had a pistol or a firearm?
- 25 A. Dula, sir.

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- 1 Q. Tristian Cummings?
- 2 A. Yes, sir.
- 3 Q. And was that firearm or, excuse me, let me rephrase
- 4 that. Was that pistol -- was it fired in that vehicle?
- 5 A. Yes, sir.
- 6 Q. On the way to [REDACTED]?
- 7 A. Yes, sir.
- 8 Q. Do you recall how many times it was fired?
- 9 A. No, sir.
- 10 Q. But no questions that it was fired?
- 11 A. Yes, sir.
- 12 Q. How was Mr. Cummings acting on that ride from Fleetwood
- 13 to [REDACTED]? How was he acting in the car?
- 14 A. I don't know, sir.
- 15 Q. Was he the one that fired the weapon?
- 16 A. Yes, sir.
- 17 Q. Where did the weapon come from?
- 18 A. I don't -- I don't know, sir.
- 19 Q. When you got to [REDACTED] -- I'm going to -- I want
- 20 you to point that out on the map here. Is this -- can you
- 21 see this?
- 22 A. A little bit.
- 23 Q. [REDACTED], is that where you lived?
- 24 A. Yes, sir.
- 25 Q. And is Burgess Avenue a short street?

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1 A. Yes, sir.

2 Q. How long would it take a person to walk from [REDACTED]
3 to 34 Burgess Avenue?

4 A. Like -- like a -- like 45 seconds or something like
5 that.

6 Q. It's a short distance?

7 A. It's a short distance.

8 Q. And had you been to 34 Burgess before?

9 A. Yes, sir.

10 Q. Did you know who lived there?

11 A. Yes, sir.

12 Q. And who lived there?

13 A. Cincinnati.

14 Q. Is that what you knew him by?

15 A. Yes, sir.

16 Q. How did you know him? Tell the jury.

17 A. I bought drugs from him.

18 Q. So you knew that he sold drugs?

19 A. Yes, sir.

20 Q. And that wasn't something you heard about, you knew
21 that on your own?

22 A. Yes, sir.

23 Q. Was that well known around people that lived on
24 Burgess, your other ---

25 A. I think so, sir.

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- 1 Q. Well, when you got to [REDACTED] what did you and
2 Tristian Cummings do at that time?
- 3 A. I had came up with the idea to rob somebody.
- 4 Q. Okay. You came up with that idea?
- 5 A. Yes, sir.
- 6 Q. And who were you going to rob?
- 7 A. Cincinnati, sir.
- 8 Q. All right. And why were y'all going to rob Cincinnati?
- 9 A. Money, sir.
- 10 Q. And did you talk this over with Mr. Cummings?
- 11 A. Yes, sir.
- 12 Q. Did y'all discuss it?
- 13 A. Yes, sir.
- 14 Q. And did you have a gun?
- 15 A. No, sir.
- 16 Q. But did he still have a gun?
- 17 A. Yes, sir.
- 18 Q. So you agreed you'd both go together?
- 19 A. Yes, sir.
- 20 Q. Tell the jury why -- why did you want to go rob him
21 that night?
- 22 A. I needed money and he needed money. So ...
- 23 Q. And tell the jury how you -- how you proceeded down to
24 34 Burgess.
- 25 A. Like what you -- what you mean?

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1 Q. Did y'all just walk down the street?

2 A. Yes, sir. We just walked down the street, sir.

3 Q. And tell the jury what you did when you got to 34
4 Burgess.

5 A. Knocked on the front door.

6 Q. Who knocked on the door?

7 A. We did.

8 Q. All right. So you lived at [REDACTED]. Does [REDACTED]
9 [REDACTED] look similar to 34 Burgess?

10 A. Yes, sir.

11 Q. All right. Now at [REDACTED] is there a front porch up
12 there?

13 A. Yes, sir.

14 Q. Was there a front porch at 34 Burgess?

15 A. Yes, sir.

16 Q. Can you tell -- did you both walk up on the porch?

17 A. Yes, sir.

18 Q. And what did you do on the porch?

19 A. Knocked on his door, sir.

20 Q. Did anyone come to the door?

21 A. Yes, sir, he came to the door.

22 Q. And was he happy about you guys being there?

23 A. No, sir.

24 Q. And what -- when he came to the door what did you say
25 to him?

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1 A. He was just like -- I didn't get to say nothing. He
2 was just like, get off this porch.

3 Q. So did he ever actually open that door at 34 Burgess?

4 A. Yes, sir.

5 Q. And so he slams the door back in your face?

6 A. Yes, sir.

7 Q. And what do you do after he does that?

8 A. I had walked down the stairs.

9 Q. And what is Mr. Cummings doing?

10 A. Kicking the back door, sir.

11 Q. Now when you say the back door, tell me about how --
12 sorry. Let me rephrase that. State's exhibit 3, which has
13 already been entered into evidence, you recognize where that
14 would be?

15 A. Yes, sir.

16 Q. What door would that be?

17 A. Back door.

18 Q. Is that -- now when you say the back door, the front
19 door, would that be right on the front of the ...

20 A. Yes, sir.

21 Q. Now where would the back door -- you say the back door
22 would be?

23 A. On the side.

24 Q. Right here?

25 A. Yes, sir.

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1 Q. So instead of saying the back door, would that be safe
2 to say that is the side door?

3 A. Side door, sir.

4 Q. All right. And is that where Mr. Cummings was?

5 A. Yes, sir.

6 Q. Do you know if there was a back door in that place?

7 A. You said did I know?

8 Q. Yeah. Did you know?

9 A. Yes, sir. I know because I got the same kind of
10 apartment.

11 Q. Okay. Tell us about that. Where is the back door?

12 A. On the side.

13 Q. Okay. Are there more than two doors into that duplex?

14 A. Yes, sir.

15 Q. Where's the -- where's the third door, then?

16 A. No, it's only two doors.

17 Q. So it's only two doors?

18 A. Yes, sir.

19 Q. Is there a front door?

20 A. Yes, sir.

21 Q. Is there a side door?

22 A. Yes, sir.

23 Q. Is there a back door ---

24 A. No, sir.

25 Q. --- to 34 Burgess?

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- 1 A. No, sir.
- 2 Q. Is there a back door to [REDACTED]?
- 3 A. No, sir.
- 4 Q. All right. Thank you. So you were -- Mr. Cummings is
- 5 at the side door. Tell the jury what he's doing.
- 6 A. Kicking the door, sir.
- 7 Q. Was he kicking it? And how many times is he kicking
- 8 it? Is this loud? Tell them about it. They weren't there.
- 9 Tell them what it sounded like.
- 10 A. It was a loud noise.
- 11 Q. And what did you do during this time period?
- 12 A. I was right behind him.
- 13 Q. You're standing behind him?
- 14 A. Yes, sir.
- 15 Q. Did you know that Mr. White was calling the police?
- 16 A. No, sir.
- 17 Q. Cincinnati?
- 18 A. No, sir.
- 19 Q. How many times do you think he kicked the door?
- 20 A. I don't know, sir.
- 21 Q. What did -- what happened to the door?
- 22 A. The door got kicked in.
- 23 Q. Did it get kicked into the -- to the kitchen?
- 24 A. Yes, sir.
- 25 Q. And what did you two do at that point?

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- 1 A. Ran in, sir.
- 2 Q. And so you both went into the house at that time?
- 3 A. Yes, sir.
- 4 Q. Or the duplex. And who had the gun?
- 5 A. (Witness pointed to the Defendant).
- 6 Q. Who?
- 7 A. Tristian.
- 8 Q. Tristian Cummings?
- 9 A. (Affirmative nod).
- 10 Q. Okay. And what were you going in that house at that
- 11 time to do?
- 12 A. Look for drugs and money, sir.
- 13 Q. So you were trying to rob Mr. White?
- 14 A. Yes, sir, I was.
- 15 Q. And what were you -- where -- when you got into the
- 16 home, where did you go in the home? What did you do?
- 17 A. I was in the kitchen looking through cabinets.
- 18 Q. Were you opening all of them?
- 19 A. Yes, sir.
- 20 Q. Did you throw any -- things around in there?
- 21 A. Think so, sir.
- 22 Q. Were you slamming any cabinets?
- 23 A. Yes, sir.
- 24 Q. Where was Tristian Cummings?
- 25 A. I think he was by the bathroom.

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1 Q. Now you said your apartment -- your duplex is the same
2 as 34 Burgess.

3 A. Yes, sir.

4 Q. So when you're in the kitchen, how far away from the
5 kitchen is the bathroom?

6 A. Not too far, sir.

7 Q. Three, four feet?

8 A. Yes, sir.

9 Q. And he's down there. What is he doing? What is he
10 doing down that hall?

11 A. He shot the man.

12 Q. Is he saying anything?

13 A. No, sir.

14 Q. Is he beating on the door down there?

15 A. No, sir.

16 Q. Did you see what he was doing down there?

17 A. No, sir.

18 Q. So you stayed in the kitchen -- your testimony is you
19 stayed in the kitchen the whole time?

20 A. Yes, sir. And it happened so fast, the police came.

21 So we -- we wasn't even in there that long.

22 Q. So the police were there very quickly?

23 A. Yes, sir.

24 Q. How many gunshots did you hear?

25 A. I don't remember, sir.

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1 Q. No idea?

2 A. No, sir.

3 Q. Did you hear any screaming?

4 A. No, sir.

5 Q. Now you said the police got there quickly. Is that
6 right?

7 A. Yes, sir.

8 Q. And where were you when the police got there?

9 A. I was in the kitchen.

10 Q. And what kind of clothing did you have on, do you
11 remember?

12 A. I had a red and white sweater on, hoodie.

13 Q. Do you remember what Tristian Cummings had on?

14 A. No, sir.

15 Q. I'll show you State's exhibit 16. Is this accurate for
16 what you had on?

17 A. Yes, sir.

18 Q. Is that, in fact, you?

19 A. Yes, sir.

20 Q. Is that when you were down at the detention center?

21 A. Yes, sir.

22 Q. Now when the police get there and you're in the
23 kitchen, what do they say to you?

24 A. Tell me to put my hands up.

25 Q. And do you do that?

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- 1 A. Yes, sir.
- 2 Q. Do you remember where you're standing in the kitchen
- 3 when they come in?
- 4 A. No, sir.
- 5 Q. And do you put your hands up?
- 6 A. Yes, sir.
- 7 Q. When you're in the kitchen with your hands up does
- 8 anyone run behind you?
- 9 A. Yes, sir.
- 10 Q. Who ran behind you?
- 11 A. Tristian, sir.
- 12 Q. And where did he go?
- 13 A. Went out the front door.
- 14 Q. And that's the front door, 34 Burgess?
- 15 A. Yes, sir.
- 16 Q. And Tristian Cummings, you know that for a fact he ran
- 17 behind you?
- 18 A. Yes, sir.
- 19 Q. And did you see him go out the door?
- 20 A. No, sir.
- 21 Q. Well, you were standing right there. How did you not
- 22 see him?
- 23 A. Because I was facing the cops. I had my hands up.
- 24 Q. So you were looking at him?
- 25 A. Yes, sir.

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1 Q. Did you see him put down a gun?

2 A. No, sir.

3 Q. But no question he came down that hall?

4 A. Yes, sir.

5 Q. After he went out that door what did you -- what

6 happened to you next?

7 A. I got handcuffed, sir..

8 Q. And how long -- and were you taken out of the house?

9 A. Yes, sir.

10 Q. Was anyone else in that house with you besides Tristian

11 Cummings?

12 A. No, sir.

13 Q. Was anybody else a part of this armed robbery,

14 burglary, first, ---

15 A. No, sir.

16 Q. --- murder?

17 A. No, sir.

18 Q. No one else?

19 A. No, sir.

20 Q. No one else talked about it?

21 A. No, sir.

22 Q. Discussed it?

23 A. No, sir.

24 Q. Now you were charged with the same charges that Mr.

25 Cummings faced, is that correct?

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1 A. Yes, sir.

2 Q. And you also had a domestic violence charge, I believe.

3 Is that correct?

4 A. Yes, sir.

5 Q. Now in June of '16 did you make a statement to

6 Investigator Fortner along with your attorney? Is that --

7 did you do that?

8 A. Yes, sir.

9 Q. With your attorney, Mr. Joe Watson?

10 A. Yes, sir.

11 Q. Did he accompany you to make that statement?

12 A. Yes, sir.

13 Q. And what you said in that statement today, is that the

14 same as your testimony here? The same stuff you said in

15 June of '16, is that what you're telling this Court here

16 today?

17 A. Yes, sir.

18 Q. Now, you said that this was going to be an armed

19 robbery, that's what it was going to be.

20 A. (Affirmative nod).

21 Q. Did you ever tell the police that you thought this

22 could be a burglary?

23 A. Yes, sir.

24 Q. Did you clear that up with law enforcement? Did you

25 tell them -- tell them that you actually meant it was going

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1 to be an armed robbery?

2 A. No, sir.

3 Q. Well you're telling the jury here today that you ---

4 A. Oh, yeah, yeah, yeah, yes, sir.

5 Q. All right. How did you know that Mr. White would be at
6 home?

7 A. Because I know he was on house arrest.

8 Q. So he had to be at home?

9 A. (Affirmative nod).

10 Q. Now you have an unlawful carrying a pistol on your
11 record where you paid a fine, is that right?

12 A. Yes, sir.

13 Q. And you already pled guilty to voluntary manslaughter
14 and burglary, first, is that correct?

15 A. Yes, sir.

16 Q. And you've received a deferred sentence until after you
17 testified, is that correct?

18 A. Yes, sir.

19 Q. Did you plead guilty to those charges because you were
20 part of the plan that caused -- that resulted in Mr. White's
21 death? Is that why you pled guilty to those charges?

22 A. Yes, sir.

23 Q. Have you been promised any particular sentence for
24 testifying here today?

25 A. No, sir.

SIMEON WILLIAMS - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. Is there any additional information you need to tell
2 this jury about what happened on 34 Burgess?

3 A. No, sir.

4 Q. I'm going to ask you is the person that you planned the
5 armed robbery and burglary with and whose actions resulted
6 in the death of Mr. White, is he in the courtroom here
7 today?

8 A. Yes, sir.

9 Q. Will you point him out for the jury?

10 A. (Witness pointed to the Defendant).

11 Q. Is he sitting -- what's he wearing?

12 A. White shirt, sir.

13 Q. And is that Tristian Cummings?

14 A. Yes, sir.

15 Q. And is that who was with you?

16 A. Yes, sir.

17 Q. Is that the same person that ran out -- ran out the
18 side, excuse me, ran out the front door?

19 A. Yes, sir.

20 Q. Any question about that?

21 A. No, sir.

22 Q. Were you able to -- I'm going to back you up just one
23 second. Were you able to find anything of value in the
24 short time you were in Mr. White's home?

25 A. No, sir.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

162

1 Q. But you were going there for -- for what purpose? What
2 were y'all trying to get?

3 A. Money, sir.

4 Q. All right.

5 **THE COURT:** Cross-examination.

6 **MR. RICHEY:** Thank you, Your Honor.

7 **THE COURT:** Mr. Richey.

8 **Cross-Examination by Mr. Richey:**

9 Q. Sir, you -- you killed this man, didn't you?

10 A. No, sir.

11 Q. You -- you -- you intentionally killed this guy that
12 night, correct?

13 A. No, sir.

14 Q. You -- you pled to voluntary manslaughter, right?

15 A. Yes, sir.

16 Q. Okay. And you had a lawyer, right?

17 A. Yes, sir.

18 Q. And you stood right here in front of a judge, right?

19 A. (Affirmative nod).

20 Q. You have to answer. Did you?

21 A. Yes, sir.

22 Q. And in front of that judge you pled guilty to
23 intentionally killing this man, correct?

24 A. No, sir.

25 Q. Okay. You had a lawyer, right?

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

163

1 A. Yes, sir.

2 Q. Did that lawyer tell you what the elements of voluntary
3 manslaughter was?

4 A. Yes, sir.

5 Q. And he told you the elements of it that you -- you
6 intentionally killed the man, is that correct?

7 A. Yes, sir.

8 Q. And you stood up and told that judge you done that?
9 Right?

10 A. (No response).

11 Q. Huh?

12 A. I didn't do it.

13 Q. What? Excuse me?

14 A. I said I ain't do it.

15 Q. But you told the judge you did it. But you're telling
16 everybody now you didn't do it, right?

17 A. Um-hum (affirmative).

18 Q. Okay. Huh? You got to answer. Did you -- that's what
19 you told him, right?

20 A. Yeah.

21 Q. So you came in this court, you put your right hand up
22 and swore in front of the judge, correct?

23 A. (Affirmative nod).

24 Q. You got to answer yes or no.

25 A. Yes, sir.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

164

1 Q. And you had a lawyer, Mr. Watson, representing you,
2 right?

3 A. Yes, sir.

4 Q. And you're telling this Court and everybody that you
5 lied to that judge, right?

6 A. No, sir.

7 Q. Huh?

8 A. No, sir.

9 Q. You told that -- you said you didn't kill that man,
10 right?

11 A. Hands of one, hands of all.

12 Q. Okay. Let me go back and ask you again. You pled to
13 killing that man, right?

14 A. Yes, sir.

15 Q. And you're telling this jury now you did not kill this
16 man, correct?

17 A. (Affirmative nod).

18 Q. You got to answer yes or no.

19 A. Yeah.

20 Q. And ---

21 **MR. McMASTER:** Your Honor, he's asked that question
22 about four times. He's ---

23 **MR. RICHEY:** No, ---

24 **THE COURT:** I'll ---

25 **MR. McMASTER:** --- already answered it.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

165

1 **THE COURT:** --- allow him -- you can go forward.

2 Q. You also burglarized this man's house, right?

3 A. Yes, sir.

4 Q. You did that, right?

5 A. (Affirmative nod).

6 Q. Right?

7 A. Yes, sir.

8 Q. And -- and -- and this is a area that you are more
9 familiar with than Mr. Cummings, correct?

10 A. Yes, sir. Yes, sir.

11 Q. Okay. Because you live in this proximity to this
12 gentleman, right?

13 A. Yes, sir.

14 Q. So Mr. Cummings don't live there. You had to go bring
15 Mr. Cummings there, correct? He had to get there, right?

16 A. Yes, sir.

17 Q. Okay. And Little Twin, who is that?

18 A. Who?

19 Q. Little Twin?

20 A. Little 20?

21 Q. Yeah, is that one of your friends?

22 A. Yes, sir.

23 Q. Okay. And Little Twin, the three of y'all were there
24 that night, right?

25 A. No.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

166

- 1 Q. Little Twin -- Little 20 ---
- 2 A. Twenty.
- 3 Q. --- is a friend of yours, right?
- 4 A. Yes, sir.
- 5 Q. Okay. And you said that you were in that house that
- 6 night that the police officer was there, right?
- 7 A. Yes, sir.
- 8 Q. You were in that house? And you said that you did not
- 9 see Mr. Cummings put down a gun, right?
- 10 A. Yes, sir.
- 11 Q. And you were right there in that house, right?
- 12 A. (No response).
- 13 Q. Right?
- 14 A. (Affirmative nod).
- 15 Q. You have to answer ---
- 16 A. Yeah.
- 17 Q. --- yes or no. Huh?
- 18 A. Yeah.
- 19 Q. So if somebody put down a gun in that house that night,
- 20 it wasn't Tristian Cummings, right?
- 21 A. (No response).
- 22 Q. Right?
- 23 A. (No response).
- 24 Q. Right?
- 25 A. Man, he -- he had the gun, man.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

167

1 Q. No, that's not what I'm asking you. I'm asking you if
2 somebody put a gun down in front of you that night, you
3 didn't see nobody with no gun that night, right? You didn't
4 see Mr. Cummings put that gun down, did you?

5 A. I didn't see him put the gun down, ---

6 Q. Okay.

7 A. --- but I know he had the gun ---

8 Q. Okay. So -- so you -- you were arrested in that house,
9 right? In that kitchen by that counter, right? Right?

10 A. Yeah.

11 Q. Okay. And if somebody put a gun down in front of you
12 that night, it wasn't Tristian Cummings, was it?

13 A. Yeah, it was.

14 Q. Oh, so now you saw somebody put a gun down?

15 A. Nah, man, ...

16 Q. You testified you did not see Tristian Cummings put a
17 gun down, correct?

18 A. I know he had the gun, though.

19 Q. That's not what I'm asking you. I'm asking you, you
20 did not see him put that gun down, correct?

21 A. No, I didn't see him ---

22 Q. Okay.

23 A. --- put the gun down.

24 Q. So if somebody put a gun down in that house that night
25 from where you're from, it wasn't Mr. Cummings, correct?

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

168

1 A. It was him.

2 Q. You gave a recorded statement, right? You and Mr.

3 Watson, right?

4 A. Um-hum (affirmative).

5 Q. Right? In that recorded statement you said you didn't

6 go in that house, right?

7 A. No, I didn't say that.

8 Q. Okay. You never said you did not go in that house?

9 A. I did go in the house.

10 Q. Okay. But you never gave a statement that said you

11 didn't?

12 A. No.

13 Q. Did you give a statement saying that a dog was shot in

14 that house?

15 A. No.

16 Q. Okay. You never said you stood in the road?

17 A. No.

18 Q. And we talked about this house being the side door and

19 back door. Really this side door is considered the back

20 door, correct?

21 A. (Affirmative nod).

22 Q. Yeah? You got to answer yes or no because ---

23 A. Yeah.

24 Q. --- she's got to take it down. That's considered the

25 back door. And you're saying here, right here, this side

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

169

1 door is kicked in, right?

2 A. Yes, sir.

3 Q. And when you went to that front door that night and you
4 knocked on it, he closed the door back, correct?

5 A. Yeah. Yes, sir.

6 Q. He said -- he said, don't come in here. And he closed
7 the door back, right?

8 A. Yes, sir.

9 Q. So -- and when all this kind of went off -- when it all
10 kind of happened, it happened really quick, correct?

11 A. Yes, sir.

12 Q. And y'all were actually surprised that the police were
13 around the home, correct?

14 A. Yes, sir.

15 Q. And it was multiple police around that house, right?

16 A. Yes, sir.

17 Q. Okay. So -- so when you're in the house and the cop
18 has you in the house, right?

19 A. (Affirmative nod).

20 Q. That house has, unbeknownst to you, has got police all
21 around it, right?

22 A. (Affirmative nod).

23 Q. You got to answer yes or no.

24 A. Yes, sir.

25 Q. Okay. And -- and this front door, this front door,

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

170

1 okay, this front door was closed at the time that you were
2 in that house, correct?

3 A. Yes, sir.

4 Q. Huh?

5 A. Yes, sir.

6 Q. Okay. So -- so an individual, to get away from --
7 individual to get out of that house, he's got to open that
8 front door, correct?

9 A. Yes, sir.

10 Q. Right?

11 A. Yes, sir.

12 Q. Okay. And at the time that individual is trying to get
13 out of that house and get away that quickly, what that
14 individual don't know is we got police all around here,
15 right?

16 A. Yes, sir.

17 Q. And so if a individual went out the front of that house
18 that night, then he would encounter these police right here
19 because they're already set up, right?

20 A. Um-hum (affirmative).

21 Q. Right?

22 A. Yes, sir.

23 Q. And you saw them when you -- you said, oh, my God, all
24 these police out here, right?

25 A. Yes, sir.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

171

1 Q. And you didn't know that they pretty much were around
2 this house, right?

3 A. (No response).

4 Q. Right?

5 A. Um-hum (affirmative).

6 Q. Okay. And so the person who -- who go out the front
7 ---

8 **MR. McMASTER:** I object. He can't -- he's asking that
9 he saw -- if he was inside and he saw the police around the
10 outside of the house. He said no ---

11 **THE COURT:** What is your objection? You can't have a
12 ---

13 **MR. McMASTER:** Your Honor, ---

14 **THE COURT:** --- speaking objection.

15 **MR. McMASTER:** --- it's an improper question. And ---

16 **THE COURT:** Overruled. You can go ahead.

17 Q. And -- and -- and so -- so from where you're sitting,
18 right? Where you're sitting, because the police got there
19 so quick, correct?

20 A. Yes.

21 Q. So quick, okay, that -- and you're familiar with this
22 area, correct?

23 A. Yes, sir.

24 Q. Very familiar.

25 A. Yes, sir.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

172

1 Q. And you know back in here where all the kudzu and all
2 that stuff is, right?

3 A. Yes, sir.

4 Q. Right? You know that a person, to go out that front
5 door, he'd have to go -- he'd have to go out here and he'd
6 have to go around here or around there, right?

7 A. (Affirmative nod).

8 Q. Right?

9 A. Yes, sir.

10 Q. And the day that you were there you would say that's
11 impossible because the police was there, right?

12 A. Yes, sir.

13 Q. Right? And so -- so you would think because of the
14 distance the person would have to go out of that house, the
15 distance that he would have to run because that's, you know,
16 it looks short, but that's a good distance, not far, but
17 it's a distance to get back here, right?

18 A. Yes, sir.

19 Q. Right?

20 A. Yes, sir.

21 Q. Okay. And -- and either way -- either way, right?

22 A. (No response).

23 Q. So for somebody to get out of that door and to get down
24 there quickly, they'd have to have a head start, wouldn't
25 you say?

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 A. Yes, sir.

2 Q. That they would have to be there at the door and, boom,
3 gone, quick, almost before the police got there, right?

4 A. Um-hum (affirmative).

5 (Pause)

6 Q. Right?

7 A. (No response).

8 (Pause)

9 Q. Right?

10 A. (No response).

11 Q. Let me ask you this again. Someone getting out that
12 front door with the police standing right there, that would
13 not be a reasonable thing to believe they'd get past all
14 those cops, correct?

15 **MR. McMASTER:** Objection. Speculation.

16 **THE COURT:** Sustained.

17 **MR. McMASTER:** Thank you.

18 Q. And there's no doubt in your mind -- there's no doubt
19 in your mind that that house was surrounded, right? By
20 police?

21 A. It was.

22 Q. Huh?

23 A. It was.

24 Q. Okay. Okay. And -- and this is an area that you're
25 familiar with, right?

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

174

1 A. Um-hum (affirmative).

2 Q. And -- and somebody who is unfamiliar with this area
3 because you know that all these kudzu and all this stuff
4 back there? You know that, right?

5 A. I don't know no kutch (ph.).

6 Q. Excuse me?

7 A. I don't know no kutch.

8 Q. You -- no. You know the terrain or how this land is
9 laid back here, right?

10 A. Um-hum (affirmative).

11 Q. Right?

12 A. (Affirmative nod).

13 Q. And you know that -- that that's not a place that you
14 would run to to get away, right?

15 A. (No response).

16 Q. That's -- that's -- that wouldn't be the easier path,
17 right?

18 A. (No response).

19 Q. Well, let me ask you this. When you walk here do you
20 walk back this way?

21 A. No.

22 Q. This is the easier path, right?

23 A. (Affirmative nod).

24 Q. Right?

25 A. Yeah.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 Q. And you know that?

2 A. (Affirmative nod).

3 Q. So -- so just you, we're talking about you, if you had
4 the intentions to try to get away from somebody, you would
5 probably take the clearer route, correct?

6 A. (Affirmative nod).

7 Q. Correct?

8 A. Yeah.

9 Q. 'Cause you're from there and you know the landscape,
10 right?

11 A. (Affirmative nod).

12 Q. But when somebody's there that don't know the landscape
13 and know the terrain, they -- they don't take that way
14 because they may not -- let me rephrase it. They're prone
15 to take a route you wouldn't take, right?

16 A. (Affirmative nod).

17 Q. Right?

18 **MR. McMASTER:** Again, speculation. He has no way to
19 know what someone else might want to do.

20 **THE COURT:** I'll allow him to ask.

21 Q. In planning -- in planning this crime -- you say you
22 planned it, right?

23 A. (Affirmative nod).

24 Q. You the -- you the guy that came up with all this,
25 right?

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

176

1 A. Yes, sir.

2 Q. So if you don't come up with all this, this guy might
3 still be alive, right? If you don't come up with it, right?

4 A. (No response).

5 Q. Right?

6 A. (No response).

7 Q. You could have not planned this, right?

8 A. (Affirmative nod).

9 Q. Right?

10 A. Yeah.

11 Q. Okay. And -- and -- and so all the planning and
12 centerfold and the know -- and the knowhow came from you,
13 right?

14 A. Yes, sir.

15 Q. And -- and this is somebody that you live close to,
16 right?

17 A. Yes, sir.

18 Q. This is somebody that you know the type of business
19 they're in, right?

20 A. Yes, sir.

21 Q. Right?

22 A. Yes, sir.

23 Q. And -- and -- and so -- so your main thing, you didn't
24 need anybody to tell you how to get in this man's house, did
25 you?

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

177

- 1 A. Uh-uh (negative).
- 2 Q. You didn't need to get -- you didn't need nobody to
- 3 tell you that this man sold drugs, right?
- 4 A. (Negative nod). No.
- 5 Q. You didn't need nobody to tell you at all that he may
- 6 have money in there? Right?
- 7 A. Uh-uh (negative).
- 8 Q. Right?
- 9 A. No.
- 10 Q. Okay. And so this -- this idea started with you?
- 11 A. Yes, sir.
- 12 Q. Not with Tristian Cummings, right?
- 13 A. Um-hum (affirmative). Yes, sir.
- 14 Q. Okay. And in that car and all that drive you talking
- 15 about guns, you and Tristian Cummings were not the only two
- 16 people in that car, correct?
- 17 A. Um-hum (affirmative).
- 18 Q. Huh?
- 19 A. Yes, sir.
- 20 Q. Okay. Who was in that car?
- 21 A. Two friends, sir.
- 22 Q. Was -- was Little Twin one of them?
- 23 A. No, Little 20 dead, sir.
- 24 Q. Oh, he's dead now?
- 25 A. Well, he's deceased. That's my friend.

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

178

1 Q. Excuse me?

2 A. He's deceased, sir.

3 Q. Okay. All right. But you did have two other people in
4 that car?

5 A. Yes, sir.

6 Q. And -- and you -- that was during the planning stages,
7 right?

8 A. No, sir.

9 Q. You planned that the day before?

10 A. No, I planned it at my house that night.

11 Q. So you're testifying and you say you weren't promised
12 anything, correct?

13 A. Um-hum (affirmative).

14 Q. You're not -- you say you weren't promised anything,
15 correct? Nothing at all, right?

16 A. (Negative nod).

17 Q. So you just decided to come to court today and say now
18 I'm going to tell the truth, today?

19 A. Been told the truth.

20 Q. Okay. So -- so -- so when you were arrested you told
21 them that you were there to rob him, right?

22 A. No, I told them it was a burglary, but ---

23 Q. Okay.

24 A. --- same thing.

25 Q. Okay. Robbery and burglary the same thing. Is that

SIMEON WILLIAMS - CROSS-EXAMINATION BY MR. RICHEY

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1 what you're saying?

2 A. Yeah.

3 Q. Okay. And -- and you're facing, on these charges,
4 burglary -- you pled to burglary, first, right?

5 A. (Affirmative nod).

6 Q. Right?

7 A. Yes, sir.

8 Q. Okay. And that potential sentence is 15 years to life,
9 correct?

10 A. Yes, sir.

11 Q. You don't expect to get a life sentence, do you?

12 A. No, sir.

13 Q. You expect, because you came here today and cooperated
14 with the State, you expect them to do something for you,
15 right?

16 A. No, sir.

17 Q. You -- so -- so you don't expect to get a life
18 sentence?

19 A. (Witness shrugged).

20 (Pause)

21 **MR. RICHEY:** One moment.

22 (Pause)

23 **MR. RICHEY:** No other questions for him.

24 **THE COURT:** Redirect.

25 **MR. McMASTER:** Yes, Your Honor.

SIMEON WILLIAMS - REDIRECT EXAMINATION BY MR. McMASTER

180

1 Redirect Examination by Mr. McMaster:

2 Q. When the police came to that house, where were you
3 located?

4 A. Kitchen, sir.

5 Q. So is it safe to say you don't know where anybody was
6 standing outside as far as the police are concerned?

7 A. Um-hum (affirmative).

8 Q. Did you see any other police besides the one that had
9 the gun on you?

10 A. No, sir, but I know they was out there.

11 Q. How did you know that?

12 A. I heard sirens and lights.

13 Q. Okay. But you didn't see anybody. You don't know
14 where they were standing?

15 A. No, sir.

16 Q. You don't know if there was one standing over here, or
17 up the road. You don't know, do you?

18 A. No, sir.

19 Q. You don't know if those lights and sirens were people
20 coming to the scene. You don't know that, do you?

21 A. No, sir.

22 Q. And you said you are from this area and if you were
23 trying to run away, you would have probably run back down
24 Burgess?

25 A. Yes, sir.

SIMEON WILLIAMS - REDIRECT EXAMINATION BY MR. McMASTER

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1 Q. Is Tristian Cummings from this area?

2 A. No, sir.

3 Q. So running back down in there, he wouldn't know kind of
4 where to go, just to run?

5 A. Yes, sir.

6 Q. Did you have the gun that night?

7 A. No, sir.

8 Q. Did you both need money?

9 A. Yes, sir.

10 Q. Is that why this robbery plan was come up with?

11 A. Yes, sir.

12 Q. Did anyone else have a gun that night?

13 A. No, sir.

14 Q. Was anybody else in that house with you?

15 A. No, sir.

16 Q. Now, if you were going out the front door and unlocked
17 -- unlocking the front door to get out, you might need both
18 hands to do that, couldn't you?

19 A. Yes, sir.

20 Q. And when the police officer's there with a gun in your
21 face, pointing the gun at you, are you looking at who's
22 going out the front door?

23 A. No, sir. I was looking at the officer.

24 Q. You were looking at the pistol is what you ---

25 A. Looking at the ---

SIMEON WILLIAMS - REDIRECT EXAMINATION BY MR. McMASTER

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1 Q. --- were looking at.

2 A. --- pistol.

3 Q. And this story that you've told the -- your testimony
4 here today that you've told this jury, is this essentially
5 the same as what you told the police back in June of 2016?

6 A. Yes, sir.

7 Q. So almost three years ago?

8 A. Yes, sir.

9 Q. The same information?

10 A. Yes, sir.

11 Q. Except about the burglary versus the armed robbery?

12 A. Yes, sir.

13 Q. To be clear?

14 A. Yes, sir.

15 Q. And you mentioned something you came up here and you
16 pled guilty.

17 A. Yes, sir.

18 Q. You pled guilty. And when he was talking to you about
19 that, using a lot of legal terms, you didn't understand all
20 those, did you?

21 A. I didn't, sir.

22 Q. But you used one. You said a hand of one is a hand of
23 all.

24 A. Yes, sir.

25 Q. Where does that -- what did that mean to you?

SIMEON WILLIAMS - REDIRECT EXAMINATION BY MR. McMASTER

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- 1 A. (No response).
- 2 Q. What does that mean to you?
- 3 A. (Negative nod).
- 4 Q. What do you think it means?
- 5 A. I don't know, sir.
- 6 Q. Well, what did you say it for?
- 7 A. (Witness shrugged).
- 8 Q. Is that why you pled guilty under that?
- 9 A. Yes, sir.
- 10 Q. Did you plead guilty because you were involved in this?
- 11 A. Yes, sir.
- 12 Q. And do you plead guilty because you took part in this?
- 13 A. Yes, sir.
- 14 Q. That you conspired to do this?
- 15 A. Yes, sir.
- 16 Q. And did you take part in this because of this robbery
- 17 and this burglary that you and Tristian Cummings were
- 18 involved in, it led to the death of Mr. White?
- 19 A. Yes, sir.
- 20 Q. Is that what went on?
- 21 A. Yes, sir.
- 22 Q. So you were a part of that?
- 23 A. Yes, sir.
- 24 Q. But you're telling this jury today you never had the
- 25 gun and you never -- and you never shot anybody?

MICHAEL NUNEZ - DIRECT EXAMINATION BY MR. McMASTER

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1 A. Yes, sir.

2 Q. But you were in close proximity to Tristian Cummings
3 when he fired that gun?

4 A. Yes, sir.

5 Q. Is that correct?

6 A. Yes, sir.

7 **MR. McMASTER:** That's all, Your Honor.

8 **THE COURT:** All right. You may step down. You may
9 call your next witness.

10 **MR. McMASTER:** Thank you, Your Honor. I'm going to
11 call Deputy Nunez, please.

12 **THE COURT:** Deputy Nunez, if you could please come
13 forward and place your left hand on the Bible and raise your
14 right hand as the clerk administers the oath.

15 **Michael Nunez,** being duly
16 sworn testified as follows;

17 **MADAM CLERK:** Thank you.

18 **THE COURT:** Have a seat in the witness chair. Pull up
19 real close to that microphone. Speak loudly, clearly and
20 slowly. And let's state your full name, please.

21 **INVESTIGATOR NUNEZ:** Investigator Michael Nunez.

22 **THE COURT:** Thank you, Mr. Nunez. Mr. McMaster, you're
23 recognized.

24 **MR. McMASTER:** Thank you, Your Honor.

25 **Direct Examination by Mr. McMaster:**

MICHAEL NUNEZ - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. And, Deputy Nunez, who do you work for?

2 A. Greenville County Sheriff's Office.

3 Q. And were you working for them back in 2016, March of
4 2016?

5 A. Yes, sir.

6 Q. In what capacity were you working then?

7 A. I was on uniform patrol on Bravo Platoon.

8 Q. And what were your duties back then?

9 A. Routine patrol and answering 911 calls.

10 Q. All right. Well, I'm going to take you back to the
11 early morning hours of March the 6th, 2016. Did you receive
12 a call regarding this incident?

13 A. I didn't receive the call. I was actually working in
14 the Taylors beat area. But when a deputy calls for
15 emergency assistance, it's kind of broadcast all around. So
16 I heard that come over the radio and decided to respond.

17 Q. And did you respond?

18 A. I did.

19 Q. And tell the jury about how long did it take you to get
20 -- to get to the incident location?

21 A. I was coming from about Rushmore and Wade Hampton area
22 when I activated my lights and proceeded that way. So a
23 couple of minutes I'd probably say.

24 Q. Was Tristian Cummings in custody when you got there?

25 A. By the time I arrived, yes.

MICHAEL NUNEZ - DIRECT EXAMINATION BY MR. McMASTER

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1 Q. And I believe we've seen a picture here, State's
2 exhibit 17, is that what you recall the way he ---

3 A. Yes, sir.

4 Q. --- was dressed?

5 A. Um-hum (affirmative).

6 Q. The way he -- the way he looked?

7 A. Yep.

8 Q. That was ---

9 A. Black male, dark clothing.

10 Q. And when you got there were you able to observe
11 Tristian Cummings and take a look at what he was wearing,
12 how he was dressed?

13 A. Yeah. When I arrived there they had already had him in
14 handcuffs, and they were at a patrol car. He had been
15 placed in the patrol car. And while he was inside the car,
16 he was actually taking some of his clothes off. He was
17 complaining about not being able to breathe and his legs
18 hurting. And he was trying to kick off his shoes and pull
19 his pants down and stuff like that inside the car.

20 Q. Do you recall him taking off any -- you said shoe?

21 A. (Affirmative nod).

22 Q. How about any -- any of his other clothing?

23 A. He had gloves on. And he had a sweatshirt on and the
24 shoes. When we pulled him out of the car to take the
25 photographs, I noticed that he had one glove on. There was

MICHAEL NUNEZ - DIRECT EXAMINATION BY MR. McMASTER

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1 another glove in the car. I think there was a shoe in the
2 car still, too.

3 Q. I'm going to show you State's exhibit 18. Can you
4 identify that, what we're looking at there?

5 A. Yeah, that's the Defendant at the back of a patrol car.
6 He's -- don't know if he's being put back in the patrol car
7 or being taken out because it's kind of blurry, but you can
8 see that there's a glove in the floorboard of the car.

9 Q. Okay. And is that on ---

10 **MR. McMASTER:** And I've shown this to Defense counsel,
11 Judge, State's exhibit 18. I'd ask it be entered into
12 evidence at this time.

13 **MR. RICHEY:** No objection.

14 **THE COURT:** It's into evidence.

15 (Whereupon State's exhibit 18 was admitted into
16 evidence)

17 Q. Is that uncommon for defendants to try to -- people
18 charged to try to take things off? Is that ---

19 A. No, it's not -- it's not uncommon. Sometimes things
20 get taken off because it's kind of hectic when they go into
21 the car or come out of the car. Shoes might be untied or
22 loose. Clothing sometimes falls off.

23 Q. But to get a glove off you would have to ---

24 A. Yeah, you'd probably have to pull it off.

25 Q. Okay. And what were your duties after you were in --

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1 you saw him in the car?

2 A. After that I was in charge of -- he was placed into my
3 custody because the ambulance had come. And he was actually
4 going to go to the hospital to be checked out for breathing
5 problems. So I rode with him in the ambulance. So one of
6 the things that we have to do is everything that's on him
7 that's not a weapon, goes with him in his property.

8 Q. So you would have put his -- his glove, ---

9 A. Yeah.

10 Q. --- his jacket, whatever?

11 A. Yeah. I would have collected all that and -- pretty
12 standard after put on the gurney. They're usually covered
13 in a blanket or a sheet to put the stuff either on the -- on
14 the sheet or on his legs, something like that just so that
15 we can see it and we know where it is.

16 Q. So you stayed with him at all times?

17 A. Yeah. I rode with him the entire time he was in the
18 ambulance.

19 Q. And then are you with him when we go into the hospital
20 room?

21 A. Yep. We went through the standard intake procedure
22 that the ambulance goes through. And he was escorted to a
23 room. I stayed with him the whole time. I was next to the
24 gurney and in the room with him.

25 Q. Did you ever leave -- I think it was -- excuse me.

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1 Until you were relieved did you ever leave the Defendant?

2 A. No.

3 Q. Is that standard procedure as well?

4 A. Yeah. He was in our custody. That means he's in our
5 -- our care and control.

6 Q. So when you say you didn't leave, you didn't leave the
7 room?

8 A. No. Correct.

9 Q. Do you know where the Defendant's clothes were placed
10 when he got to the room?

11 A. They were balled up. And I placed them on the ground,
12 I think, next to the -- next to the bed that he was laying
13 in.

14 Q. Okay. Did the Defendant complain about anything in the
15 room?

16 A. Yeah. It was actually pretty cold in the room. It's
17 usually cold in the ER anyway. He complained about being
18 cold. And I think the nurse actually brought him an extra
19 blanket and at one point took the jacket that he had, that
20 sweatshirt, took it off the ground and put it on him like as
21 a blanket to cover up -- cover him up.

22 Q. So you got the jacket off the floor out of the balled
23 up clothes?

24 A. Yeah.

25 Q. And handed it to him?

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1 A. Yeah. I just kind of grabbed it and put it on him
2 because he was cold.

3 Q. And is it safe to say that they would have taken his
4 gloves and things like that off at that time to administer
5 first aid?

6 A. Correct. Yeah, everything would have been taken off
7 because they would have been looking for, in the ambulance,
8 they usually look for injuries or look for IV's and stuff.
9 So they want clear arms. So the jacket would have been
10 taken off, gloves would have been taken off.

11 Q. When did you leave the Defendant's -- the Defendant's
12 room?

13 A. After I got relieved by Deputy Heath.

14 Q. Okay. And was anybody there when you were leaving?
15 Was there anything in change over there?

16 A. Yeah. I think it was forensics was there to collect
17 his clothing while I was leaving, take additional
18 photographs, maybe run some tests, I don't know. They were
19 -- they were there, though, to collect the stuff.

20 Q. Now, did the Defendant have or did you have a chance to
21 have the Defendant identify himself by his name while you
22 were present in the hospital room with him?

23 A. Yeah. When I was there, actually, he -- he asked me if
24 I was investigating this case. I told him I'm just, you
25 know, I'm just watching him at that point, I wasn't the

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1 investigating officer, I wasn't even involved in the
2 incident.

3 Q. Did you have him identify himself by name?

4 A. Yeah. He -- he told me his name, Tristian Cummings,
5 after -- he asked to talk to somebody. And so I actually
6 called one of the investigating officers ---

7 Q. Let me ask you this. Did you -- can you identify the
8 person that identified himself as Tristian Cummings?

9 A. Yes, sir. He's the gentleman sitting over there in the
10 white shirt. (Witness pointed to the Defendant).

11 Q. All right. After completing your report did you have
12 any other -- at this time did you have any other involvement
13 in this case once you left the hospital?

14 A. No. After leaving the hospital, I completed my report,
15 that was it.

16 Q. Did you notice anything about the Defendant's --
17 Defendant's mouth that night?

18 A. Yeah, he was -- he was missing teeth in the front. And
19 I don't know how many, but ...

20 Q. I'm going to show you State's -- State's exhibit 19.
21 Can you identify that?

22 A. State's exhibit 19.

23 Q. 19?

24 A. Yeah. This same condition his mouth was in, missing
25 the two front teeth.

3 **MR. RICHEY:** No objection.

5 MR. McMASTER: Thank you.

8 Q. So he was missing those teeth when he was booked in?

10 Q. When you were with him in the hospital.

12 Q. If you'll answer any questions Mr. Richey may have.

14 **MR. RICHEY:** No questions.

17 **MR. McMASTER:** Deputy Jeffery Heath, please.

21 **Jeffery Heath**, being duly
22 sworn testified as follows:

24 **THE COURT:** Have a seat in the witness chair. Pull up
25 real close to that microphone. Speak loudly, clearly and

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1 slowly in order that we can hear everything that you have to
2 say. And let's start with your full name.

3 **MASTER DEPUTY HEATH:** Master Deputy Jeffery Scott
4 Heath.

5 **Direct Examination by Mr. McMaster:**

6 Q. Who do you work for?

7 A. Greenville County Sheriff's Office.

8 Q. And were you working for the Greenville County
9 Sheriff's Office back in March of '16?

10 A. Yes, sir, I was.

11 Q. And what capacity -- what duties did you have back
12 then?

13 A. Working as Adam Platoon on uniform patrol. Would
14 respond to 911 calls for service.

15 Q. And with regards to the incident at 34 Burgess, did you
16 ever go to that incident location in regards to this case?

17 A. No, sir, I did not.

18 Q. Where did -- how did you get involved? Tell the jury
19 how you're involved in this case.

20 A. I responded to the hospital as a relief unit for Deputy
21 Nunez because it was the end of his shift and the beginning
22 of mine.

23 Q. And did you know any of the underlying facts of why you
24 were there?

25 A. I -- on our computers there's a computer aided dispatch

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1 system which will show very limited information about
2 certain calls. So out of curiosity I kind of looked it up
3 and I saw that it appeared to be some sort of burglary and a
4 foot chase had happened. But other than that, I really
5 didn't know much about the case.

6 Q. What were your duties when you arrived? You said to
7 relieve Nunez?

8 A. Was to relieve Deputy Nunez and just take custody of
9 Mr. Cummings.

10 Q. Did you stay with the Defendant in his hospital room?

11 A. Yes, sir, I did.

12 Q. Did the Defendant receive medical treatment while you
13 were there?

14 A. He did.

15 Q. And what was that?

16 A. While I was there they were evaluating him. They took
17 him out of the room for a CAT Scan. When they moved the
18 bed, I noticed that there was a glove sitting on the floor.
19 That was odd because it wasn't like a medical glove or
20 anything.

21 So since we're responsible for people's property while
22 they're in our custody, I asked Mr. Cummings if that was his
23 glove. He indicated that it was. So then I took that, kept
24 it with me so we wouldn't lose it. He went and got his CAT
25 Scan, came back to the room. I went with him for the CAT

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1 Scan.

2 Q. Had all his other material that he had -- that came
3 with him in the ride over, had it been collected at that
4 point?

5 A. Yes. When I first arrived one of the investigators was
6 there completing paperwork and taking items and stuff from
7 the -- from the room, his clothing.

8 Q. So this was -- but you said this was under the bed?

9 A. Yeah. This had -- this was under the bed. I only
10 noticed it when they moved it for the CAT Scan.

11 Q. All right. I'm going to show you -- it's been marked
12 State's exhibit 23. I'm going to show you what's been
13 marked State's exhibit 23. Can you tell the jury -- can you
14 tell the jury what this is?

15 A. This is the envelope that I would have put the glove
16 into. I had called one of the investigators, asked him
17 about it, if this was something that was necessary for them.
18 They asked me to put it down to Property and Evidence. And
19 I can tell that this is the same one because my initials,
20 the date and the case number are here on the evidence tape.

21 Q. And what -- tell the jury -- what's P&E? What kind of
22 place is P&E?

23 A. It's a secure location down in the basement of the law
24 enforcement center where we put evidence or property that
25 we're going to be returning to people. What I did was I

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1 would have taken this, put it into an envelope, filled out
2 some paperwork and then slid it through a little opening in
3 a door that would be collected by the evidence people in the
4 morning or later in the day when they opened up.

5 Q. And do you have access into P&E?

6 A. Just on the outer portion where we can shove things
7 through the door or in a locker.

8 Q. So once it's shoved through, you can't go back in and
9 get it?

10 A. No.

11 Q. Does that appear to be in substantially the same
12 condition as it was?

13 A. Yes.

14 Q. Okay. And would you at this time open -- yeah, open
15 that, please.

16 (Pause)

17 Q. That's all right. And would you just look in it and
18 tell us what you see in there.

19 A. It's a glove.

20 Q. Does it appear to be the same glove that you put into
21 Property and Evidence back on March the 6th?

22 A. Yes, sir.

23 Q. Okay.

24 **MR. RICHEY:** No objection.

25 **MR. McMASTER:** No objection?

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1 **MR. RICHEY:** No.

2 **MR. McMASTER:** Your Honor, without objection we'd ask
3 that this glove be entered into evidence at this time,
4 State's exhibit 23.

5 **THE COURT:** It's into evidence.

6 **MR. McMASTER:** Thank you.

7 (Whereupon State's exhibit 23 was admitted into
8 evidence)

9 Q. Other than putting State's exhibit 23 into evidence at
10 that time did you have any further duties in this case?

11 A. No, sir. I had transported Mr. Cummings down to the
12 detention center. And then as soon as I left there,
13 immediately put the glove into P&E and then went about my --
14 the rest of my shift.

15 (Pause)

16 **MR. McMASTER:** I don't have any other questions, Your
17 Honor.

18 **THE COURT:** Cross-examination.

19 **MR. RICHEY:** No questions.

20 **THE COURT:** You may step down and you're free to leave.
21 You may call your next witness.

22 **MR. CULBREATH:** Your Honor, the State would call Dar
23 Shaw.

24 **THE COURT:** Yes, sir. Please come forward. I'd ask,
25 if you would, place your left hand on the Bible. Raise your

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1 right hand as the clerk administers the oath.

2 **Darwin Shaw**, being duly
3 sworn testified as follows;

4 **MADAM CLERK:** Thank you.

5 **THE COURT:** Have a seat in the witness chair. Pull up
6 real close to that microphone. Speak loudly, clearly and
7 slowly in order that we can hear everything that you have to
8 say. And let's start with your full name, please, sir.

9 **SERGEANT SHAW:** Darwin Shaw, S-h-a-w.

10 **Direct Examination by Mr. Culbreath:**

11 Q. Sergeant Shaw, good morning. Could you tell the jury a
12 little bit about yourself and where you currently work, if
13 you work, and where you used to work.

14 A. I'm just working part-time at a golf shop. I retired
15 last February from the Forensic Division. I was a sergeant
16 there for 18 years, total of 19 years. Prior to that I was
17 with the police department in Nebraska for 21 years, 14
18 years as a detective and seven years as a road officer.

19 Q. Okay. And back on March 7th of 2016 were you -- is
20 that where you were employed as a sergeant?

21 A. It was, yes.

22 Q. And that was in forensics?

23 A. Yes, sir.

24 Q. All right. Did you receive specialized training with
25 regard to your forensics activities with the Department of

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1 Public Safety?

2 A. I did. Most -- most everything is on-the-job training,
3 but there's also specialized schooling in on-site
4 investigations, evidence collection and processing and how
5 to work crime scenes.

6 Q. Okay. Would it be fair to say you get training on a
7 wide range of different areas in forensics, and on a given
8 case you may be asked to do a specific thing or a number of
9 things?

10 A. That's correct, yes.

11 Q. Okay. If I could take your attention back to March 7th
12 of 2016, do you recall becoming involved in the case that
13 we're here for today?

14 A. I did.

15 Q. Okay. Could you tell the jury a little bit about how
16 you got involved.

17 A. I was contacted by dispatch of an autopsy that was
18 going to be performed that we were requested to have an
19 officer respond to. Usually as a supervisor I had more
20 flexibility. So I attended a lot of the autopsies that were
21 requested. And I responded to the morgue that morning.

22 Q. Okay. Had you been provided any instructions or kind
23 of set out some duties that you needed to attend to while
24 you were there?

25 A. And it's just a standard protocol on death

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1 investigations where we collect potential evidence, we take
2 photographs, usually roll their fingerprints. On homicides
3 we do additional collection like either head hair, pubic
4 hair, fingernail clippings, that type of thing. And
5 especially in a -- in a case where there was a shooting, we
6 do a gunshot residue test on the victim's hands.

7 Q. All right. So you did have an occasion to attend the
8 autopsy of Jeryl White?

9 A. Yes, I did.

10 Q. Okay. And all of those different tasks that you just
11 mentioned, did you conduct, as you mentioned, a GSR, gunshot
12 residue testing or sampling on Mr. White?

13 A. Yes, I did.

14 Q. Can you tell the jury a little bit about what that is,
15 what that sampling kit is?

16 A. It's called a Gunshot Residue Test Kit. It's specified
17 as an SEM Kit, which stands for Scanning Electron
18 Microscope. Basically what it is is a vial that has like
19 sticky fly paper on a little dab. And what you do is you
20 dab the palm of the hand as well as the back of the hand,
21 both hands.

22 The SEM picks up gunshot particles, which consists of
23 antimony, barium and lead. So the -- you do the dabber in
24 hopes of getting gunshot particles. And then they use a
25 microscope to quadrant off the section that was dabbed to

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1 try to find gunshot particles that were retrieved from the
2 hand.

3 Q. Okay. As far as the testing, you don't do the testing,
4 correct?

5 A. That's correct.

6 Q. Okay. You just have the -- is it a standard packet or
7 a standard test kit?

8 A. There is. It changed. I'm not sure which one I --
9 there used to be four dabbers. One would be the left front,
10 left back, right front, right back. And then the Crime Lab
11 changed it to where only there were two dabbers. One would
12 be for the left hand only and one for the right hand only.
13 So I'm not sure which one I did. Probably the four dabbers.
14 I'd have to look at it.

15 Q. Okay.

16 **MR. CULBREATH:** Your Honor, may I approach?

17 **THE COURT:** Yes.

18 Q. Sergeant Shaw, I'm going to show you an envelope here
19 with some barcodes on it and just ask you if you recognize
20 any of those?

21 A. I do.

22 Q. All right. What are those?

23 A. They're barcodes that specify what evidence has been
24 put into Property and Evidence. The ones specifically for
25 me, what we do is we would label evidence under our

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1 initials. So label DS1 was a gunshot residue -- it was a
2 GSR SEM Collection Kit on Jeryl Lamar White.

3 Q. Okay. Do you generate that label?

4 A. I do. I have to pull all the information in. And then
5 the label comes off. And then I attach it to the evidence.

6 Q. Okay. And is that for purposes of turning it into
7 Property and Evidence?

8 A. It is.

9 Q. Okay. And so you've mentioned when you go out on a
10 crime scene, you're collecting various types of evidence.
11 Is that how you keep track of it by creating barcodes and
12 specific identifiers and then turning them into P&E?

13 A. It is.

14 Q. Okay. And in this particular case, if you would, since
15 it appears to have three in it, if you'll take the scissors
16 and cut that open and take a quick look inside.

17 (Pause)

18 Q. All right. And if you can look in there and see if
19 there is a SEM Kit. It may be marked DS1.

20 A. There is.

21 Q. All right. And if you could pull that out for me. All
22 right. And do you recognize that?

23 A. I do.

24 Q. And what is that?

25 A. This is an envelope that comes with the -- the kits

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1 that are provided with the dabbers. You do the dabbers.

2 When they're done, you put it in this bag. It's sealed with
3 evidence tape, it's initialed. And then a barcode is
4 applied to the package on the outside to show what is
5 specifically on the inside of the package.

6 Q. Okay. Does that appear to be in substantially the same
7 condition as it was when you first placed it in P&E?

8 A. It does.

9 Q. Okay. And would it be -- if it were to be tested,
10 would somebody come and get it from P&E and do the testing?

11 A. It would -- normally it went -- it would go to SLED,
12 which either somebody from our Crime Lab may transport it
13 down to SLED. That's normally how it goes. Once I'm done
14 with it, it goes to Property and Evidence, and I have no
15 further contact with it once it's done.

16 Q. Okay. And would this be the kit that you used to take
17 the sampling on the deceased, Mr. Jeryl White?

18 A. Yes, it is.

19 **MR. CULBREATH:** Your Honor, at this time I'd like to
20 move this into evidence.

21 **MR. RICHEY:** No objection.

22 **THE COURT:** It's into evidence. That's State's exhibit
23 ...

24 **MR. CULBREATH:** This would be 24. State's 24.

25 (Whereupon State's exhibit 24 was marked and admitted

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1 into evidence)

2 **MR. CULBREATH:** That's all the questions I have for
3 this ...

4 **THE COURT:** Cross-examination, Mr. Richey.

5 **MR. RICHEY:** No questions, Your Honor.

6 **THE COURT:** You may step down.

7 A. Thank you, Your Honor.

8 **THE COURT:** You're free to leave. You may call your
9 next witness.

10 **MR. CULBREATH:** Your Honor, the Court's indulgence one
11 moment.

12 (Pause)

13 **MR. McMASTER:** Your Honor, may we approach?

14 **THE COURT:** Yes.

15 (Whereupon a bench conference was held off the record
16 in the presence of the jury, but out of their hearing)

17 (Whereupon the bench conference was ended)

18 **THE COURT:** Madam Forelady, ladies and gentlemen of the
19 jury, I'm going to ask that you return to the jury room to
20 allow you to refresh yourselves. We have some legal matters
21 to attend to outside of your presence. Madam Forelady, once
22 again, there's to be no discussion about the case
23 whatsoever. And you can follow the bailiff.

24 (Whereupon the jury exited the courtroom at 11:28 am)

25 (Pause)

1 **THE COURT:** I tell you what we're going to do, we're
2 going to break for lunch. And we'll return at 1:00 and
3 y'all can get all this stuff straight. And we'll reconvene
4 at 1:00.

5 **MR. CULBREATH:** Yes, sir.

6 **MR. McMASTER:** Thank you, Your Honor.

7 **MR. RICHEY:** Yes, sir.

8 **THE COURT:** If we could -- if you could bring the
9 forelady of the jury back in. All right. We're still in --
10 we're still in session everyone.

11 (Whereupon the forelady entered the courtroom)

12 **THE COURT:** Madam Forelady, we're going to break until
13 1:00. Once again, there's to be no discussion amongst
14 yourselves or with anyone else. Be back at 1:00, 1:00
15 sharp. And we'll stay here and work out some legal matters.

16 **MADAM FORELADY:** Okay.

17 **THE COURT:** And that way y'all can have a good, what we
18 call, executive lunch. How about that?

19 **MADAM FORELADY:** Thank you.

20 **THE COURT:** Very good. Thank you.

21 (Whereupon the forelady exited the courtroom)

22 **THE COURT:** We'll stand at ease until 1:00.

23 **MR. RICHEY:** Yes, sir.

24 **MR. McMASTER:** Thank you, Your Honor.

25 (Whereupon court was in recess at 11:32 am)

1 (Whereupon State's exhibits 25 - 52 were marked for
2 identification)

3 (Whereupon court reconvened at 12:55 pm)

4 **THE COURT:** Anything from Defense?

5 **MR. RICHEY:** No, sir.

6 **THE COURT:** All right. We're ready for the jury.

7 **MR. McMASTER:** If you want to read those stipulations
8 into the record now, we can do that, before the jury walks
9 in. It's up to you, how you'd prefer it.

10 **MR. CULBREATH:** Your Honor, in talking with the court
11 reporter, she felt that it may be helpful to go ahead and do
12 a summary outside the presence of the jury just to get all
13 of the numbers and exhibits on the record.

14 **THE COURT:** Okay.

15 **MR. CULBREATH:** And as we proceed through Investigator
16 Fortner and refer to those it will -- we'll have something
17 to refer back to on the record.

18 **THE COURT:** All right. Well, let's hold -- hold that
19 door until -- yeah, go ahead.

20 **MR. CULBREATH:** I'll make this very quick, Your Honor.
21 I will defer to the court reporter if I get these wrong, but
22 it looks like we're going to start with 25, State's 25 will
23 be next in sequence. And State's 25 will be the -- what's
24 NJD1, which is the sweatpants of the Defendant. State's 26
25 will be the left shoe of the Defendant. State's 27 will be

1 item NJD4, which is a long sleeve shirt collected from the
2 Defendant. State's 28 will be item NJD5, which is the right
3 hand O'Neal glove collected from the Defendant. State's 29
4 will be NJD6, which is a GSR kit collected from Defendant
5 Tristian Cummings.

6 State's 30 will be item NJD9, which is a Free Tech
7 jacket collected from the suspect or Defendant. 31 through
8 42 is a collection of photographs of the interior of the
9 residence.

10 43 would be item RRH, which is a black and silver
11 handgun inside the box here, Your Honor, along with the two
12 cartridges and the magazine. State's 44 will be RH4, which
13 is a cartridge casing collected from the hallway between the
14 bathroom and the kitchen. 45 is a cartridge casing, RH6,
15 collected from the bathroom floor.

16 State's 46 is called RH7, which is a projectile removed
17 from the bathroom floor. It was dug from the surface of the
18 floor. 47 is RRH8, which is a GSR Kit, collected from co-
19 defendant Simeon Williams.

20 48 is referred to as item 1. And that is a projectile
21 taken from the right arm of the deceased at the autopsy.
22 49, a red jacket with white stripes, which was collected
23 from co-defendant Simeon Williams.

24 Then, Your Honor, we have three reports. State's 50 is
25 a serology report. State's 51 is the DNA report. And

1 State's 52 is the firearms report.

2 **THE COURT:** All right. Any objection from Defense?

3 **MR. RICHEY:** None, Your Honor.

4 **THE COURT:** All right. They're into evidence.

5 (Whereupon State's exhibits 25 - 52 were admitted into
6 evidence)

7 **MR. CULBREATH:** And just to back up, Your Honor, on two
8 photographs, State's 21 and 22, the photographs taken from
9 the hospital of the suspect's glove and shoe.

10 **MR. RICHEY:** No objection, Your Honor.

11 **THE COURT:** All right. They're into evidence.

12 **MR. McMASTER:** Yes, sir.

13 (Whereupon State's exhibit 21 and 22 were admitted into
14 evidence)

15 **MR. CULBREATH:** That's all from the State.

16 (Whereupon the jury entered the courtroom at 1:00 pm)

17 **THE COURT:** Madam Forelady, ladies and gentlemen of the
18 jury, everyone looks very alert and very well fed. If you'd
19 please pay very close attention. Mr. McMaster.

20 **MR. McMASTER:** Thank you, Your Honor. The State calls
21 lead Investigator Mike Fortner.

22 **THE COURT:** Yes, sir. Please come forward. I'm going
23 to ask you, if you could, to take a moment, set your stuff
24 down and put your left hand on the Bible. Raise your right
25 hand as the clerk administers the oath.

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1 Michael Fortner, being

2 duly sworn testified as follows;

3 **MADAM CLERK:** Thank you.

4 **THE COURT:** Have a seat in the witness chair. Pull up
5 real close to that microphone. Speak loudly, clearly and
6 slowly in order that we can hear everything that you have to
7 say. And let's start with your full name, sir.

8 INVESTIGATOR FORTNER: Michael Eugene Fortner.

9 THE COURT: Very good.

10 Direct Examination by Mr. McMaster:

11 Q. Investigator Fortner, who do you work with?

12 A. Greenville County Sheriff's Office.

13 Q. And how long have you been with the Greenville County
14 Sheriff's Office?

15 A. Twenty-five years now.

16 Q. And you were -- and back in March of 2016 in what
17 capacity were you working there?

18 A. I was working in the Criminal Investigations Division
19 in the Homicide Unit at the time.

20 Q. And were you the on-call investigator on the night of
21 March the 6th, ---

22 A. I was.

23 Q. --- in the early morning hours of March the 6th?

24 A. I was. Yes, sir.

25 Q. And as a lead investigator can you tell the jury

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1 briefly what your duties are? What do you do?

2 A. As lead investigator -- as an investigator you cover
3 call after hours. In this case I was on-call. A call came
4 in around 1:40 in the morning. When you get the call, you
5 respond to the scene.

6 Once you get on the scene the important thing is just
7 make sure everything's still secure as far as crime scene's
8 concerned. Once forensics gets on the scene we do what we
9 call a walk-through with forensics. We'll walk through the
10 crime scene with them, look at everything that we can see
11 that's out and needs to be collected as evidence. Anything
12 that might need to be photographed, we work with forensics
13 on that.

14 Then once that's taken care of, we get forensics
15 started, if there are any witnesses that are maybe on-scene,
16 like in this case, April Green was on-scene still. I
17 interviewed her in my car while forensics was doing some of
18 the processing. Then once forensics gets done processing
19 the scene, we release the scene and go on from there.

20 Q. And what time did you get to the scene?

21 A. I arrived on the scene at about -- I'm going to say it
22 was about 2:20 in the morning.

23 Q. And was Defendant Cummings or Defendant Williams at the
24 scene at that time?

25 A. No, neither one of them are at the scene. Mr. Williams

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1 had already been taken down to the law enforcement center.

2 And Tristian Cummings was down at the hospital.

3 Q. At that point -- let's go through what you did, what
4 you were doing in the house at that point.

5 A. Again, we walk through the house with forensics as they
6 photograph, collect evidence. I make notes of what's being
7 collected, where it's collected from and that type of thing.
8 We just work with forensics as they process.

9 Q. And did you have a -- when forensics is processing the
10 scene, then they're not moving anything around at that
11 point? Not moving around any of the evidence in the -- on
12 the scene?

13 A. While we're doing the walk-through, no. At that point
14 in time we're just identifying what needs to be collected.
15 And then they come back through it and mark it with placards
16 and photograph it.

17 Q. Did they do that in this case?

18 A. Yes.

19 Q. What was the condition of 34 Burgess when you got in
20 there? Where did -- what do you remember seeing?

21 A. It had been -- appeared to have been ransacked, like
22 somebody was going through drawers in the kitchen, for
23 example. Furniture in the living room area was kind of
24 moved around, tossed around a little bit. And the door, the
25 side door was actually laying on the floor of the kitchen,

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1 had been literally -- had been kicked completely in.

2 Q. And we've talked a lot about side doors, and back doors
3 and front doors. In 34 Burgess are there just two doors?

4 A. Yes, there are.

5 Q. And so there's the front door and then the side door,
6 which you just referenced, that was laying on the floor ---

7 A. Yes.

8 Q. --- in the kitchen?

9 A. That's correct. Yes, sir.

10 Q. Okay. And is this a fairly small area?

11 A. It is. I mean, you've got the front door that leads
12 right into the living room. The living room and the kitchen
13 basically is like a great room. The kitchen's just
14 basically separated from the living room by a countertop.
15 And the very next room would be the bathroom, which shares a
16 wall with the kitchen. And then on the end of the house is
17 the bedroom where Ms. -- or April was lying underneath the
18 bed.

19 Q. Now is she still on-scene when you get there?

20 A. She is. She's actually sitting in the living room when
21 I get on-scene.

22 Q. And do you speak to her?

23 A. I do, yes, sir.

24 Q. Now, I know there's been some mention about a dog. Did
25 you ever establish any information about a dog or what

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1 happened with the dog?

2 A. I asked -- 'cause somebody had mentioned something
3 about a dog. There was a kennel in there. And I asked
4 about the dog or the whereabouts of it. And April told me
5 that she felt that it probably ran off maybe when the
6 gunshots went off 'cause she didn't -- never saw the dog,
7 you know, because she was inside the bedroom. So what
8 happened to it, she's not really sure either.

9 Q. All right.

10 **MR. McMASTER:** I'm going to -- Court's indulgence just
11 one second. I'm going to pull down the screen, Your Honor.

12 (Pause)

13 Q. Investigator Fortner, I'm going to show you a series of
14 photographs. Now, to -- let's see if this comes up to speed
15 here. Now, I want you to -- these have -- these have
16 previously been stipulated to and admitted into evidence.

17 A. Okay.

18 Q. And I want you to kind of -- I want you to explain to
19 the jury what we're looking at here.

20 A. Okay.

21 Q. Okay. Just a second just to auto-focus it. It should
22 be fine. All right. Can you explain what we're looking --
23 what we see here?

24 A. Yeah. We're actually standing inside the kitchen.

25 Right here to your right -- to the right side of the photo

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1 there would be the countertop I was talking about that
2 separates the kitchen from the living room area. There on
3 the countertop you can see the handgun that was placed there
4 by Tristian Cummings as he was running out the front door.

5 As you can see, the house has been ransacked. That's
6 not normal set-up for the house. It had been ransacked.
7 You can kind of see the dog kennel there. Up above the gun
8 ---

9 Q. What are we looking at right here? Can you see that?

10 A. Looks like drawers and stuff ---

11 Q. Right here.

12 A. Oh, okay. That looks like the door -- the door's been
13 lifted up off the floor now.

14 Q. And is that where it was kicked in there, the crack in
15 the door?

16 A. Correct. Yeah, that's where the door gave, yes.

17 Q. Okay. All right. And you've indicated that that is
18 the -- that's the pistol on the counter there. And at this
19 point in time it appears it has a placard beside it, is that
20 correct?

21 A. Yes, sir, it does.

22 Q. And would that have been placed by there by forensics?

23 A. Yes, it would have been.

24 Q. And to give you -- and that ---

25 **MR. McMASTER:** Just for reference to the Court, Your

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1 Honor, that's State's exhibit 31.

2 Q. And then we have State's exhibit 11. Is that another
3 picture? What is that telling -- showing us there?

4 A. All right. Here we're kind of standing right in the
5 hallway, kind of right there where the kitchen's at. Again,
6 there's the counter that separates the kitchen from the
7 living room area, the gun laying on top of the counter there
8 still. And then that would be the actual front door that
9 Mr. Cummings ran out of when the deputies arrived on the
10 scene.

11 Q. And that's the -- and that is the pistol that we're
12 talking about here today?

13 A. Yes, sir.

14 Q. All right. And I'm going to show you State's 43 that
15 has already been admitted into evidence, stipulated to as
16 well. Can you tell the jury and show the jury what is in
17 that box?

18 A. This is the Kahr .45 caliber handgun that was recovered
19 from the countertop there. It's got a magazine with it as
20 well as a couple of rounds with it.

21 Q. Are those -- those are live rounds that are found
22 there?

23 A. Yes, sir, they are.

24 Q. All right.

25 **THE COURT:** Might counsel approach the bench for a

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1 moment.

2 MR. McMASTER: Sir?

3 THE COURT: Might counsel approach the bench for a
4 moment.

5 MR. McMASTER: Yes, sir.

6 (Whereupon a bench conference was held off the record
7 in the presence of the jury, but out of their hearing)

8 (Whereupon the bench conference was ended)

9 Q. All right. Going back into our photographs that were
10 previously stipulated to, I'm going to show you a series of
11 photographs. And if you'll just describe what you -- what
12 these are for the jury, please. State's 39.

13 A. This would be the bedroom at the end of the hallway
14 where April Green was hiding at underneath the bed.

15 Q. And what would this be right here?

16 A. That right there would be the door that was removed
17 from the bathroom that had to be removed in order to get the
18 victim out of the bathroom so they could do first aid with
19 him.

20 Q. All right. And then this, State's 40?

21 A. All right. This is the bathroom door again. And right
22 there, kind of right there in the middle area right there,
23 that would be the bullet hole that was fired when the bullet
24 went through the door of the bathroom.

25 Q. Then we'll go to 41. Does that give a better

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1 perspective of what we're looking at there?

2 A. All right. Again, that's the door. Forensics has put
3 some measuring tape, I guess you'd say, on the door to kind
4 of show you about how high up off -- from the bottom of the
5 door the bullet ---

6 Q. So that's ---

7 A. --- was.

8 Q. --- about a mid-section of the door?

9 A. Yes, sir.

10 Q. All right. Mid-point of the door. That's -- if you
11 were standing behind that door, then you'd be right in the
12 middle of the door, is that -- is that safe to say?

13 A. Yes, sir. I would say so, yes.

14 Q. And 42, what is that?

15 A. Again, it's the door. It's just a closer shot of the
16 door and the bullet hole. They're indicating here that the
17 bullet hole was approximately thirty-seven and a half
18 (37 1/2) inches from the bottom of the door. And they're
19 just kind of giving you a little bit of a scale there so you
20 can tell about what size the hole is.

21 Q. I believe you've identified the actual item, but 32.

22 A. All right. This would be the handgun that was in the
23 box we just showed. It's a Kahr .45 caliber.

24 Q. This just shows it in a secure position?

25 A. Yes, sir.

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1 Q. It would not have been in this position at -- on the
2 scene, though, is that correct?

3 A. That's correct. It was fully loaded on the scene.

4 Q. Thank you. Would someone from law enforcement have
5 taken the -- taken the magazine out and put the gun in a
6 safe position? Is that -- is that part of their practice?

7 A. When forensics collects it, they would have done that.
8 Deputies who respond to the scene, unless there's just an
9 exigent circumstance of some sort, they're taught to leave
10 the guns alone, don't touch them, don't unload them, that
11 kind of thing, unless, of course, you just had like a crowd
12 of people around, he was worried about somebody maybe
13 picking it up and taking off with it or something.

14 Q. Okay. I'm going to show you some -- the next pictures,
15 a series of pictures. We're going to start with 35. I'd
16 like you to describe what -- where we are here in the house.

17 A. All right. Here is -- this is the bathroom. Again,
18 the door has been removed. Deputies did that when they
19 responded on-scene. You can see the obvious pool of blood.
20 And there's some markings there. I believe 1, that was for
21 a shell casing. I believe number 6 was for a shell casing.
22 And number 5, I believe, was for a hole in the floor from
23 the projectile.

24 Q. Okay. And we're going to go to 36. That appears -- is
25 that a little better picture of what number 6 placard was

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1 showing?

2 A. Yes. You can see the ---

3 Q. Right there?

4 A. --- the shell casing right there laying up against the
5 baseboard on the bathroom floor.

6 Q. Does that say to you that when that shot was fired that
7 the firearm had to have been or the pistol had to have been
8 inside the bathroom area?

9 A. Most likely. I mean, it's not to say that it couldn't
10 have been out in the hallway and someone kicked it into the
11 bathroom, but certain mostly likely it was fired inside the
12 bathroom.

13 Q. And I think you indicated -- on State's 37 can you tell
14 us what we're looking at there?

15 A. Yeah. I believe this is the hole in the floor.
16 Forensics looked at the hole and they did some work with it.
17 And they were able to recover a projectile from the hole in
18 the floor.

19 Q. All right. And to get ahead to 38, can you tell them
20 what that is at this time?

21 A. That looks like -- it's probably the hole in the floor.
22 And that would be the projectile in the -- in the subfloor.

23 Q. And forensics would have pulled that projectile out to
24 recover it?

25 A. Yes, they would have. Yes, sir.

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1 Q. And State's 34 we have here, can you talk about this --
2 these marks here, what these would have most likely come
3 from?

4 A. Yes. That's what we would refer to as drag marks in
5 blood. Mr. Jeryl White was lying there on the floor, no
6 doubt. And when the deputies responded and removed the
7 door, they then pulled him out into the kitchen area so they
8 could administer first aid. And when they drug him out of
9 the bathroom, that would have caused those drag marks.

10 Q. And State's 33, placard number 4 here, what are we
11 seeing here as well?

12 A. All right. This is another .45 caliber shell casing.
13 This was recovered out in the hallway, pretty much that
14 threshold right there that kind of starts the hallway
15 leading down to where the bathroom was at and then the
16 bedroom. And this is kind of like the kitchen area back
17 this way.

18 Q. And did -- did you ever see that shell casing on the
19 stove or was it on the floor the entire time that you --
20 when you got on the scene?

21 A. Yeah. When I arrived on the scene the shell casing was
22 already on the floor.

23 Q. And, obviously, when you arrived on the scene Mr. White
24 had already been moved around and had been transported out?

25 A. That's correct. Yes, sir.

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1 Q. All right. We're going to have you open some items
2 that have previously been admitted into evidence under
3 stipulation. I'm going to ask you to open State's 49, which
4 is in evidence.

5 (Pause)

6 Q. Can you read out what that -- what that is as well?

7 A. All right. Label on the bag has got item number RRH10.
8 And it says it's a Galaxy double XL red jacket with white
9 stripes.

10 Q. And who would that have been collected from?

11 A. This was collected from Simeon Williams.

12 Q. So this was the co-defendant?

13 A. Yes, sir, the co-defendant that testified earlier.

14 Q. So -- and this is what he would have had on when he was
15 booked into the LEC?

16 A. It is, yes, sir.

17 Q. And you actually saw him in this material, is that
18 correct?

19 A. I did, yes.

20 Q. Okay. All right. Try to get some of these all at one
21 time. These have all been stipulated into evidence.
22 State's 25, 28, and 27, will you open those up for the jury
23 and tell them what those are, please.

24 A. All right. This is a extra large American Stitch, gray
25 in color, sweatpants.

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1 Q. And who was it taken from?

2 A. Doesn't indicate on here, but I believe these are going
3 to be what were taken from Mr. Cummings.

4 Q. Okay. Sweatpants?

5 A. Yes, sir.

6 Q. Is that them?

7 A. Yes, sir.

8 Q. All right. Which one are you opening now?

9 A. All right. This is going to be XL Tanu Harlem long
10 sleeve shirt collected from -- and I can't tell what it says
11 after that. It's kind of cut off.

12 Q. Okay. Appear to be a shirt, a black shirt?

13 A. A black shirt, yes, sir.

14 Q. And that was collected from?

15 A. I'm not sure. My guess would be this came from -- from
16 the victim, possibly. That's probably from Tristian
17 Cummings.

18 Q. All right.

19 A. Yeah, that's who that's going to be. That's going to
20 be Tristian Cummings.

21 Q. All right.

22 A. Those are cut outs from where they took the blood
23 samples.

24 Q. All right. Which one are you working on now?

25 A. All right. This is going to be a right hand O'Neal

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1 glove collected from suspect. And it says at -- probably
2 from the hospital.

3 Q. Who's that belong to?

4 A. This would be one of the gloves that Tristian Cummings
5 was also wearing or was wearing.

6 Q. All right. You got another bag here.

7 A. All right. This is going to be a -- let's see. Looks
8 like a medium Free Tech jacket collected from suspect at
9 GMH. That's going to be Tristian Cummings as well.

10 Q. And then if you'll open the last one.

11 A. All right. This is a -- it's an Adidas, eight and a
12 half (8 1/2) left shoe and one white in color sock.

13 Probably ---

14 Q. What number is it, please?

15 A. State's exhibit number 26.

16 Q. Thank you.

17 A. One shoe.

18 Q. And that is from -- that was collected at -- where?

19 A. Hospital.

20 Q. Hospital? So those would be from?

21 A. Mr. Cummings.

22 Q. Okay. We only have one, correct?

23 A. Correct. Yes, sir.

24 Q. All right. You can put that back in the bag. I'd like
25 for you to identify State's 48 and tell us what that is.

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1 A. State's exhibit 48, this is a projectile that was
2 recovered from the right arm of the victim during the course
3 of the autopsy.

4 Q. It's in a container?

5 A. Yes, it is.

6 Q. Okay. That's fine. Just put it back in the bag. And
7 then -- and that was number 48, State's exhibit 48. What
8 number is this?

9 A. All right. This is State's exhibit number 44. This is
10 going to be a Speer .45 auto caliber shell casing.

11 Q. And where would this have come from?

12 A. The shell casing would have come from the residence
13 during the course of the processing of the scene.

14 Q. All right. Thank you. If you'll call out what that
15 is.

16 A. All right. State's exhibit number 46, this is a
17 projectile that was removed from the bathroom floor that we
18 saw in the pictures that we were just looking at a few
19 minutes ago. One projectile.

20 Q. That's the projectile from the bathroom floor?

21 A. It would have been from the bathroom floor, yes, sir.

22 Q. Okay. And the next one. Please give us the number.

23 A. State's exhibit 45, this is a cartridge casing. Again,
24 Speer .45 auto caliber. One shell casing.

25 Q. And that was collected from?

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1 A. This would have been collected from the residence as
2 well.

3 Q. And can you look at -- you have previously looked at 43
4 and you indicated there were live ammunition in there. Can
5 you look at the heads of the live ammunition and tell us
6 what make they are?

7 A. All right. This one's a Speer. And this one is also
8 a Speer.

9 Q. Are those the same -- is that the same type of
10 ammunition -- the shell casings that were recovered from
11 inside the residence?

12 A. They are. Yes, they are.

13 Q. And the same caliber projectile as well? Does ---

14 A. Yes, sir.

15 Q. --- that appear to be?

16 A. Yes.

17 Q. I'm going to show you 47 and 29, too. And can you just
18 tell us what these are? They've previously been admitted
19 into evidence under stipulation.

20 A. These are gunshot residue collection kits.

21 Q. And ---

22 A. You need me to open them up?

23 Q. No, that's okay. That's all right. And did you also
24 receive a blood spot from the victim, Jeryl White, as well?

25 A. We did. We'll collect a blood spot. Generally it will

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1 come from the coroner's office. It gets used for DNA
2 comparisons typically.

3 Q. And is that generally consumed in testing as well?

4 A. Yes, sir.

5 Q. All right. Appreciate that. Thank you. After
6 investigating the case on the scene and looking at all the
7 evidence, did you -- what conclusions did you reach in your
8 investigation at that time?

9 A. Obviously a big part of this case was made by uniform
10 patrol deputies responding to the scene. They did a great
11 job getting there quickly like they did. April, obviously,
12 giving us a warning on it, I guess you could say, by giving
13 us a heads up and being able to get there and catch this
14 thing in the act. But after speaking with the deputies, and
15 what happened on-scene, and the evidence that we collected,
16 we concluded that Mr. Cummings was one of the two
17 individuals involved in this murder.

18 Q. And was anyone else, obviously, someone else was
19 charged as well?

20 A. Yes, sir.

21 Q. And -- Mr. Williams?

22 A. Mr. Williams. Simeon Williams was charged as well.

23 Q. And in June of '16 did Mr. Williams make a statement to
24 you?

25 A. Yes, sir, he did. I got contacted and met with Simeon

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1 Williams and his attorney, Joe Watson, at the law
2 enforcement center. And in the presence of Joe Watson, his
3 defense attorney, Mr. Williams provided us a statement.
4 Q. And did he give you -- did he tell you in his own words
5 what happened there that night?

6 A. Yes, he did.

7 Q. Based on hearing that information did you change
8 anything that you did in your investigation?

9 A. No, sir, it did not change anything for us.

10 Q. Please answer any questions Mr. Richey may have.

11 **THE COURT:** Mr. Richey, you're recognized. Cross-
12 examination.

13 **MR. RICHEY:** Thank you, Your Honor.

14 **Cross-Examination by Mr. Richey:**

15 Q. You're -- you're the leader of investigations. So
16 you're sort of like the vice control, right? You kind of
17 tell everybody what to do, kind of?

18 A. I guess you could put it that way, yes, sir.

19 Q. And so if there's any lead to be followed through, then
20 that -- you would tell them to do that, correct?

21 A. Yes, sir.

22 Q. And -- and based off that you actually do a report,
23 don't you?

24 A. Yes, sir.

25 Q. And in that report you kind of summarize all the stuff

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1 that happened, who did what, correct?

2 A. Yes, sir, we do.

3 Q. And -- you got a copy of your report up there?

4 A. Yes, sir, I do.

5 Q. Tell us -- on your report you have a Ms. Nichols on
6 there, correct?

7 A. I believe so, yes, sir.

8 Q. Do you -- who is that?

9 A. I believe she was the intern that was working with the
10 sheriff's office. She was riding with Robinson, Deputy
11 Robinson that night. When they got first on the scene, she
12 was riding with him.

13 Q. And -- and based off your investigation with her, at
14 the time of the shots, somebody with a red shirt came out
15 the house?

16 **MR. McMASTER:** Objection, Your Honor. He can't
17 speculate and give hearsay testimony, solicit hearsay
18 testimony.

19 **MR. RICHEY:** I'll rephrase it.

20 Q. During the course of your investigation did you ever
21 determine that someone with a red shirt came out of the
22 house after the firearm [sic]?

23 A. That's what Ms. Nichols had reported to us, yes.

24 Q. And she was the first one on the scene, correct?

25 A. As a ride-along intern that night, yes, sir.

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1 Q. Okay. And -- and did you all follow up on that
2 investigation as to who that person could be?

3 A. Nothing further than what we did at this point, no,
4 sir.

5 Q. And you don't have any reason to dispute what she said
6 as being correct, right?

7 A. A reason to dispute? No, I don't guess we got any
8 reason to dispute it, no, sir.

9 Q. Right. So she -- she told the truth, correct?

10 A. Yes, sir. She told the truth as far as what she felt
11 she saw that night, yes, sir.

12 Q. Okay. And she was one of the first ones there, right?
13 The ride-along?

14 A. The ride-along, yes, sir.

15 Q. Okay. And also during your investigation you also
16 found out that there was -- there were people outside with
17 orange shirts on and stuff at the time of the shooting,
18 correct?

19 A. A neighbor from across the street had called in a 911,
20 yes, sir.

21 Q. So there was people outside when all this happened,
22 right?

23 A. According to the people on the 911 from across the
24 street, yes.

25 Q. Okay. Okay. And -- and you didn't charge any of those

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1 folks? None of those folks were charged with this?

2 A. No, sir. The only two people who got charged are Mr.
3 Cummings and Mr. Williams.

4 Q. And -- and this picture -- this picture of the -- let
5 me see. That intern that night -- did you show her this
6 shirt?

7 A. No, I don't believe she saw the shirt once we collected
8 it, no, sir.

9 Q. Did you show her -- did you ask her whether the shirt
10 ---

11 A. I'm sorry, I didn't ---

12 Q. Did you ask her whether the shirt that the guy was
13 wearing at the time of the shooting had this type of shirt
14 on?

15 A. No, sir, we did not.

16 Q. And she was in a position to see that, correct?

17 A. She was, yes.

18 Q. Thank you.

19 A. Yes, sir.

20 **Redirect Examination by Mr. McMaster:**

21 Q. Do you know where Ms. Nichols would have been located?
22 You said she's a ride-along or where would she have been
23 located during this -- the time of this incident?

24 A. As a ride-along, an intern in her case, on particularly
25 a call like this, she would not have been permitted to have

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1 gotten out of the vehicle that she was riding in.

2 Q. So when she would have -- if she would have said that
3 she saw someone walking out of the home, it could have been
4 when Mr. Williams was being escorted out by law enforcement?

5 A. It could have been. It's one of the things that makes
6 investigations challenging. People see things and people
7 see things differently. You know, they may see the exact
8 same scenario taking place and they may interpret it
9 differently and maybe get things confused in their head, I
10 guess you could say, as far as the order -- order of events.

11 Q. That's not uncommon then?

12 A. No, it's not uncommon ---

13 Q. And you've ---

14 A. --- at all.

15 Q. --- investigated, I'd say, hundreds of homicides?

16 A. Well, I wouldn't say hundreds of homicides, but
17 hundreds of violent crime cases, robberies, and kidnappings
18 and homicides.

19 Q. Home invasions?

20 A. Yes, sir.

21 Q. Things like that. And based on your investigation, to
22 be clear, based on your investigation Simeon Williams was
23 taken into custody in that home?

24 A. Correct. He was, I mean, Deputy Robinson confronted
25 him right there at that side door in the kitchen. Mr.

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1 Williams immediately complied with verbal commands given by
2 Deputy Robinson, and he got down on the ground.

3 Q. And based on your investigation Mr. Cummings left that
4 front door area?

5 A. That's correct. He's the one that ran out the front
6 door.

7 Q. Is he, based on your investigation, is he also the one
8 that put down that pistol?

9 A. Yes, sir. It'd be the one -- the same that ran out of
10 the front door, yes, sir.

11 Q. And this is all close in time on this 911 call from
12 inside the house?

13 A. Right. I mean, I wasn't there, but I would imagine
14 that this whole thing from the time Deputy Robinson showed
15 up to the time Tristian Cummings runs out the front door was
16 probably seconds, within 30 seconds or less.

17 **MR. McMASTER:** Nothing further, Your Honor. Thank you.

18 **THE COURT:** All right. You may step down. You may
19 call your next witness.

20 **MR. CULBREATH:** Your Honor, the State would call Tyler
21 Sturkie.

22 **THE COURT:** Mr. Sturkie, please come forward. I'm
23 going to ask you, if you could, you can lay your -- set your
24 paperwork down. Place your left hand on the Bible. Raise
25 your right hand as the clerk administers the oath.

23 A. I work in the Trace Evidence Department where we
24 analyze evidence pertaining to gunshot residue, fire debris,
25 glass, paint, fibers, explosives and general unknowns. My

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1 specific duties are to analyze gunshot residue, fire debris
2 and glass evidence.

3 Q. Okay. And what type of educational background do you
4 have in order to do that?

5 A. I received a Bachelor of Science Degree in Chemistry
6 from Newberry College. When I was hired by SLED I began a
7 year-long training program in the analysis of gunshot
8 residue. This training consisted of written and practical
9 examinations on the theory and practice of gunshot residue.

10 I've also attended courses at the Hooke College of
11 Applied Sciences titled Gunshot Residue Identification,
12 Scanning Electron Microscopy and Advanced X-Ray
13 Microanalysis.

14 Q. Okay. And those are a lot of big terms. Is it fair to
15 say you've done some specialized training with regard to
16 gunshot residue analysis?

17 A. Yes, sir, I have.

18 Q. All right. Tell this jury just a little bit, and then
19 we'll move forward, a little bit about gunshot residue, what
20 it is, what causes it and how -- why you would test it.

21 A. Gunshot residue is composed of the burned and unburned
22 particles from the primer, the propellant and the projectile
23 when a firearm has been recently discharged. We are looking
24 specifically for particles from the primer. And they must
25 be round or molten in shape and contain the elements of

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1 lead, barium and antimony. When we find a particle through
2 our analysis that fits this shape and its elemental
3 composition, then that particle could have only come from a
4 fired weapon.

5 Q. Okay. All right. And so let me ask you in layman's
6 terms. We've seen a gun fired before and the cloud of smoke
7 comes out. Would that be GSR? Would that be gunshot
8 residue?

9 A. Typically when a gun is fired, any opening within that
10 weapon, gunshot residue can be expelled. That includes the
11 muzzle end, and if it is a revolver, typically the cylinder
12 gaps, or if it's a semiautomatic weapon, the ejection port.

13 Any opening in that gun, gunshot residue will form a
14 cloud or a plume we sometimes call it, around the weapon and
15 in that general vicinity. And then it will settle on the
16 shooter's hands, their clothing, any object within its
17 vicinity, gunshot residue has the potential to be there.

18 Q. Okay. Do you have a rough idea of the radius that it
19 can be spread within? Is it different if it's outdoors
20 versus indoors or a confined space?

21 A. There are a lot of factors that play into the distance
22 as far as how far gunshot residue can be found. In general
23 for a pistol, five to eight feet is a typical range in which
24 we like to say gunshot residue can be deposited. Some
25 studies show further. Some -- some studies show less.

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1 It certainly depends on the type of firearm,
2 environmental factors. If it's outside, wind can play into
3 effect or rain. If it's indoors, generally inside, not many
4 factors will play into where the GSR will be deposited. So
5 in a vicinity within an indoor setting, we're likely to find
6 GSR on those.

7 Q. Okay. And in doing the testing, do you have a
8 standardized way in which you test different materials that
9 are submitted to you?

10 A. Yes, sir. Typically a gunshot residue kit consists of
11 either two or four particle lifts. And a particle lift is
12 -- if you can imagine a roofing nail, has a larger head with
13 a smaller stem. And the head of this particle lift is
14 composed of a carbon sticky tab, essentially tape. And the
15 four particle lifts will be labeled on the exterior of its
16 enclosed case. These are labeled right palm, right back,
17 left palm and left back for the areas of the subject's
18 hands.

19 When an individual is suspected to have fired a weapon
20 or to have been around a weapon that has been fired, the
21 collecting officer will collect those specific areas that
22 read on the particle lifts. These will then be sent to the
23 laboratory, and I will analyze them using a scanning
24 electron microscope for an automated analysis. And when
25 that analysis is complete, I will manually search for the

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1 particles and confirm or confirm the presence or absence of
2 gunshot residue.

3 Q. Okay. And when you complete your testing do you reduce
4 those to a report, writing?

5 A. Yes, sir. We have, like I said, four, typically,
6 particle lifts that are collected. And we will analyze all
7 four. In the report I will include all four results for one
8 individual. So I will not outline specifically which
9 particle lift has how many number of particles. I will
10 analyze all four and give a summation of those particles and
11 report as one individual.

12 Q. Okay. And is any of your testing -- do you have it
13 peer reviewed? Is there anyone else there that assists you?

14 A. We do both a tech and admin review on each case that is
15 performed.

16 Q. Okay. And have you had an occasion to testify in court
17 before?

18 A. I have, yes.

19 Q. Have you been certified as an expert in GSR analysis in
20 other courts?

21 A. Yes, sir, I have.

22 Q. About how many times, roughly?

23 A. Nineteen.

24 **MR. CULBREATH:** Your Honor, at this time, based on the
25 testimony here, we would offer this individual as an expert

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1 in GSR analysis.

2 **THE COURT:** Any query with regard to his
3 qualifications?

4 **MR. RICHEY:** No objections, Your Honor.

5 **THE COURT:** All right. He is indeed qualified as an
6 expert in GSR analysis. Madam Forelady, ladies and
7 gentlemen of the jury, ordinarily a witness can only testify
8 as to things they heard, saw and felt. There is an
9 exception of this rule for witnesses that are qualified as
10 expert. If by reason of their experience or education they
11 have become expert in some field, then they can not only
12 testify as to what they heard, saw, and felt, but they can
13 render opinions in that field.

14 Just by virtue of the fact that a witness is an expert
15 doesn't mean that you have to believe them. You have to
16 apply the same rules to credibility of an expert witness
17 that you would an ordinary witness. And you don't have to
18 believe an expert witness' testimony even though it's
19 uncontradicted. I'll talk with you in greater detail about
20 that at the conclusion of the case. He is so qualified.

21 **MR. CULBREATH:** Thank you, Your Honor. May I approach,
22 Your Honor?

23 **THE COURT:** Yes.

24 **Direct Examination by Mr. Culbreath Continued:**

25 Q. Mr. Sturkie, let me show you what we've had previously

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1 marked and admitted into evidence as State's 24, 29 and 47.

2 Take a moment and see if you recognize those three.

3 (Pause)

4 A. I do recognize these State's exhibits. State's exhibit
5 24, 29 and 47 are gunshot residue collection kits that were
6 submitted to SLED's laboratory for analysis.

7 Q. Okay. And tell us just a little bit about what we kind
8 of talk about as the chain of custody. How do these things
9 get to you?

10 A. The submitting agency will submit these collection kits
11 to SLED's laboratory in our evidence control department.
12 The evidence control will assign a lab number. In this
13 specific case it was SLED's lab number L16-08798. From
14 there any items that are submitted with that case get
15 assigned an item number.

16 State's exhibit 24 was SLED's lab number L168798 item
17 1. State's exhibit 29 was item number 3. And State's
18 exhibit 47 was item number 2.

19 When all of these get assigned, they will remain in
20 evidence control until it is to be analyzed by myself. And
21 I will come down from the Trace Evidence Department, collect
22 the evidence that is stored in a secure location, and I will
23 bring them to the Trace Evidence Department in my custody or
24 in another secure location.

25 From there, when it is time to analyze, I will open the

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1 kits, inventory them, analyze them. When my analysis is
2 complete I will again store them in a secure location. And
3 when the case is closed, I will submit them for return.

4 Q. Okay. And were those -- would that packaging indicate
5 any type of tampering or would you -- would you receive it
6 in a secure condition when you test them?

7 A. These kits would have come in this envelope here, which
8 at the time was sealed and initialed. This is lab number
9 L168798, container A. All three items were contained in
10 this container. If the container was sealed or broken in
11 any fashion, I would not have analyzed the kits.

12 Q. Okay.

13 **MR. CULBREATH:** I'm going to ask this be marked as
14 State's 53.

15 (Whereupon State's exhibit 53 was marked for
16 identification)

17 **MR. CULBREATH:** Let me show this to Defense counsel.

18 **MR. RICHEY:** We'd have no objection to this, Your
19 Honor.

20 Q. State's 53, Mr. Sturkie, if you could take a look at
21 that for me and just tell the jury what that is.

22 A. State's exhibit 53 appears to be a copy of my final
23 report on this case.

24 Q. Okay. Does that appear to be an accurate reflection of
25 the findings that you made based on your testing of those

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1 three samples?

2 A. Yes, sir.

3 **MR. CULBREATH:** At this time, Your Honor, we'd like to
4 move that in as State's 53.

5 **THE COURT:** Any objection?

6 **MR. RICHEY:** No objection.

7 **THE COURT:** It's into evidence.

8 (Whereupon State's exhibit 53 was admitted into
9 evidence)

10 Q. All right. Mr. Sturkie, if you will, tell the jury
11 about your testing of these three samples and your findings.

12 A. The items are all automated analysis through a scanning
13 electron microscope. And this microscope is not your
14 typical light microscope that you may be used to. These
15 particle lifts will be placed in what we call a chamber.
16 And this chamber is then vacuum sealed.

17 The automated analysis portion uses an electron beam
18 and will scan the particle lift to look for gunshot residue
19 particles or any particles that may be on these particle
20 lifts. Whenever I set up an automated run, I am setting it
21 up to look for a specific shape and an elemental
22 composition. The elements that are needed to be found are
23 lead, barium and antimony within one particle.

24 As the automated analysis is performed, these particles
25 are collected as features within the system and database.

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1 However many particles are found once the automated analysis
2 is complete, I will manually check and go back to these
3 particles to confirm whether or not these features are, in
4 fact, gunshot residue.

5 For item 1, which was one GSR kit from Jeryl Lamar
6 White, the results were particles characteristic of gunshot
7 primer residue were found.

8 My item number 2, one GSR kit from Simeon Williams,
9 results were particles characteristic of gunshot primer
10 residue were found.

11 And my item number 3, one GSR kit from Tristian
12 Cummings, the results were particles characteristic of
13 gunshot primer residue were found.

14 Q. Okay. And those are summaries of the -- were there
15 four different swab areas that they submitted for each
16 individual?

17 A. Correct. Each individual had four particle lifts.
18 Each individual particle lift had enough between the four to
19 have at least two or more particles of gunshot residue
20 found. If only one particle were found, I would have
21 notated that in my results. However, due to time and space
22 on that final report, the particles that are found are
23 multiple if two or more are found.

24 Q. Two or more? Okay. And do you -- when you're doing
25 your testing of each one, do you keep your own internal

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1 notes and then provide as a collection or summary ---

2 A. Yes, sir, I do.

3 Q. Okay. So you're keeping track internally and then
4 creating a final report?

5 A. Correct. I have the case jacket with the exact number
6 of particles that I found.

7 Q. And you found particles on all three of the individuals
8 tested? Mr. ---

9 A. Correct.

10 Q. --- White, Mr. Cummings and Mr. Williams?

11 A. That is correct.

12 Q. Okay. How can or about how long -- is there a period
13 of time that you need to do testing for you to find that to
14 be reliable or you're comfortable with the findings?

15 A. For living individuals, from the time of shooting to
16 the time of collection, we will not analyze a kit that has
17 been collected beyond six hours. The reason being is after
18 six hours on a living individual the GSR particles are
19 negligible.

20 As time goes on, if particles are deposited onto the
21 hands, a lot of factors start coming into play, sweat,
22 rubbing of the hands, any potential factor to try to remove
23 those particles increases as time goes on. Six hours
24 appears to be about that time-frame in which we will no
25 longer analyze a gunshot residue kit.

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1 For a deceased individual, there is no time-frame.

2 That individual -- their bodily functions have ceased. So

3 they are not actively removing gunshot residue particles.

4 For inanimate clothing or inanimate objects such as

5 clothing, we also do not have a time-frame only because it

6 would have to be removed from an outside source.

7 Q. Okay. And with regard to the pattern of the spray of
8 GSR when a gunshot is fired, I'd assume clothing would in
9 some way prevent it from getting on skin, obviously. With
10 regard to, say, wearing gloves, can you -- if you're
11 undertaking the -- take the gloves off or manipulating the
12 gloves after having been exposed to GSR, will that also show
13 up?

14 A. During -- during the time of the shooting if there are
15 any objects such as gloves that are impeding factors in
16 between where the gunshot residue is expelled from, being
17 the gun, and then where it would be deposited, on gloves,
18 the gunshot residue would happen to land on the gloves if
19 the individual were wearing gloves.

20 I would not expect them to be on the hands at the time
21 of the shooting if that individual were wearing gloves.
22 However, gunshot residue is a very fragile piece of
23 evidence. It can be easily removed and transferred.

24 A visual I like to give sometimes is baking flour. If
25 you're in the kitchen and you have baking flour on your

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1 hands, if you go to pick up a spoon or a cup and then place
2 that cup down, that cup will have flour from your hands. So
3 whereas you cannot see gunshot residue, it still acts as the
4 same concept as baking flour. So the more anything is
5 utilized as far as movement or deposition, gunshot residue
6 has the potential to be transferred if deposited.

7 Q. Okay. And so if you had fired a gun two or three hours
8 before and then put on gloves, it's possible to still have
9 GSR on your hands?

10 A. It would be, yes.

11 Q. Okay. And if you fired a gun with gloves and then
12 tried to take those gloves off, you could have transferred
13 the GSR to your hand?

14 A. Potentially, yes, depending on how much movement has
15 been going on. The more things that are touched with
16 gunshot residue, the more potential it has to be
17 transferred.

18 Q. And if you were standing nearby, like with Mr.
19 Williams, standing nearby three or four feet, could you have
20 gotten GSR on you as well?

21 A. Yes, sir. When we find gunshot residue I can tell you
22 one of three things. One is that the individual fired a
23 weapon. Or, two, is that the individual was in the vicinity
24 when that weapon was fired. Or, three, the individual
25 touched an object that had GSR on it. I cannot identify

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1 which of those three specifically, just that GSR is either
2 absent -- absent or present.

3 Q. And that is what's stated in your report, correct?

4 A. That is, yes.

5 **MR. CULBREATH:** Court's indulgence one moment.

6 (Pause)

7 Q. Mr. Sturkie, thank you. Please answer any questions
8 Defense counsel has for you.

9 **Cross-Examination by Mr. Richey:**

10 Q. Sir, do you know what items you tested? Did you test
11 -- did you test the gloves? Do you know the items you
12 actually tested?

13 A. Yes, sir. I only tested these three gunshot residue
14 kits here.

15 Q. Okay. And do you know where that came from?

16 A. According to the outside of the collection kits -- and
17 inside of these kits is an information form that labels the
18 subject in which the kits were taken from.

19 Q. Okay. And where were they taken from?

20 A. Item -- State's exhibit 24, which is my item number 1,
21 is taken from Jeryl White. State's exhibit 29, which is my
22 item number 3, was taken from Tristian Cummings. And
23 State's exhibit 47, which is my item number 2, collected
24 from Simeon Williams.

25 Q. And I want to ask you about -- the glove in this case

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1 is actually -- if somebody fired a gun and -- and put gloves
2 on, that would actually be a benefit to you, wouldn't it?

3 A. Depending on the type of glove or the material that it
4 is used. If it's plastic, plastic over your hand creates
5 humidity and sweat. Therefore, any sweat could potentially
6 remove any object or any GSR, excuse me. However, if a
7 glove were on the hand, anything could be preserved as well.

8 Q. We got one of these -- this is not plastic, right?

9 A. Does not appear to be, no, sir.

10 Q. Okay. And the reason why that glove benefits you in
11 your testing is -- and it's a bonus for you is because we
12 have a term we call this trace evidence, right? Trace
13 evidence, right?

14 A. Yes, sir.

15 Q. It's the kind of evidence that we don't see. Like I'm
16 standing here right now and my hair particles could be
17 falling on the floor, correct?

18 A. Correct.

19 Q. And -- and when I leave -- when I leave this area, you
20 folks or somebody could come, take the microscope, collect
21 the hair and can basically identify who was standing here,
22 correct?

23 A. Not particularly with your hair, but with any type of
24 trace evidence you can likely leave some behind to be found
25 later.

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1 Q. Right. It's the evidence -- it's the blind evidence,
2 right, that we can't see, but -- we can't see. That's ---

3 A. With the naked eye it is -- it is impossible to see,
4 generally. It usually requires some sort of magnification
5 ---

6 Q. Right.

7 A. --- instrumentation.

8 Q. So -- so if I fire a gun -- because we know -- we know
9 that these little particles get on our hand, right? We know
10 that. That's -- right?

11 A. Yes, sir.

12 Q. We can see them there. I mean, they're so small that
13 we can't see them, correct?

14 A. That is true.

15 Q. Okay. So if I fire a gun, okay, I got these particles
16 on my hand right here, right? I then immediately put on a
17 glove over them, right?

18 A. (Affirmative nod).

19 Q. Then we know that if those particles are on my hand and
20 I put that glove on, those particles can go one or two
21 places, right? They could go -- they could remain on my
22 hand, correct?

23 A. They could remain on the hand, yes.

24 Q. Or they could be on this glove?

25 A. They could be on the interior of the glove as -- in the

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1 motion of removing that glove ---

2 Q. Right.

3 A. --- at that moment. Anything afterwards, it -- again,
4 GSR is very fragile. So depending on where those hands were
5 going or the glove would be going, wherever GSR was on it
6 could end up whatever else it touches.

7 Q. But we could catch you, can't we, by cutting this open,
8 right?

9 A. I'm sorry?

10 Q. This glove, we could -- we could take it and we could
11 cut it open, right?

12 A. Yes, sir.

13 Q. And we could take that same microscope and look on the
14 inside of this glove to see was there any particles, right?

15 A. We would use a particle lift ---

16 Q. Right.

17 A. --- such as the hands to collect the glove itself and
18 then analyze that particle lift.

19 Q. So the glove is a benefit?

20 A. My job is to analyze for gunshot residue for the items
21 that were submitted to the lab.

22 Q. And you said clothing -- it stays on clothing longer
23 than the skin, right?

24 A. In theory, yes.

25 Q. True? That would be an accurate ---

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1 A. Yes, sir.

2 Q. Okay. So -- so that clothing is going to carry that
3 gunpowder residue for longer periods of time than the hand,
4 correct?

5 A. Yes.

6 Q. Okay. And so one could not necessarily, necessarily
7 shoot, fire a gun and have gunpowder residue on them,
8 correct?

9 A. Can you repeat that one more time?

10 Q. Okay. One cannot fire a gun, a person, I use the word
11 person, could not fire a gun and have gunpowder residue on
12 them, correct?

13 A. That is correct. If no one fires a weapon, it is
14 common to not have gunshot residue on you.

15 Q. So -- so the mere fact that you have gunpowder residue
16 on you does not determine whether you fired a gun in
17 absolute, correct?

18 A. That is true.

19 Q. Thank you.

20 **MR. CULBREATH:** Very briefly, Your Honor.

21 **THE COURT:** Yes, sir.

22 **Redirect Examination by Mr. Culbreath:**

23 Q. Mr. Sturkie, Jeryl White had gunshot residue on him,
24 correct?

25 A. That is correct.

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1 Q. Any evidence that he fired a weapon that night other
2 than the fact that he had GSR on him?

3 A. No, sir. Generally with victims of gunshot wounds, we
4 expect gunshot residue simply because they have been shot
5 with a weapon. However, when we find gunshot residue, I can
6 tell you the individual fired was in the vicinity or touched
7 an object that had GSR.

8 Q. Right. And with regard to the glove or cutting it open
9 and testing it, that would show generally that the glove was
10 nearby or involved with a firearm being fired as opposed to
11 the testing of an individual's hands, correct?

12 A. They would -- they would be the same as far as my
13 analysis goes.

14 Q. So if we -- we test the hands, we show that the
15 individual was there?

16 A. Yes, sir.

17 Q. We test the glove, we show the glove was there?

18 A. That is correct.

19 Q. And the test kits that you got were hand swabbed?

20 A. Only hand kits only.

21 Q. Thank you. That's all I have.

22 **THE COURT:** All right. You may step down.

23 A. Thank you.

24 **THE COURT:** And you're free to leave. Madam Forelady,
25 ladies and gentlemen of the jury, we're going to take a

1 brief recess, allow you to refresh yourselves. Once again,
2 no discussion about the case whatsoever. Everyone remain
3 seated as the jury exits the courtroom.

4 (Whereupon the jury exited the courtroom at 2:03 pm)

5 **THE COURT:** Anything from the State before we recess
6 for a moment?

7 **MR. McMASTER:** Nothing from the State, Your Honor.

8 **THE COURT:** Anything from Defense?

9 **MR. RICHEY:** No, sir, Your Honor.

10 **THE COURT:** All right. We'll stand at ease for a
11 moment.

12 (Whereupon court was in recess at 2:04 pm)

13 (Whereupon court reconvened at 2:19 pm)

14 **THE COURT:** Anything from the State before we proceed?

15 **MR. McMASTER:** No, Your Honor.

16 **THE COURT:** Anything from Defense?

17 **MR. RICHEY:** Nothing, Your Honor.

18 **THE COURT:** All right. We're ready for the jury.

19 (Whereupon the jury entered the courtroom at 2:20 pm)

20 **THE COURT:** Mr. McMaster, you're recognized.

21 **MR. CULBREATH:** Thank you, Your Honor. May it please
22 the Court?

23 **THE COURT:** Yes, sir.

24 **MR. CULBREATH:** Your Honor, the next two witnesses on
25 the State's witness list are Timothy Nafzinger and Dr.

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1 Kandala. We've talked with Defense counsel. We've
2 stipulated to the admissibility of those reports generated
3 by those two expert witnesses so that we can put those in
4 evidence. And we no longer have a need to call those two --
5 the two particular witnesses.

6 **THE COURT:** Very good.

7 **MR. RICHEY:** That's correct, Your Honor.

8 **MR. CULBREATH:** So at this time we'll call Mr. James
9 Armstrong.

10 **THE COURT:** Very good. Mr. Armstrong, please come
11 forward. You can put your paperwork down. Place your left
12 hand on the Bible and raise your right hand as the clerk
13 administers the oath.

14 **James Armstrong,** being
15 duly sworn testified as follows;

16 **MADAM CLERK:** Thank you.

17 **THE COURT:** Speak loudly, clearly and slowly in order
18 that we can hear everything that you have to say. And start
19 with your full name.

20 **MR. ARMSTRONG:** Yes, sir. James William Armstrong.

21 **Direct Examination by Mr. Culbreath:**

22 Q. Mr. Armstrong, good afternoon. Please tell this jury
23 where you work.

24 A. I'm employed with the Greenville County Department of
25 Public Safety, Forensics Division, Crime Laboratory.

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1 Q. All right. And what does that mean for us in layman's
2 terms?

3 A. I personally have a dual responsibility as a forensic
4 drug chemist and a forensic firearm examiner.

5 Q. Okay. How long have you worked over at the Department
6 of Public Safety?

7 A. A little over 23 years.

8 Q. And in what capacity?

9 A. I worked in the drug chemistry for 23 years. And doing
10 firearm identification, a little over 19 years.

11 Q. Tell us a little bit about your educational background.

12 A. In which field?

13 Q. Well, from college, and then take us -- just go --
14 you're here today and your report has already been entered
15 into evidence. And that's the firearms expert -- so geared
16 towards that particular specialty.

17 A. I have a Bachelor of Science Degree in Chemistry from
18 Erskine College. I have trained in the area of firearm
19 identification approximately two years doing an
20 apprenticeship-style-training under the direction of a
21 retired firearm examiner from Philadelphia PD.

22 I'm a member of the Association of Firearm and Toolmark
23 Examiners. I have completed numerous firearm identification
24 schools sponsored by the Alcohol Tobacco and Firearms and
25 Explosives.

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1 I have been through 14 different manufacturing
2 facilities to see how the firearms are manufactured from raw
3 material to finish product. Went through four different
4 ammunition assembly plants to see how the ammunition is
5 manufactured and assembled. And I've testified in federal
6 and state court at least 67 times as an expert in the area
7 of firearm identification.

8 Q. All right. And is your work peer reviewed?

9 A. Yes, sir, it is.

10 **MR. CULBREATH:** Your Honor, at this time we'd offer
11 this witness as an expert in the field of firearms and
12 ballistics analysis.

13 **MR. RICHEY:** No objection.

14 **THE COURT:** All right. No query with regard to his
15 qualifications?

16 **MR. RICHEY:** None, Your Honor.

17 **THE COURT:** All right. He is so qualified.

18 **MR. CULBREATH:** Thank you, Your Honor.

19 Q. Mr. Armstrong, tell us a little bit about ballistics,
20 firearms analysis and in particular matching up firearm with
21 shell casings and projectiles. Just give us an overview.

22 A. Yes, sir. When you fire a firearm there are basically
23 anywhere from four to six fingerprints, as we can basically
24 say, that are left behind at a crime scene from that
25 particular firearm because when you pull a trigger of the

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1 firearm, the firing pin goes forward and strikes what we
2 call the primer region on the cartridge. That primer
3 section, once it is struck, now has an impression in it from
4 that firing pin.

5 Well, then there's a spark that's caused from that
6 striking, and it causes the powder inside the cartridge to
7 burn at a rapid rate causing the projectile to then go down
8 the barrel. Well, the barrel has what we call rifling in it
9 that has the spiral effect, that puts the spin on a bullet.
10 And it has different lands and grooves. And those lands and
11 grooves are impressed onto the projectile leaving a
12 fingerprint for the firearm.

13 Then on the shell casing, which actually holds the
14 projectile and everything together inside that -- the
15 firearm, it expands in all directions. As it expands it
16 leaves other marks on that casing called chamber marks.
17 That's the second fingerprint. Then we have the firing pin
18 impression as well, which is three.

19 Then we have what we call breech face comparison or
20 breech face marks. Those are about where the firing pin is
21 housed, there's an aperture or a hole, and when it goes
22 through, this entire face has imperfections there that are
23 transferred to that casing, breech face marks.

24 And you also have an extractor and ejection marks if
25 it's a semiautomatic. And those are unique to a particular

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1 firearm just like fingerprints are to individuals.

2 Q. All right. And in this particular case ---

3 **MR. CULBREATH:** Your Honor, if I may approach?

4 **THE COURT:** Yes.

5 Q. --- I'd like to show you is State's exhibit 52 to see
6 if you recognize that.

7 A. Yes, sir, I do.

8 Q. Okay. That's your report that you generated in this
9 case?

10 A. Yes, sir, it is.

11 Q. All right. And I'll show you some of the physical
12 evidence that's in evidence right now, State's 43, 44, 45,
13 46 and 48.

14 (Pause)

15 Q. And if you could look at those, we've obviously got
16 them marked as State's exhibits, but they've got barcoding
17 on them that indicates which particular forensic -- crime
18 scene technician admitted those into evidence. And if I
19 can, I'd like to put this report up.

20 And if you can just explain for the jury, talk us
21 through how you did an analysis in this case and what
22 exactly is reflected on your report. Well, I'm hoping you
23 can see that.

24 (Pause)

25 Q. That's not working out for us. Well, I'll tell you

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1 what, ---

2 **THE COURT:** I believe you've got some assistance.

3 (Pause)

4 **THE COURT:** These lawyers can't operate machinery.

5 **MR. CULBREATH:** Clearly.

6 Q. All right. Mr. Armstrong, after looking at that
7 physical evidence and looking at your report, just talk us
8 through, if you will, your test procedures.

9 A. Yes, sir. When I receive items from our Property and
10 Evidence room for testing, I take them back to my office and
11 inventory what I actually find out -- to make sure I have
12 everything the officer has requested for me to examine, such
13 as item number -- State's exhibit 48 was my item number 1.

14 When I take it out of the container I actually clean
15 the projectiles because it may have biologicals on it. I'm
16 trying to eliminate the potential threat of having any kind
17 of transfer. So I then clean the projectile, then I
18 identify it.

19 Like this one here, I actually wrote the item number,
20 item number 1, put my initials underneath it on the base so
21 I can identify it later and make sure I don't mix it up in
22 any other testing. And I count what we call the lands and
23 grooves.

24 And then I do a comparison to an actual piece of
25 evidence which I generate from actually firing the firearm

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1 so we can compare them side by side. So I go and take the
2 firearm itself, test fire it, collect that projectile and
3 compare it to this projectile under a comparison microscope
4 to see if I can line up what we call the striations or the
5 lands and grooves from the barrel to that -- to its own
6 projectile.

7 It's kind of like matching a puzzle together. To get
8 two pieces -- I get the puzzle and it kind of goes together
9 and all links together, then we know for certain this is a
10 match and we can go from there. The same concept with the
11 fired cartridge cases. But this item RH -- RRH7, which is
12 -- does not have a State's exhibit on it. It's another
13 projectile. And the same type examinations are done with
14 that one.

15 This is item RRH6, which is a caliber .45 auto fired
16 cartridge case. And it has the item number and my initials
17 on the inside where I've marked it. And these are compared
18 to known test shots that I have actually generated from the
19 firearm as well to make a -- do my findings.

20 And in doing the -- doing the examination on the
21 firearm I actually write down the serial number, the make
22 and model, the caliber, what country originated in. And
23 then I take it out and do a test fire and generate those
24 evidence pieces to compare to the unknowns that have come
25 from the crime scene.

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1 Q. And based on your analysis what were your findings in
2 this case?

3 A. The item RRH1 pistol, which is State's exhibit 43, it
4 was test fired, found to be operable. The items RRH4 and
5 RRH6, fired cartridge casings were fired in this pistol.
6 The items RRH7 and item 1, fired bullet specimens were fired
7 from the item RRH1, pistol.

8 Q. Okay. So the evidence that has been put in front of
9 you, the two shell casings collected from the scene, the
10 projectile dug from the floor of the bathroom, and the
11 projectile taken out of Mr. White at the autopsy, do all of
12 those match that firearm?

13 A. Yes, sir. Correct.

14 **MR. CULBREATH:** Court's indulgence one moment.

15 (Pause)

16 Q. That's all the questions I have. Please answer any
17 questions ---

18 **THE COURT:** Cross-examination.

19 **MR. RICHEY:** No questions.

20 **THE COURT:** You may step down.

21 A. Thank you.

22 **THE COURT:** You're free to leave.

23 A. Thank you.

24 **THE COURT:** You may call your next witness.

25 **MR. CULBREATH:** Your Honor, the State would call Dr.

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1 Michael Ward.

2 THE COURT: Mr. Culbreath, ---

3 MR. CULBREATH: Yes, sir.

4 THE COURT: --- you might want to grab these envelopes
5 right here and put them over there in a pile so we don't
6 knock them over. Those envelopes on the side there.

7 MR. CULBREATH: Oh, yeah.

8 THE COURT: Let's do that.

9 Come forward. You can put your file down and place
10 your left hand on the Bible. Raise your right hand as the
11 clerk administers the oath.

12 Michael Ward, M.D., being
13 duly sworn testified as follows;

14 MADAM CLERK: Thank you.

15 THE COURT: Yes, sir. If you could have a seat in the
16 witness chair. Pull up real close to that microphone.
17 Speak loudly, clearly and slowly in order that we can hear
18 everything that you have to say. And let's start with your
19 full name, please, sir.

20 DR. WARD: My name is Michael Eugene Ward.

21 THE COURT: Thank you, Mr. Ward. Mr. Culbreath.

22 **Direct Examination by Mr. Culbreath:**

23 Q. Dr. Ward, good afternoon. Please tell the jury where
24 you work, and how long you've been there and what you do.

25 A. I'm employed by Pathology Associates of Greenville,

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1 which is a private practice pathology group here in
2 Greenville. I've been here for almost 24 years. I'm also
3 the Chief Medical Examiner for the County of Greenville. My
4 primary responsibilities are to investigate deaths that
5 occur in Greenville County, to determine cause and manner of
6 death.

7 Q. All right. And, I'm sorry, how long have you served in
8 that capacity?

9 A. Twenty-four years.

10 Q. Have you had the occasion to testify in court as an
11 expert witness in the area of forensic pathology?

12 A. Yes, I have.

13 Q. About how many times have you been certified ---

14 A. Well over a hundred times.

15 **MR. CULBREATH:** Your Honor, at this time I'd like to
16 offer the doctor as an expert ---

17 **THE COURT:** Any query with regard to his qualification?

18 **MR. RICHEY:** No objection.

19 **THE COURT:** All right. He is so qualified and allowed
20 to render his opinion in the field of forensic pathology.

21 **MR. CULBREATH:** Thank you, Your Honor.

22 Q. Dr. Ward, if you could just tell the jury generally
23 what an autopsy is, what its purpose is and how you conduct
24 one.

25 A. An autopsy is a detailed physical examination which is

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1 performed on someone who has died. Pathology, which is one
2 of the fields that I'm -- have education in is the study of
3 disease and disease processes and how they affect man.
4 Forensic pathology takes that one step further dealing
5 primary with disease, trauma or injuries and how persons
6 come to die, so how they -- how these injuries affect and
7 cause them to die, and then the presentation of that
8 information in the court of law.

9 Q. And in this particular case -- you were serving in that
10 capacity back on March 7th of 2016?

11 A. Yes, I was.

12 Q. And did you have occasion to conduct an autopsy on Mr.
13 Jeryl White?

14 A. Yes, I did.

15 Q. If you could tell this jury about that autopsy, and if
16 you recall, who was there with you. I think law enforcement
17 does attend in some cases. But just kind of generally tell
18 them how you conducted your autopsy on Mr. White.

19 A. So present at the time of the autopsy was Greenville
20 County Criminal Justice Support Department, Sergeant Dar
21 Shaw, that's forensics. Also present was Greenville City
22 Police, Detective Mike Fortner, and Greenville County Deputy
23 Coroner, Sonny Soler.

24 An autopsy basically begins with an external
25 examination looking at the outer portion of the body for any

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1 injuries that may be present, any identifying marks,
2 diagraming those injuries that are present, and then a
3 continuation of that examination on the inside of the body
4 to see what trauma that we noticed on the outside is also
5 present on the inside and then the recovery of any, in this
6 case, projectiles that may have been present.

7 Q. All right. And not to jump ahead too far, but when you
8 first bring -- have the individual brought in for the
9 autopsy, you identify them how?

10 A. Well, in this particular case, Deputy Coroner Soler was
11 present at the autopsy, so he was able to identify Mr.
12 White. But he also had an identification band that had been
13 placed by Deputy Coroner Soler when he was in the emergency
14 room on his -- one of his extremities. So we make sure that
15 the person that we're supposed to be autopsying has that
16 identification band present at the time of autopsy.

17 Q. Okay. Based on your examination of this particular
18 individual, Mr. White, did you observe any injuries? And if
19 you did, what were they and what -- were they likely to
20 cause death?

21 A. Mr. White had two gunshot wounds. The first was -- and
22 these are in no particular order. The first was a gunshot
23 wound to the front portion of his right thigh, what we would
24 call in the midline of his right thigh.

25 It passed from his front to his back and from his right

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1 to his left and exited the inner portion of his -- the back
2 portion of his right thigh. So it goes through the muscle,
3 does not strike bone, it enters on the front and exits out
4 the back. It goes from Mr. White's front to back and right
5 to left.

6 This very likely would not have been a fatal wound.
7 Any wound is potentially fatal, but more than likely this
8 would not have been a fatal wound if he had been able to
9 seek medical attention.

10 The second wound was a gunshot wound, which entered
11 literally the top of the left shoulder. It passed from Mr.
12 White's left to his right. It passed through his seventh
13 cervical vertebra.

14 So the vertebra are the bones that surround our spinal
15 cord and give us support and protect our spinal cord. It
16 passed through the seventh cervical vertebra. It transected
17 or cut the spinal cord at that level.

18 It then passed into his right neck where it cut or
19 transected his right carotid artery, passes through the
20 musculature of his shoulder into the arm and was recovered
21 almost at the angle of the elbow. So it passed from here
22 this way through his arm. And a projectile was recovered
23 from the deep musculature of his right upper arm.

24 Q. Would that particular injury be sufficient to cause
25 death?

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1 A. Yes, it would.

2 Q. And was that the cause of death in this case?

3 A. Yeah, the cause of death to Mr. White in this case, I'm
4 sorry, didn't want to phrase it -- was a gunshot wound of
5 the chest in that the entrance wound began on the chest even
6 though the trauma is to the neck.

7 **MR. CULBREATH:** Your Honor, if I may?

8 **THE COURT:** Yes.

9 **MR. CULBREATH:** We'll mark this as State's 54.

10 (Whereupon State's exhibit 54 was marked for
11 identification)

12 Q. Let me show you that.

13 (Pause)

14 Q. Do you recognize that?

15 A. Yes, I do.

16 Q. Okay. And what is that?

17 A. This is a copy of my autopsy report generated on Mr.
18 White.

19 Q. All right. I'll have that marked, and I'll show you
20 this very briefly for demonstrative purposes.

21 (Whereupon State's exhibit 55 was marked for
22 identification)

23 Q. Do you recognize that?

24 A. Yes, I do.

25 Q. And what is that?

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1 A. This is a body diagram made at the time of autopsy
2 demonstrating the injuries that I described to you, which
3 was also generated at the time of autopsy.

4 Q. Okay. Thank you, sir.

5 **MR. CULBREATH:** Your Honor, at this time I'd like to go
6 ahead and move these, State's 54 and 55, into evidence.

7 **MR. RICHEY:** No objections.

8 **THE COURT:** They're into evidence.

9 (Whereupon State's exhibits 54 and 55 were admitted
10 into evidence)

11 Q. Doctor, let me show you -- I'm going to give you your
12 report, which is 54. If you could, we've got a full body
13 diagram that I believe you utilized in this particular
14 autopsy. And I show you this to ask you, if you can, I'll
15 give you a pointer, if you could describe for the jury
16 visually where you're talking about as far as the two
17 injuries, and the path of the two bullets and the trajectory
18 that they took.

19 A. So the first gunshot wound I described was a gunshot
20 wound to the front portion of Mr. White's right leg. It
21 entered here. This is the entrance wound. It passed from
22 his front to his back, so through the musculature of his
23 right leg.

24 Now looking from the back, this becomes the right leg,
25 and here's the exit wound. So you can see that initially it

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1 was in the midline. So it is now traveling from right to
2 left and from front to back with very little deviation
3 either up or down. It was -- it was basically on a level
4 plain, in this case, vertically.

5 The second gunshot wound is a little bit hard to see,
6 which enters here on the top of his left shoulder. It
7 passes from his left to his right transecting in this region
8 here, the spinal cord, at the level of the seventh cervical
9 vertebra. Right here would be the right carotid artery.

10 And it travels this way through the musculature. And
11 with his arm raised at the shoulder it then travels downward
12 and is recovered in this region here. So this arm would be
13 raised to the level of his shoulder for the bullet to be
14 able to do that.

15 Q. Okay. And so, doctor, let me ask you this. If an
16 individual were laying on the ground and someone stood over
17 them and fired into their leg, would that be consistent from
18 an angle or trajectory standpoint with the wound you
19 described on the right leg?

20 A. Yes, it would.

21 Q. All right. And with regard to the shoulder injury, if
22 you had an individual that may have been bracing up, putting
23 their hand, say, on a door and on the wall, would that be a
24 plausible way to have a bullet enter here and end or stopped
25 here as you mentioned by having your arm raised?

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1 A. Yes. That scenario would describe the position
2 necessary for that course of that bullet through the body.
3 With the arm raised to nearly 90 degrees at the shoulder, if
4 he were bracing this way, would be a scenario that would fit
5 that, yes.

6 Q. And then as the bullet entered and it transected and
7 cut the carotid artery, would death -- how quickly is onset
8 after an injury like that is sustained, if you know?

9 A. Well, I don't know. It would take certainly minutes
10 for him to -- basically he bleeds out from transection of
11 his coronary artery. So he, in this case, he had time to be
12 recovered and transported to a hospital before they
13 pronounced him dead.

14 Q. Okay. Just to summarize, the wounds that he suffered
15 from the firearm, that caused his death, correct?

16 A. Yes. His cause of death is a gunshot wound of the
17 chest.

18 **MR. CULBREATH:** The Court's indulgence for one moment,
19 Your Honor.

20 (Pause)

21 Q. That's all the questions I have, doctor. Thank you.

22 **MR. RICHEY:** No questions.

23 **THE COURT:** You may step down and you're free to leave.
24 Thank you, sir.

25 A. Thank you.

1 **THE COURT:** You may call your next witness.

2 **MR. McMASTER:** Your Honor, we -- at this time we'd like
3 to take up a matter of law with the Court.

4 **THE COURT:** Very good. Madam Forelady, ladies and
5 gentlemen of the jury, we're going to have to take up a
6 legal matter outside of your presence. I'm going to ask you
7 to retire to the jury room, but once again, do not discuss
8 the case. Everyone remain seated as the jury exits the
9 courtroom.

10 (Whereupon the jury exited the courtroom at 2:44 pm)

11 **THE COURT:** Yes, sir.

12 **MR. McMASTER:** Your Honor, the State will rest in just
13 a moment. We wanted to confer with the court reporter to
14 make sure that all items of evidence that has been marked
15 have been entered into evidence at this time. And then the
16 State will rest at that point.

17 **THE COURT:** All right. You feel free to do that.

18 **MR. McMASTER:** Thank you.

19 (Pause)

20 **THE COURT:** I want to ask maybe if the investigator can
21 ensure that the firearm -- there's no live rounds that are
22 going to go back with the evidence. And I think -- make
23 sure that the gun is not operational and that there are no
24 ---

25 **INVESTIGATOR FORTNER:** It's got a ---

1 **THE COURT:** Okay, good.

2 **INVESTIGATOR FORTNER:** --- lock on it.

3 **THE COURT:** All right. And there are no live rounds?

4 **INVESTIGATOR FORTNER:** These two right here, but I'll
5 take possession of them.

6 **THE COURT:** Okay. Well, I'll tell you what, let's let
7 the clerk hang on to them.

8 **INVESTIGATOR FORTNER:** Okay.

9 **THE COURT:** Let the clerk hang on to them. And if they
10 request to see the bullets, then we will get the gun back
11 and send the bullets back. How about that?

12 **MR. McMASTER:** Right. Yes, sir. And the clerk has
13 told us that she also has a laptop that has -- that is
14 provided by the clerk's office, if they would like to listen
15 to the 911 call, that would go back there in evidence.

16 **THE COURT:** No, we'll -- if they ask to hear that, we
17 would bring them back into the courtroom and play it again.
18 We don't want them playing with technology and playing stuff
19 that doesn't need to be played.

20 **MR. McMASTER:** Perfect.

21 **THE COURT:** They've heard it once. If they need to
22 hear it again, we can -- they can ask for it.

23 **MR. McMASTER:** Sure.

24 (Whereupon court was in recess at 2:48 pm)

25 (Whereupon court reconvened at 2:52 pm)

1 **THE COURT:** Yes, sir, you're recognized.

2 **MR. McMASTER:** Your Honor, we've reviewed the evidence.

3 And there's one photograph that -- State's exhibit 20 that
4 the Defense has stipulated that it can be entered into
5 evidence at this time.

6 **THE COURT:** Is that correct?

7 **MR. RICHEY:** That's correct, Your Honor.

8 (Whereupon State's exhibit 20 was admitted into
9 evidence)

10 **MR. McMASTER:** We've reviewed all other evidence,
11 though, with the clerk. It appears all evidence has been
12 properly admitted.

13 **THE COURT:** Very good. Anything from the State before
14 we bring the jury back out?

15 **MR. McMASTER:** No, Your Honor.

16 **THE COURT:** Anything from the Defense?

17 **MR. RICHEY:** Judge, do you want to do my directed
18 verdict motion at this point?

19 **THE COURT:** Yes, we can. If -- we can stipulate to
20 that. I understand the State has already stipulated. So we
21 can entertain motions at this time, however, I'm going to
22 give him an opportunity to rest on the record when the jury
23 comes out.

24 **MR. RICHEY:** Yes, sir.

25 **THE COURT:** And we'll entertain motions at this time.

1 **MR. RICHEY:** Your Honor, we'd ask the Court to grant a
2 directed verdict in looking at the evidence in the light
3 most favorable to the State. The State did not call any
4 witness to say my client actually shot this individual or
5 killed him. And it's our position there was no evidence to
6 show that. And we're asking the Court to grant us a
7 directed verdict as to all charges.

8 And as to the burglary, first, the State did not put in
9 any evidence that my client actually broke into the
10 gentleman's home or anything. So we're just ---

11 **THE COURT:** I think the testimony -- both of them were
12 on the porch and both of them were beating on the door,
13 weren't they?

14 **MR. RICHEY:** Your Honor, that was the testimony, but we
15 believe that that testimony is not credible. And we're
16 asking the Court to grant us a directed verdict.

17 **THE COURT:** Any further motions?

18 **MR. RICHEY:** No, sir.

19 **THE COURT:** All right. I'd be glad to hear from the
20 State in that regard.

21 **MR. McMASTER:** Your Honor, we believe we've met our
22 burden at this stage, that looking at the light most
23 favorable to the State we feel like we've met every element
24 to establish jurisdiction of this court, we've established
25 identification and each and every element of every charge

1 that he is -- that Mr. Cummings is currently charged with.
2 We've done that through testimony and through items that
3 have been entered into evidence at this time.

4 **THE COURT:** All right. I do, indeed, find that it's a
5 question of fact for the jury to resolve. But your motion
6 is noted for the record and you're protected on the record.

7 **MR. RICHEY:** Thank you, Your Honor.

8 **THE COURT:** Mr. Cummings, I'm going to ask if you could
9 stand where you are and raise your right hand as the clerk
10 administers the oath.

11 **MADAM CLERK:** Do you swear or affirm to tell the truth,
12 the whole truth and nothing but the truth so help you God?

13 **MR. CUMMINGS:** Yes, ma'am.

14 **THE COURT:** Mr. Cummings, at this time I'm going to
15 explain to you certain of your rights. If you do not
16 understand anything I say, please let me know. If you want
17 me to explain anything in more detail, let me know, and I'll
18 be happy to do so. Do you understand?

19 **MR. CUMMINGS:** Yes, sir.

20 **THE COURT:** All right. We have now reached the stage
21 of the trial where you may present your defense. You have
22 the right to claim the protections given to you by the Fifth
23 Amendment to the Constitution of the United States, which
24 provides in relevant part; No person shall be compelled in
25 any criminal case to be a witness against himself.

1 This means that you cannot be required to testify in
2 this case. You have the right to testify on your own
3 behalf, however, no one can make you testify. This is a
4 personal right and no one can waive this right except you.

5 If you decide to testify, you'll be subject to the same
6 rules that govern other witnesses and you may be examined
7 and cross-examined on any relevant issue in this case. In
8 addition, if you have any convictions involving dishonest or
9 false statements or for crimes punishable by imprisonment
10 for more than one year, if this Court determines that the
11 probative value of admitting this evidence outweighs its
12 prejudicial effect to you, the solicitor will be able to
13 introduce your record to attack your credibility.

14 If you decide to testify this decision on your part
15 must be freely, voluntarily and intelligently made, the
16 knowledge of the protections given to you by the Fifth
17 Amendment and the consequences of your decision to testify.
18 If you decide not to testify, I will instruct the jurors
19 that they cannot give the fact that you did not testify any
20 consideration whatsoever and that there is to be absolutely
21 no prejudice to you because you did not testify.

22 It's left entirely up to you whether or not to testify.
23 You may talk with your attorney, your family members,
24 friends or anyone else, but the final decision will be left
25 entirely up to you. Do you understand what I've explained

1 to you?

2 **MR. CUMMINGS:** Yes, sir.

3 **THE COURT:** Do you have any questions about what I've
4 explained to you?

5 **MR. CUMMINGS:** No, sir.

6 **THE COURT:** Have you discussed this matter with your
7 lawyer?

8 **MR. CUMMINGS:** Yes, sir.

9 **THE COURT:** All right. Do you wish to talk with your
10 lawyer any more about this particular issue?

11 **MR. CUMMINGS:** No, sir.

12 **THE COURT:** Do you wish to testify?

13 **MR. CUMMINGS:** No, sir.

14 **THE COURT:** Very good. Thank you. We're ready for the
15 jury.

16 (Whereupon the jury entered the courtroom at 2:58 pm)

17 **THE COURT:** Mr. McMaster, you're recognized.

18 **MR. McMASTER:** Thank you, Your Honor. At this time the
19 State rests.

20 **THE COURT:** Very good. Mr. Richey, you're recognized.

21 **MR. RICHEY:** Thank you. The Defense rests, Your Honor.

22 **THE COURT:** Very good. Madam Forelady, ladies and
23 gentlemen of the jury, you have heard all the evidence
24 that's going to be presented in this case. We have some
25 legal matters that need to be -- we need to take up outside

1 of your presence.

2 We will reconvene in the morning. And in the morning
3 we'll engage in what's known as closing arguments. They're
4 very similar in form to opening statements, but they're
5 truly argumentative in nature because at this point in the
6 trial the lawyers will have an opportunity to point to the
7 evidence that's been put on this record and point to the
8 evidence that supports their relative theory in the case.

9 What they have to say is not -- is not evidence in and
10 of itself, but it will aid you immensely in your
11 deliberation process. So pay very close attention as we go
12 through that process in the morning. It will aid you
13 immensely.

14 And once again, do not discuss the case amongst
15 yourselves or with anyone else. Do not engage in any social
16 media. And if there's any articles written in the paper or
17 if there's any item on published news or any blog, divert
18 your attention from that. You need to base your decision on
19 what transpires here in this courtroom.

20 We're going to recess for the evening. We have a few
21 things that we need to tend to this afternoon. And then we
22 will reconvene at 9:30, 9:30 sharp. Thank you very much.

23 (Whereupon the jury exited the courtroom at 3:01 pm)

24 **THE COURT:** All right. I'd be happy to entertain
25 motions at this time.

1 **MR. McMASTER:** None from the State, Your Honor.

2 **MR. RICHEY:** We'd just renew our directed verdict
3 motion.

4 **THE COURT:** Very good. And you're protected on the
5 record. And all of your arguments have been preserved for
6 the record and, once again, have properly made the motion.

7 At this time I want to talk with you in some detail
8 about what I intend to charge. I'm just going to go through
9 it in summary fashion, obviously. After I charge the jury
10 tomorrow, you can have -- bring up objections or additional
11 requests.

12 And this is what I intend to charge in a very general
13 way. I'm going to charge the indictment is indeed not
14 evidence. I'm going to charge that each separate and
15 distinct offense is to be considered separately and
16 distinctly. I'm going to charge them the respective duties
17 of the jury and the trial judge.

18 I'm going to charge presumption of innocence,
19 reasonable doubt. I'm going to charge both reasonable doubt
20 is the kind of doubt that would cause a reasonable person to
21 hesitate to act. I will charge the longer version of that
22 as well so y'all can be aware of that for argument purposes.

23 I'm going to charge direct and circumstantial evidence.
24 I'm going to charge credibility of witnesses, aiding and
25 abetting and accomplice liability, expert witnesses, failure

1 of the Defendant to testify and how that cannot be used
2 against him, the hand of one is the hand of all, that
3 general concept of law.

4 What is the State's position and the Defendant's
5 position with regard for a charge on identification?

6 (Whereupon the attorneys were conferring)

7 **THE COURT:** What ---

8 **MR. McMASTER:** I couldn't hear ---

9 **THE COURT:** Well, my question to you, Mr. McMaster, is
10 ---

11 **MR. McMASTER:** Yes, sir.

12 **THE COURT:** --- do you want or requesting a charge on
13 identification?

14 The reason why I ask is that, you know, there are three
15 people and, perhaps, the mention of another that the
16 identification of those individuals was never in question.
17 The issue in this case is whether or not -- who they're
18 going to believe and who actually did the shooting is the
19 only issue. The identification of who the individuals are
20 are not at issue. So taking that into consideration, what
21 is your request?

22 **MR. McMASTER:** Well, I mean, we don't think we need it
23 at this time, Your Honor.

24 **THE COURT:** All right. And, Mr. Richey, what is your
25 position on that? If you want an identification charge,

1 I'll charge it. If you don't ---

2 **MR. RICHEY:** No, sir. No, sir.

3 **THE COURT:** You specifically request that I not charge
4 ---

5 **MR. RICHEY:** Yes, sir.

6 **THE COURT:** --- identification? Okay. Very good. All
7 right.

8 I'm going to charge the substantive law with regard to
9 murder. And with regard to the inference of malice, the
10 only malice I'm going to charge is malice may be inferred
11 from conduct showing a total disregard for human life.

12 You know, we're all familiar with the most recent case
13 dealing with a deadly weapon. And -- but regardless, I'm
14 not going to charge inference that's attached to a deadly
15 weapon.

16 The felony murder inference, I'm going to charge that.
17 Burglary, first degree, its substantive law with regard to
18 that. Attempted armed robbery. Bear with me just one
19 moment.

20 (Pause)

21 **THE COURT:** You know, the statute that deals with
22 attempted armed robbery really doesn't define what an
23 attempt is. I'm going to explain that in some detail, but
24 essentially charge what attempt means and the elements of
25 armed robbery. Not that it came to fruition, but that it

1 was attempted. And I'm going to explain that as best I can.

2 I'm going to charge conspiracy and the substantive law
3 with regard to that, possession of a weapon during the
4 commission of violent crime. And any additional requests
5 from the State?

6 **MR. McMASTER:** No, Your Honor.

7 **THE COURT:** Any additional requests from Defense?

8 **MR. RICHEY:** No, Your Honor.

9 **THE COURT:** All right. And, obviously, y'all have an
10 opportunity to hear the text of my charge. And if there are
11 any additional requests in the morning, I'll be happy to
12 entertain that. That gives you a good idea as to what --
13 what I'm going to be talking about.

14 Does anybody want to hear a particular charge and the
15 language of any of it? Since we have the luxury of time,
16 I'll be happy to share that with you, if you would like.

17 **MR. McMASTER:** Yes, Your Honor, just one second. Let
18 me finish referring right here to which one. I think we'd
19 -- definitely would like to hear the felony murder and the
20 hand of one.

21 **THE COURT:** All right. The hand of one is the hand of
22 all. If a crime is committed by two or more people who are
23 acting together in committing a crime, the act of one is the
24 act of all. A person who joins with another to commit an
25 unlawful act is criminally responsible for everything done

1 by the other person which happens as a probable or natural
2 consequence of the acts done in carrying out the common plan
3 and purpose. If two or more people are acting or together
4 acting together, assisting each other in attempting the
5 offense, the act of one is the act of all, or as it is
6 sometimes said, the hand of one is the hand of all.

7 Prior knowledge that the crime was going to be
8 committed without more is not sufficient to make a person
9 guilty of that crime. Mere knowledge that another person is
10 going to commit a crime, even if the Defendant is present
11 when the crime is committed, is not sufficient to convict
12 the Defendant as a principal.

13 Guilt as a principal is shown by actual or constructive
14 presence at the scene as a result of prior arrangement.
15 Therefore, a finding of a prior arranged plan or common
16 scheme is necessary for a finding of guilt as a principal.
17 The State must prove beyond a reasonable doubt by competent
18 evidence the theory of the hand of one is the hand of all.

19 A principal in a crime is one who either actually
20 commits the crime or who is present, aiding, abetting or
21 assisting in committing the crime. When a person does an
22 act in the presence of and with assistance of another, the
23 act is done by both. If there are two or more acting with a
24 common plan or intent or present at the commission of a
25 crime, it does not matter who actually commits the crime,

1 all are guilty. The hand of one is the hand of all.

2 Present at the commission of the crime means to be
3 sufficiently near or to aid, and abet and assist in the
4 commission of the crime. However, mere presence at the
5 scene of a crime is not sufficient to convict one as a
6 principal on the theory of aiding and abetting.

7 Intent is also a necessary element for there must have
8 been a common design or intent to commit the crime. The
9 crime must have been committed pursuant thereto with the
10 person aiding and abetting by some overt act. Intent means
11 intending the result which actually occurs not accidentally
12 or involuntarily. Intent may be shown by acts and conduct
13 of the Defendant and other circumstances from which you may
14 naturally and reasonably infer intent. The State must prove
15 these elements beyond a reasonable doubt.

16 If one intentionally kills another during the
17 commission of a felony, the inference of malice may arise.
18 If facts are proved beyond a reasonable doubt sufficient to
19 raise an inference of malice to your satisfaction, this
20 inference would simply be an evidentiary fact to be taken
21 into consideration by you along with all other evidence in
22 the case. You may give it the weight you decide it should
23 receive.

24 Anything else?

25 **MR. RICHEY:** What's the attempt charge, Your Honor?

1 You said ---

2 THE COURT: Pardon?

3 MR. RICHEY: The attempt.

4 THE COURT: All right. I will ---

5 MR. RICHEY: Just the attempt part.

6 THE COURT: Yes. I'm going to define attempt. An
7 attempt is an effort to accomplish a crime which does not
8 succeed. An attempt includes a specific intent to do a
9 particular crime, act -- criminal act along with an act
10 falling short of an act intended. The State must show more
11 than mere preparation of intent. There must be some overt
12 act committed in the effort to commit the crime. Is that --
13 is that what you wanted to hear?

14 MR. RICHEY: Yes, sir, it is. Thank you.

15 MR. McMASTER: I believe the State's ready to proceed
16 on those charges, Your Honor.

17 THE COURT: Okay. Any additional requests at this
18 time?

19 MR. McMASTER: None at this time.

20 THE COURT: Okay. Any objection to what I intend to
21 charge at this time?

22 MR. McMASTER: No objection at this time.

23 THE COURT: Mr. Richey.

24 MR. RICHEY: Yes, sir. No objection.

25 THE COURT: Okay.

1 **MR. RICHEY:** Thank you. And no additional ---

2 **THE COURT:** If there are additional requests, I'll
3 entertain those before the charge itself or after. And I'm
4 going to ask if y'all can come and view the verdict form.

5 (Pause)

6 **THE COURT:** Any objection to the verdict form from the
7 State?

8 **MR. McMASTER:** No, Your Honor.

9 **THE COURT:** Any from Defense?

10 **MR. RICHEY:** No, sir.

11 **THE COURT:** All right. Can y'all think of anything
12 else that we need to discuss before we recess for the
13 evening?

14 **MR. McMASTER:** No, Your Honor.

15 **MR. RICHEY:** (Negative nod).

16 **THE COURT:** Well, I expect y'all to start working on
17 some riveting closing arguments. Obviously, the State will
18 go first and open in full -- yes. The State will go forward
19 in full and Defense will have the closing argument.

20 **MR. McMASTER:** Yes, Your Honor.

21 **MR. RICHEY:** Yes, sir. Thank you, Your Honor.

22 **THE COURT:** All right. We'll stand at ease until 9:30,
23 9:30 sharp. And I'll be here a little bit earlier if y'all
24 need me.

25 **MR. RICHEY:** Yes, sir.

1

(Whereupon court was in recess at 3:16 pm)

1 Wednesday, April 10, 2019:

2 (Whereupon court reconvened at 9:25 am)

3 **THE COURT:** Is there anything from the State before we
4 proceed?

5 **MR. McMASTER:** No, Your Honor.

6 **THE COURT:** Anything from Defense?

7 **MR. RICHEY:** No, Your Honor.

8 (Whereupon the jury entered the courtroom at 9:29 am)

9 **THE COURT:** Madam Forelady, ladies and gentlemen of the
10 jury, thank you for being here and being here on time. As I
11 mentioned to you yesterday, this is the time where the
12 lawyers will have an opportunity to address you in summary
13 fashion very similar to the opening statements. Once again
14 these presentations are truly argumentative in nature.

15 Since you've already heard all the evidence, these very
16 fine lawyers, being the advocates for their relative
17 positions, will be able to point to the facts that supports
18 their relative theory of the case. Although what they say
19 is not evidence, it will aid you immensely in your
20 deliberation process.

21 These are very serious matters. Pay very close
22 attention. And under the circumstances the State goes
23 first. Mr. McMaster.

24 **MR. McMASTER:** May it please the Court?

25 **THE COURT:** Yes, sir.

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1 (Whereupon a portion of the 911 call was played for the
2 jury)

3 **MR. McMASTER:** Ladies and gentlemen of the jury, there
4 are consequences for your actions. You think you found an
5 easy target, a drug dealer, cash and a supply of drugs on
6 hand. He's the perfect target. He would never call the
7 police because he wouldn't want them to come to his home.
8 This should be an easy lick. How did they ever get caught?
9 I'll tell you how they did, because of that 911 call right
10 there.

11 Now you've heard two days of testimony and you've seen
12 numerous items entered into evidence. I believe there are
13 many facts, and we can all agree there is no doubt that
14 occurred at 34 Burgess Avenue on March 6, 2016 in the early
15 morning hours. There's no doubt it was burglary, first, and
16 attempted armed robbery at 34 Burgess. How do we know? We
17 have the 911 call, a live recording of what was happening in
18 progress at 34 Burgess.

19 We don't need to guess. We have no doubt there's an
20 unlawful injury -- entry. We hear kicking. We hear banging
21 described in detail. We have pictures of the side door that
22 you've seen entered into evidence, literally kicked in and
23 is laying on the floor of the kitchen.

24 No doubt this burglary took place in the nighttime
25 hours. The 911 call establishes that. The officers, the

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1 deputies on-scene confirm it.

2 We have an unlawful entry into 34 Burgess. That
3 unlawful entry was made to commit a crime. April Green
4 describes it in the 911 call. You just heard it. They're
5 ransacking the house. They're robbing us. They're
6 demanding money and hurting my boyfriend. Additionally, we
7 had Simeon Williams tell you that was the objective, money
8 and drugs.

9 We have attempted armed robbery, give us the money,
10 give us the money. How do we know he's armed? Because we
11 hear two shots on the 911 tape. There's no doubt, ladies
12 and gentlemen.

13 We have possession of a weapon during the commission of
14 a violent crime. The weapon was fired not once, but twice
15 during the burglary, attempted armed robbery and murder of
16 Jeryl White. There's no doubt the pistol recovered from the
17 scene on the counter, which was placed there by the
18 Defendant, Tristian Cummings, is the pistol that fired the
19 shots that killed Jeryl White. No doubt about it.

20 No doubt those shots were fired while in the commission
21 of a felony, attempted armed robbery and burglary. Those
22 shots were intentional and were made with malice. I'll
23 refer to it as meanness. Those shots were made with
24 malicious intent with a total disregard for human life.
25 There's no doubt. This was not an accident. This was

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1 meanness.

2 You hear the screams of Jeryl White on the 911 tape.

3 You know from Dr. Ward, he's up against the door, he's got
4 his arm up, he's got his arm up like this. He's up against
5 the door. He's down.

6 And where does he get shot? Mid-section of the door,
7 right there. Thirty-seven and a half (37 1/2) inches, I
8 believe, is what it said. You can look at the pictures and
9 refresh your recollection of that, mid-part of the door. He
10 knew he was up against that door, and he wanted him off that
11 door. He wanted to get to him.

12 That shot is intentional, and it is with malice. This
13 is the true meanness because Tristian Cummings was getting
14 that money. Mr. White takes a round in the neck, likely is
15 paralyzed and bleeding out from the injury to his carotid
16 artery. That's what came from Dr. Ward.

17 But just to make him talk, Tristian Cummings goes in
18 and fires another round into his leg while he's on the
19 ground bleeding out. That's malice. That's intent. That's
20 meanness. That is a total disregard for human life.

21 We have the pistol, the projectiles and the shell
22 casings that all matched the weapon found on the counter
23 placed there by Tristian Cummings. There's no doubt that
24 the gun used to murder Jeryl White, that was it.

25 How do we know this? Because Deputy Robinson sees

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1 Tristian Cummings put that gun down on the counter just
2 before he goes out the front door. There is no doubt that
3 Jeryl White died from the gunshots. You heard Dr. Ward
4 confirm it.

5 There's no doubt we had two individuals in that house,
6 two individuals conspiring to commit these crimes and
7 working together to commit these crimes. You just heard
8 that on the 911 tape. April Green says all these things on
9 the 911 tape.

10 And I would ask you to listen to it. You'll have the
11 ability to listen to it as many times as you'd like. All
12 you have to do is inform the Court, and he'll allow you to
13 listen to the entire tape. It is in evidence. It is part
14 of this case.

15 Additionally we have eyewitness testimony that Deputy
16 Robinson sees both Tristian Cummings and Simeon Williams in
17 the house. So we know we've got two.

18 But there's also the section of the 911 tape you just
19 heard, and this establishes approximately 18 seconds into
20 that, 18 seconds in, that third segment, you're going to
21 hear screams of Jeryl White and then the first shot. You
22 can certainly listen to it again.

23 But you're going to hear that shot, and Jeryl goes
24 silent. You don't hear those screams any longer. Because
25 remember, he's been shot, likely paralyzed, carotid artery,

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1 shot in the neck.

2 At one minute and approximately 16 seconds into that
3 third segment that we just listened to, you're going to hear
4 a second shot. It's muffled because it's in the bathroom.
5 Remember? He's in the bathroom, he put the one in his leg.
6 He's got to be standing over him, because like Dr. Ward
7 said, it's through and through. You remember that.

8 But the part that will leave no doubt that Tristian
9 Cummings fired those shots is that less than seven seconds,
10 seven seconds after we hear that muffled shot in the
11 bathroom, what do we hear April Green say? The police are
12 here. The police are here. We know there was no time for
13 him to be anywhere but in that hallway. Because remember,
14 it's right after that the police are there in the doorway.

15 We know Simeon Williams could not have fired that shot
16 because the police are there instantaneously. Simeon
17 Williams would've been required to give the gun to Tristian
18 Cummings and get back to the cabinets in the kitchen before
19 the deputies got there, and that's impossible.

20 You've heard from Deputy Robinson, he's watching Simeon
21 from the corner. This is the doorway. He's over here. And
22 he can see him going through those cabinets. He can see him
23 rustling through there, slamming the doors. The same thing
24 Simeon Williams told you. He can't -- he could not have
25 fired that shot. It's impossible. It just doesn't -- the

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1 facts don't -- just don't fit.

2 Then we have Deputy Robinson holding Simeon Williams at
3 gunpoint. And Simeon says something to someone down the
4 hall, is what he said. And that person darts across behind
5 Simeon and slams the pistol on the counter in order to use
6 both hands to unlock the front door.

7 You remember, in the beginning of this they go to the
8 front door. They knock on that door. Jeryl White opens
9 that door and says, get out of here, get lost, I'm calling
10 the police. Locks that door back. So he's got to have two
11 hands to unlock that door.

12 But also, he's just committed a murder. He's trying to
13 distance himself from that firearm. He's trying to get out
14 of there, put that firearm away and get as far away from it
15 as possible.

16 What Tristian Cummings doesn't know, that you all do,
17 that who's standing out right around that front door?
18 Deputy Sandefur. He sees Tristian Cummings come out of that
19 front door, no doubt about it. He told you that. Saw it
20 with his own eyes. Not something he heard about, not
21 something he thinks he saw, he saw it.

22 Mr. Richey even cross-examined him. He saw him come
23 out of that door, wearing the same clothing that Robinson
24 had just described, just described as that guy's running.

25 The chase is continuous. He gets behind him. He never

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1 loses him. They run into vines, or briars, or, I think,
2 kudzu somebody used, but a lot of heavy brush. But he never
3 loses him.

4 In fact, he gets Tristian Cummings on the ground. But
5 if that's not good enough, he jumps back up. He continues
6 to run more. Again, no doubt that he has come from that
7 house. No doubt that's who they're chasing. No doubt
8 that's who's caught in those woods. There's no doubt about
9 that. This is not a who done it, folks. It just isn't.
10 There's not any doubt about what happened.

11 Now if you think there is some reasonable doubt whether
12 Mr. Cummings came out that front door, that would mean you
13 have a doubt. And that doubt has to have a reason you would
14 have it.

15 What reason would you have to find Tristian Cummings
16 running, wearing matching clothing, the same as has just
17 been described as the individual that has just been seen
18 leaving the front door of 34 Burgess? You'd have to believe
19 that Tristian Cummings just happened to be in the woods
20 wearing the same clothing. And don't forget, we didn't
21 mention, he also has gunshot residue on his hands. It's
22 just not plausible. That doesn't make sense.

23 You would also have to believe that Deputy Robinson and
24 Deputy Sandefur concocted this entire chain of events in a
25 matter of seconds. You would need to assign a reason or

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1 motivation of why they would do that. It's just not
2 reasonable.

3 What possible motivation would Robinson and Sandefur
4 have to make up this story? They both admitted, you never
5 get these types of cases -- get to these types of cases this
6 early. It just doesn't happen. There's never -- they're
7 always gone. Again, this is not a who done it. It's clear
8 from the facts that Tristian Cummings was an active
9 participant in these crimes.

10 And I'll give you another reason. Why would he be
11 running if he were not involved? Again, it just doesn't
12 make sense.

13 Now on cross-examination I believe Investigator Fortner
14 said something about a civilian ride-along with Deputy
15 Robinson, something about a red striped shirt and a doorway
16 -- in the front doorway. Who's wearing a red striped shirt?
17 Well, we know who it is, Simeon Williams.

18 But how could she see Simeon Williams in that front
19 door? Because remember, when they got there, the door was
20 closed. What she sees or what she thinks she sees, and I
21 submit to you, is that there's somebody in there because the
22 door is now open.

23 Remember the pictures, you've got a picture here,
24 State's 2, door is open. Remember where Deputy Robinson
25 said he parked? Right down from the front door. Why is

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1 that? Because I couldn't -- this door was not open. I
2 couldn't see any light coming from it. I didn't know what
3 was going on. So I pulled down until I saw the side door.

4 Sure she sees him. He's in the kitchen, hands up with
5 a big old red shirt. You'll have that red shirt. You've
6 got that picture.

7 And I'll submit to you, I think there was some mention
8 of something being orange. That could, I guess technically,
9 look orange, but you'll have the actual item. The evidence
10 doesn't support any of that information. That is a red
11 herring to get you off track.

12 The evidence is before you. You've heard it. You've
13 heard the testimony. You have heard and seen the items.
14 You can touch them. You can feel them. You can get a look
15 at them. You can listen to them.

16 Now, Simeon Williams, as he told you, only has a ninth
17 grade education. Mr. Richey tried to establish that law
18 enforcement has surrounded the house and Mr. Williams
19 somehow knew that. That makes no sense. Because Simeon
20 Williams is captured in the kitchen. He can't possibly know
21 who's outside. That's just not reasonable.

22 Plus, Robinson and Sandefur told you they were the only
23 units on the scene. Now they said there was more on the
24 way. And you'll hear that even on the 911 calls, there's
25 more on the way, we've got more coming. But again, they are

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1 the only two there.

2 Additionally, Mr. Richey asked questions about knowing
3 the area. And Simeon said clearly he would not run down
4 there in all this thick briars and brush. But who is not
5 from the area? Tristian Cummings. Didn't know which way to
6 go. So he runs down there and gets tangled up.

7 Well, let's talk a little bit more about Simeon
8 Williams. He came into court and he told you the same story
9 he told Investigator Fortner June of 2016, June of 2016.

10 Now, did he make a change? He did. And I think that's
11 how you can tell he's being truthful. He corrected his
12 statement. He said it was not originally supposed to be a
13 burglary with no one at home. It was actually supposed to
14 be an armed robbery because he knew Jeryl White was home.

15 And this change makes no difference because at the end
16 of the day they committed both acts, burglary, and in this
17 case, attempted armed robbery because they were not able to
18 complete their armed robbery because the police got there.
19 As Mr. Williams testified, we didn't get anything. We
20 didn't have long enough to get anything.

21 Additionally, Simeon Williams tells -- he came up with
22 the idea that he and Tristian planned it because both he and
23 Tristian needed the money. He talked about they both wanted
24 the money, they both needed the money.

25 He established where the pistol came from and that

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1 Tristian Cummings even fired that pistol earlier in the
2 night. He also says that Tristian was missing his teeth.
3 And I believe there's a picture that confirms that as well.

4 Now, if Mr. Williams wanted to come in here and lie, he
5 comes in here and what does he say? He did it all. I
6 didn't have anything to do with it. That's the lie. It'd
7 be easy to say that. That's what you would say. That's if
8 he wants that deal Mr. Richey was talking about. You would
9 agree that'd be the best way to handle that.

10 Additionally, he could have easily said that he saw
11 Tristian come and shoot Jeryl White. That would've been
12 easy to do, too. But he didn't say that. He told you what
13 he saw. He said, I was in the kitchen. But I'll tell you
14 this, he was down the hall and he had the pistol. He told
15 you that. We know that's true because remember, Deputy
16 Robinson gets to the door, the side door, he sees Simeon in
17 the kitchen, Tristian Cummings comes down the hall.

18 He talked about not seeing the gun put on the counter.
19 How could you not? Think about that. Deputy Robinson's got
20 a pistol pointed in your face. You were looking like this,
21 straight at him. You're probably worried a little bit more
22 about what you're looking at, that pistol pointing in your
23 face. He goes a step further, though. He confirms it's
24 just the two of us.

25 Now, Mr. Richey asked Simeon about pleading guilty to

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1 killing someone because he pled to a reduced charge of
2 voluntary manslaughter. And he pled to burglary, first.
3 And he received a deferred sentence. No question about
4 that. Mr. Williams pled to those charges.

5 Mr. Richey's a good lawyer. Mr. Richey knew that
6 Simeon Williams has a little bit of education. And he,
7 obviously, has no legal training. Simeon Williams could get
8 boxed in due to Mr. -- due to him pleading guilty to the
9 charge even though he didn't pull the trigger.

10 And out of nowhere, you remember, he's hammering,
11 repeating it, you pled guilty. You pled guilty. Why did
12 you plead guilty? Why did you plead guilty? You shot him.
13 You shot him.

14 And what does Simeon Williams say? What does he tell
15 you? You know what he says? A hand of one is the hand of
16 all. And you know what? He's right. You know what else?
17 The Judge is going instruct you on that charge.

18 But I'm going to tell you what I think it means. It's
19 accomplice liability. The hand of one is the hand of all.
20 What that means very simply is if two or more people agree
21 to commit a crime and agree to help each other, both of them
22 are guilty for the natural or foreseeable consequences of
23 that crime. Both are guilty.

24 Bank robbery is the common example everybody always
25 uses. If you're the getaway driver or you're the lookout,

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1 you're just as guilty as the person that goes into that bank
2 with a pistol and robs it. To push that statement even
3 further, if you plan a bank robbery, and you sit in the car,
4 but your co-conspirator goes into the bank and kills the
5 clerk, you're just as guilty, and you never pulled the
6 trigger.

7 You know, Mr. Richey talked a lot about you must pull
8 the trigger in his opening statement. That's not the case.
9 It's not what the Judge is going to tell you.

10 Now, we believe that Tristian Cummings pulled that
11 trigger intentionally and maliciously, but we don't have to
12 prove that. Because you are a part of the plan, part of the
13 robbery, when you go in with a gun, it is a natural
14 consequence that someone could get killed. It is
15 foreseeable.

16 So to break it down for you, even if we were to
17 consider that Mr. Cummings did not intentionally fire those
18 shots with malice, he is still just as guilty on all
19 charges, including murder, because the hand of one is the
20 hand of all. And if you take affirmative steps to carry out
21 these crimes, you're just as guilty as being a principal.
22 This is not a mere presence situation. This is active
23 participation.

24 To make it crystal clear, and I want you to think about
25 this example, if you switch places with Simeon Williams and

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1 Tristian Cummings, so now Tristian's in the kitchen and
2 Simeon runs by, it doesn't change a thing. They both can be
3 convicted of murder.

4 Now, I'm going to talk a little bit about GSR because I
5 mentioned earlier how ridiculous it would be for someone
6 running around the woods in the same clothes as Tristian and
7 the same person that ran out the front door and they all --
8 and they miraculously have GSR on their hands. Now everyone
9 involved in this case had GSR. You heard that. And I
10 believe Mr. Sturkie with SLED gave a sound explanation of
11 why that is.

12 But you could say, Mr. McMaster, Tristian had on
13 gloves. I don't get that. He did. Mr. Sturkie explained
14 that to you. Mr. Sturkie did. He's an expert on GSR, was
15 qualified without objection. And the Judge is going to tell
16 you about expert information, expert opinions.

17 He said that GSR could have been transferred from the
18 gloves to the hand. How do we know he was pulling on those
19 gloves with his bare hand? Got pictures of it. They are in
20 evidence. Got a picture of the glove in the bottom -- in
21 the car. We've got his hands behind his back pulling those
22 gloves off.

23 Think about that. You're in the car, those gloves are
24 down on the floorboard. Nunez, I believe it was, Deputy
25 Nunez said, oh yeah, he pulled them off, tried to take his

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1 pants off or something else. Is that uncommon?, No. No.
2 They try to get -- get rid of items on them. So again,
3 we've got documentation, photos.

4 He never considered he was rubbing that GSR all over
5 his hands, you know? You think you're wearing gloves,
6 you're going to be set.

7 Now those gloves were probably a good idea for one
8 thing, and you can probably guess the one thing they keep
9 from coming in, DNA from being transferred. There is no
10 information about DNA found. These gloves worked, but not
11 all the way. But again, if we assume no GSR at all was
12 found on Mr. Cummings and it was all found on Mr. Williams,
13 that still does not change a thing because if you apply
14 accomplice liability, felony murder, and the hand of one is
15 the hand of all, Tristian Cummings is still guilty.

16 Obviously, based on our facts and testimony and the
17 collection of any scientific evidence was not even
18 necessary, although it's standard practice in every murder
19 case because this is an eyewitness ID case. We have people,
20 actual people on the scene, there on the ground. Ladies and
21 gentlemen, remember if you take the facts in the light most
22 favorable to Mr. Cummings, he is still guilty.

23 Now, I believe I've shown you substantial compelling
24 evidence Mr. Cummings intentionally shot Mr. White with
25 malice. But if you still need more, please remember the

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1 hand of one is the hand of all. There's no doubt that Mr.
2 Cummings was actively involved in conspiring to commit
3 burglary, first, attempted armed robbery and murder while in
4 possession of a weapon on the night of March 6, 2016 at 34
5 Burgess Avenue where Jeryl White lost his life.

6 But you might say, Jeryl White sold drugs. And he did.
7 But the law fits everyone. The law doesn't come in and say
8 it is okay for Jeryl White to be murdered because he was
9 involved in drugs. If that were the case, we wouldn't be
10 sitting here. The law comes in one size, fits everyone.

11 The law does not allow for Tristian Cummings and Simeon
12 Williams to burglarize a home and attempt an armed robbery
13 because we have a particular type of victim. The law is for
14 everyone. If Jeryl White sold drugs, then he deserved to be
15 punished, but not murdered in his home.

16 Ladies and gentlemen, the Rules of Court do not allow
17 me to address you once I conclude. But I know Mr. Richey is
18 a very capable lawyer. And I expect a quite powerful
19 closing argument, but he cannot change the facts and the
20 evidence or the law.

21 And I submit to you if you look at all the evidence,
22 remember the testimony, and listen to the 911 call, there is
23 not a reasonable doubt about Mr. Cummings' guilt. This is
24 not a burglary that resulted in the murder. This is a
25 murder for the purpose of robbery and burglary.

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1 And we know that because Tristian Cummings
2 intentionally shot Jeryl before he robbed him. We know
3 that. That's on the 911 tape. You can hear it.

4 Mr. Richey talked about connecting the dots to make the
5 picture. And I think that's a way to look at this case, but
6 I don't think it's as dots. I look more of it as arrows.
7 And those arrows are all pointing to Tristian Cummings'
8 guilt on all charges, burglary, first, attempted armed
9 robbery, conspiracy, possession of a weapon during the
10 commission of a violent crime and murder. He is guilty of
11 all charges.

12 And after the Judge charges you on the law, I want you
13 to return a verdict of guilty on all charges, not because of
14 my argument, but because when you apply the law to the facts
15 that you have, and the evidence that you have, and the
16 eyewitness testimony that you have, there is overwhelming
17 evidence that Tristian Cummings is guilty on all charges.
18 Thank you.

19 **THE COURT:** Thank you, Mr. McMaster. Mr. Richey,
20 you're recognized for closing argument.

21 **MR. RICHEY:** Thank you, Your Honor. When I first
22 started practicing law a long time ago, you know, I went to
23 college and got all these fancy degrees and stuff and went
24 downstairs on a Monday, and I heard a judge say you have to
25 have a sixth grade education to be on a jury. And I

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1 thought, wait a minute, I got this law degree, sixth grade?

2 But then as I try these cases, you know, I realized
3 that's all it takes, really, because all of this is really
4 common sense. It's -- it's really -- it's really common
5 sense. And this case, it's -- it's all common sense.

6 And when you look at the facts that was presented by
7 the State and the State's refusal to present facts, you're
8 going to find that Tristian Cummings is not guilty. You're
9 gonna find that. And let me show you why.

10 Let's take this chart. We've got the house. And
11 everybody remember all -- the house. Let me make sure I'm
12 turning it the right way. Right here, Burgess Avenue,
13 right? Everybody remember the house, okay?

14 Here's what we know, facts is what we know. We know
15 that the cops said we got there faster than any other time
16 ever. This was bang, bang, we were there, okay?

17 We also know where they were positioned. You know how
18 we know that, how they were positioned? Because the cop
19 came in here, he told you, he said, look, we got this code
20 system that 22 means I'm on the left. 43 means I'm in the
21 center, all this stuff. So they had it -- they had the
22 place surrounded. We know that. They had the place
23 surrounded.

24 But there was one weak link to that. One weak link to
25 that surrounding. One weak link, okay? And that weak link,

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1 the State, they didn't address it. And they have to. They
2 cannot ask you to convict this man on murder and refuse to
3 produce that link. What that link -- I'm going to tell you
4 what that link was.

5 At that front door -- at that front door they had
6 somebody there. The reason why it's a weak link is because
7 that officer had that intern in that car. We know that. We
8 know he had an intern in that car. And that intern and that
9 officer, what did they -- what did they tell the
10 investigator? We saw a guy with a red shirt run out of the
11 house.

12 Not like Mr. McMaster said, that he was standing there
13 -- that's not what was said. We saw that guy in the red
14 shirt run out that house. We saw that. That's what they
15 told. We saw that, period. So we know that guy in that red
16 shirt got through that front door. We know that. That's a
17 fact. That was told -- that was the testimony.

18 Why didn't they chase him? Why didn't they chase him?
19 You know why that cop didn't chase him? Because he said, I
20 got this intern in this car, and I heard that gunshot, and
21 I'm not going to leave her. That was the one missing link
22 in this round. Gone. Gone. That's a fact.

23 Because if it wasn't a fact, why wouldn't the State --
24 see, when they -- when they bring Tristian Cummings to be
25 identified, why wouldn't they say, you know what, that cop

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1 and that intern, they sat right there at that front door.
2 Hey, look, cop and intern, here's the guy we got. Here's
3 the guy we got. Because, see, they're the ones that do the
4 identification because they're the ones that saw the guy.
5 They're standing there.

6 So why in the world would they not bring this guy,
7 Tristian Cummings, why wouldn't they bring him to the people
8 who was there and say, look, is this him? Is this him? Why
9 wouldn't they bring this intern into this court, put her on
10 that witness stand and say, look, is this the guy? Because
11 you were there. Why wouldn't they do that? Why?

12 But they come in here and say this guy committed a
13 murder. Hey, let's just get rid of him. That's what
14 they're telling you to do. But they could have sat that
15 intern and that cop on that witness stand and they could
16 have had her tell you whether that was Tristian Cummings or
17 not. Because she was clear, it was clear the guy that came
18 out of that house had a red shirt on running from that
19 house. It's clear. Clear as a bell. Clear as a bell.

20 And we know this house is surrounded. We all know
21 that. How in the world, if you believe this story, how in
22 the world does Tristian Cummings, with these side doors
23 right here, how in the world he gets back there with all
24 these cops around this house? How in the world does he get
25 there?

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1 'Cause if he comes out this front door like they said,
2 he's got to go make a loop around or go through there. And
3 we know he's not going there because the cop's standing
4 right there. So he's got to come out here, loop around and
5 go through there. Now does that make sense? No, it
6 doesn't. It doesn't make sense.

7 But you know what makes sense? You know what makes
8 sense? I'll tell you what makes sense. Mr. McMaster, what
9 makes sense is -- you remember when he's standing up here
10 and he said that orange shirt, whatever, orange shirt,
11 that's -- that's a big fact in this case. This is not the
12 only 911 call that was made. It's not. It's not. It's not
13 the only 911 tape that was -- that was called.

14 The investigator, he's testified, neighbors called and
15 said there's three guys outside with orange shirts on.
16 Three guys.

17 Do you know how we know there was other people outside?
18 You know how we know? Because that officer told you. He
19 said, I pulled my car -- remember he said -- he said I
20 turned the lights off. I put it in first, not to be
21 detected. Not to be detected. Because he didn't know what
22 he was walking into and he saw those folks there. So he
23 went dark on them. He went dark on them.

24 So we know this is not some scene where there's nobody
25 outside. We know there's people outside. We know that.

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1 This is not a case where there's two people inside the
2 house, everything is clear outside. That's not this case if
3 you believe what they tell you. If you believe that.

4 And what happened -- what happened when those fires --
5 when those shots went off, people ran. They ran. When
6 those shots went off, boom, they ran. They ran.

7 Because the State, they have -- you know why they have
8 the burden of proof? They have the burden of proof. This
9 is the State of South Carolina. They have the burden of
10 proof. They have researches -- resource. They have the
11 burden of proof. And when they have the burden of proof and
12 ask them -- ask a jury to do what they're asking you to do,
13 asking what you to do. They're asking -- asking the jury to
14 convict the guy for murder. That's what they're asking you
15 to do.

16 Why in the world are these people in here? Why in the
17 world is the neighbors not here to say these people with
18 orange shirt? Why she's not here? Because it doesn't fit
19 the narrative that they have set up. It doesn't. It
20 doesn't fit the narrative. Mr. McMaster says everything's
21 facts. Everything's facts. Everything is facts.

22 This is a case where we all talk about how fast the
23 cops got there. Oh, dah, dah, dah, dah, dah, dah. How in
24 the world does he get back here if they're already there?
25 If the cops are already there, they're already there, how in

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1 the world does he get back here in this kudzu? I mean, on
2 this route, if you believe them, on this route that he took,
3 on the route that Tristian Cummings took, cops, we know the
4 intern and the cop's there, one, two right here, they got
5 this house surrounded. Look how many people he got to run
6 through to get there.

7 And he's got to get there now. See, he's got to be
8 there now, now because they're already there. That's why we
9 know one fact here, he wasn't in that house because it would
10 have been impossible for him to get out of that house. He
11 was not in that house. No way.

12 If you believe -- if you believe the officers in this
13 case, if you believe how they was set up, if you -- if you
14 believe all that, if you believe they were there on time, if
15 you believe they had the house surrounded, if you believe
16 they had codes to tell everybody where everybody -- if you
17 believe all that, if you believe all that, you believe the
18 shot was fired, they were there right -- if you believe all
19 that, if you believe all that, there's no way possible that
20 Tristian Cummings could have been in that house and got out
21 of it. It's too much. Too many people. It's too many
22 people. Too many. Too many. Too many.

23 And see stuff that doesn't make common sense -- let me
24 tell you something that don't make common sense. So is --
25 prosecutor told you, oh, Tristian Cummings had gloves on.

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1 Oh, yeah, what's this gunpowder residue? He had gloves on.
2 He had gloves on. Oh, but, we didn't get the DNA because he
3 had gloves on.

4 You know he's -- here's what he's trying to get
5 everybody to believe. He's trying to get everybody to
6 believe that Tristian Cummings shot the gun, he shot the
7 gun, okay? He went over and put -- the officer didn't say
8 anything about, you know, he had gloves on, supposedly, put
9 the glove [sic] down and then he put the gloves on.

10 See, that's to try to evade the fact that we don't have
11 the DNA from Tristian Cummings on that gun. We ain't got
12 it. But see, they're in a box. You can't -- you can't --
13 you can't explain everything. You can't say, oh, he got
14 gunpowder residue. Oh, but he got these gloves, switcheroo,
15 no DNA. So we know -- they produced zero evidence that
16 Tristian Cummings had that gun. Zero. Okay?

17 Because he wants you to believe Simeon Williams. He
18 wants you to believe him. He said, hey, Simeon Williams
19 told the truth, gave a consistent statement. You know, hand
20 of one, hand of all. He's the truth-teller. So they want
21 us to believe him.

22 You know what? I believe him. You know why I believe
23 him? Because he told you he didn't see Tristian Cummings
24 with a gun. That's what he told you. That's what he told
25 you. So if we going to believe him, we going to believe

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1 him. We going to believe him.

2 Now, you know what reasonable doubt is? Reasonable
3 doubt, it's the kind of doubt -- it ain't, oh, no way
4 possible in this world. Reasonable doubt, that's not what
5 it is. Reasonable doubt is the kind of doubt to make you
6 hesitate to act. You know, you hesitate to act. That's
7 what reasonable doubt is, hesitate to act.

8 And I always say what makes you hesitate to convict
9 somebody? Well, what makes you hesitate to convict somebody
10 is you say, why that intern's not here? Why she's not here
11 with that officer? Why she's not here? Why? Why?

12 What makes you hesitate to convict is you say, no, they
13 know the neighbors told them that people are outside with
14 orange shirts on. We know that. Well, why wouldn't the
15 neighbor come here and say, we saw Tristian Cummings? Why
16 wouldn't they come here and say that? Why? They're the
17 neighbors. They make the 911 call. They're right there.
18 Why wouldn't they do that?

19 And that officer that went in that house and he looked
20 outside, we know one thing. We know it was at night. It
21 was dark, which they used to their benefit. It was dark.
22 No evidence that light was on in that house. And if that
23 light was on in that house, they would have told you it was.
24 See, they would have told you, he went in that kitchen and
25 that light was turned on, he saw everything. They didn't

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1 tell you that. They didn't tell you that.

2 So he sees two people in that house, outside in the
3 dark, we presume no light on in the kitchen, right? Two
4 people. They then double back around sometime, they bring
5 him a guy and said, we found this guy in the kudzu. Is this
6 the guy? Is this the guy? What do these folks say? What
7 is he supposed to say? They took the guy to the wrong
8 person. To the wrong person.

9 And so Tristian Cummings is not guilty. And based off
10 the evidence in this case, he's not in that house. Not even
11 close. Not even close.

12 And you would have to ignore -- you got to ignore
13 everything on here. For Tristian Cummings to do this, you'd
14 have to ignore this. You'd have to ignore it. You'd have
15 to ignore what the cops said. You'd have to say they didn't
16 have the house surrounded. You'd have to say they wasn't
17 there on time.

18 You'd have to ignore all that because then you would
19 have to tell yourselves something that's not the way it was,
20 that he weaved his way through all these people to get back
21 here. That's what you'd have to believe.

22 See, this is -- this is -- what we have -- what we have
23 here is a responsibility. See, we have a responsibility,
24 okay? We have a responsibility that when a person's accused
25 of a crime, when they're accused of a crime there's a

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1 responsibility there.

2 See, the police's responsibility is not always to get
3 the bad guy. It's not. That's not their total
4 responsibility. The prosecutor's responsibility is not
5 always to convict a guy. There's a responsibility to that
6 person, to that person. It's a responsibility to that
7 person that we have.

8 And that responsibility is that that intern was in that
9 car and he didn't bring her in here. If those neighbors are
10 out there, he'd bring them in here. That's a
11 responsibility. That's a responsibility. And that's why
12 the Defendant doesn't have the burden of proof. And that's
13 why Tristian Cummings is not guilty. Thank you.

14 **THE COURT:** Thank you, Mr. Richey.

15 Ladies and gentlemen of the jury, you've heard all the
16 evidence. You've heard the closing arguments. And now it's
17 time for me to charge you the law.

18 Y'all have paid very close attention to the evidence.
19 I've watched you throughout the trial. You have all the
20 wherewithal to determine the facts in the case. But your
21 responsibility is to take those facts and apply it to the
22 law.

23 And I kind of wish that there was an easy or an
24 entertaining way to charge you the law, but there's not.
25 But it's very important stuff. You've taken a solemn oath

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1 that you would do that, that you would determine what the
2 facts are and apply it to the law.

3 Y'all have been sitting here for about 45 minutes.
4 Before we launch into the law, I'm going to ask if y'all
5 could just stand up and stretch just a little bit. Stretch
6 after a little while, maybe that'll help us pay very close
7 attention.

8 (Pause)

9 **THE COURT:** All right. You may be seated.

10 Madam Forelady, ladies and gentlemen of the jury, the
11 indictments charge the Defendant with murder, burglary,
12 first degree, attempted armed robbery, conspiracy,
13 possession of a weapon during the commission of a violent
14 crime.

15 I'll remind you that the fact that the Defendant was
16 arrested, charged and indicted is not evidence and cannot be
17 considered by you as evidence of guilt, nor does it create
18 any presumption or inference of guilt. This document simply
19 is the formal instrument which contains the charges made
20 against the Defendant. It is the formal document that
21 brings this case to court.

22 The indictments in this case allege several different
23 offenses against the Defendant. Each indictment charges a
24 separate and distinct offense. You must decide each
25 indictment separately on the evidence and the law applicable

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1 to it uninfluenced by your decision as to any other
2 indictment.

3 The Defendant may be convicted or acquitted on any or
4 all of the offenses charged. You'll be asked to write a
5 separate verdict of guilty or not guilty for each
6 indictment.

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

16 I have the additional duty to charge you the law. As
17 the presiding judge I am the sole judge of the law. It is
18 your duty as jurors to accept and apply the law as I now
19 state it to you.

20 If you already have an idea as to what the law is or
21 what the law ought to be and it does not agree -- and it
22 does not agree with what I now tell you the law is, you must
23 abandon this idea because you were sworn to accept the law,
24 apply the law exactly as I state it to you.

25 In every case tried in this court before a jury the

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1 jury becomes the sole and exclusive judge of the facts. A
2 trial judge cannot intimate, state, comment on or make any
3 statements to a trial jury about the facts in a case.

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

14 Ladies and gentlemen of the jury, this is a very
15 important concept of the law known as presumption of
16 innocence. The Defendant has pled not guilty to these
17 indictments. And that plea puts the burden of proof on --
18 the burden of proof on the State to prove the Defendant
19 guilty.

20 A person charged with committing a criminal offense in
21 South Carolina is never required to prove himself innocent.
22 I charge you that it is an important rule of law that a
23 defendant in a criminal trial, no matter what the
24 seriousness of the charge may be, will always be presumed to
25 be innocent of the crime for which he -- which the

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1 indictment was issued unless guilt has been proven by
2 evidence satisfying you of that guilt beyond a reasonable
3 doubt. Presumption of innocence does not end when you begin
4 your deliberations, but that accompanies the Defendant
5 throughout the trial until you reach a verdict of guilt
6 based on evidence satisfying you of that guilt beyond a
7 reasonable doubt.

8 The presumption of innocence is like a robe of
9 righteousness placed about the shoulders of the Defendant,
10 which remains with the Defendant until it has been stripped
11 from the Defendant by evidence satisfying you of the
12 Defendant's guilt beyond a reasonable doubt. The
13 presumption of innocence is not a mere legal theory, it is
14 not just a legal phrase. It is a substantial right to which
15 every defendant is entitled as you, the jury, are satisfied
16 from the evidence of the Defendant's guilt beyond a
17 reasonable doubt.

18 What is reasonable doubt in the law? A reasonable
19 doubt is the kind of doubt that would cause a reasonable
20 person to hesitate to act. The State has the burden of
21 proving the Defendant guilty beyond a reasonable doubt.

22 Some of you may have served as jurors in a civil case
23 where you were told that it is only necessary to prove that
24 a fact is more likely true than not true, such as by a
25 greater weight or preponderance of the evidence. In

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1 criminal cases the State's proof must be more powerful than
2 that. It must be beyond a reasonable doubt.

3 Proof beyond a reasonable doubt is proof that leaves
4 you firmly convinced of the Defendant's guilt. There are
5 very few things in this world we know with absolute
6 certainty. And in criminal cases the law does not require
7 proof that overcomes every possible doubt.

8 If, based on your consideration of the evidence, you
9 are firmly convinced that the Defendant is guilty of the
10 crime charged, you must find the Defendant guilty. If, on
11 the other hand, you think there is a real possibility the
12 Defendant is not guilty, you must give the Defendant the
13 benefit of the doubt and find him not guilty.

14 Ladies and gentlemen of the jury, there are two types
15 of evidence which are generally presented during a trial,
16 direct evidence and circumstantial evidence. Direct
17 evidence directly proves the existence of a fact and does
18 not require deduction. Circumstantial evidence is proof of
19 a chain of facts and circumstances indicating the existence
20 of a fact.

21 Crimes may be proven by circumstantial evidence. The
22 law makes no distinction between the weight or value to be
23 given to either direct or circumstantial evidence. However,
24 to the extent the State relies on circumstantial evidence,
25 all of the circumstances must be consistent with each other

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1 and when taken together point conclusively to the guilt of
2 the accused beyond a reasonable doubt.

3 If these circumstances merely portray the Defendant's
4 behavior is suspicious, the proof has failed. The State has
5 the burden of proving the Defendant guilty beyond a
6 reasonable doubt. This burden rests with the State
7 regardless of whether the State relies on direct evidence,
8 circumstantial evidence or some combination of the two.

9 Ladies and gentlemen of the jury, necessarily you must
10 determine the credibility of witnesses who have testified.
11 Credibility simply means believability. It becomes your
12 duty as jurors to analyze and to evaluate the evidence and
13 determine which evidence convinces you of its truth.

14 In determining the believability of a witness who has
15 testified you may believe one witness over several witnesses
16 or several witnesses over one witness... You may believe a
17 part of the testimony of a witness and reject the remaining
18 part of the testimony of that same witness.

19 You may believe the testimony of a witness in its
20 entirety or reject the testimony of a witness in its
21 entirety. You may consider whether any witness has
22 exhibited to you any interest, bias, or prejudice or other
23 motive. You may also consider the appearance and the manner
24 of a witness while on the witness stand.

25 The Rules of Evidence ordinarily do not permit

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1 witnesses to testify to opinions or conclusions. An
2 exception to this rule exists for witnesses we call expert
3 witnesses.

4 A witness who by education and experience have become
5 expert in some art, science, profession, calling may state
6 an opinion as to relevant and material matter in which the
7 witness claims to be an expert and may also state the
8 reasons for the opinion. You should consider any expert
9 opinion received into evidence and like any other evidence
10 give it the weight you think it deserves.

11 If you decide the opinion of an expert is not based on
12 sufficient education and experience or if you conclude that
13 the reasons given in support of the opinion are not sound or
14 that the opinion is outweighed by other evidence, you may
15 disregard the opinion entirely. An expert witness'
16 testimony is to be given no greater weight than that of
17 other witnesses simply because the witness is an expert.
18 Further, you are not required to accept an expert's opinion
19 even though it is not contradicted.

20 Madame Forelady, ladies and gentlemen of the jury, I
21 instruct you and emphasize the fact that the Defendant did
22 not -- that the -- emphasize that the fact that the
23 Defendant did not testify is not a factor to be considered
24 by you in any way in your deliberation and in your
25 consideration on the question of guilt or innocence of the

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1 Defendant. It must not be considered by you in any manner
2 whatsoever.

3 A defendant has a constitutional right to remain
4 silent. And the assertion of this right must not be
5 considered by you in your deliberations. I'll repeat, under
6 your oath you are to draw no conclusion whatsoever from the
7 fact that the Defendant in this case did not testify.

8 The fact that this Defendant did not testify should not
9 even be discussed in the jury room. Madame Forelady, I'm
10 going to ask that you enforce that rule. There'll be no
11 discussion about whether or not the Defendant testified in
12 this case.

13 The burden of proof, as I have stated to you, is on the
14 State. The Defendant is not required to prove his
15 innocence. The burden of proof remains on the State to
16 prove guilt beyond a reasonable doubt.

17 Ladies and gentlemen of the jury, I'm going to charge
18 you the law with regard to accomplice liability. A person
19 who was present at the scene of the crime and intentionally
20 and through a common plan aided, abetted or assisted in the
21 commission of that crime through some overt act is guilty as
22 an accomplice. To be liable as an accomplice the Defendant
23 must have knowledge of the principal's criminal conduct.
24 Mere presence at the scene of the crime is not sufficient to
25 establish guilt as an accomplice. Intentionally means

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1 willfully intending the result which actually occurs, not
2 accidentally or involuntarily.

3 I want to charge you the concept and the law known as
4 the hand of one is the hand of all. A crime -- if a crime
5 is committed by two or more people who are acting together
6 in committing a crime, the act of one is the act of all.

7 A person who joins with another to commit an unlawful
8 act is criminally responsible for everything done by the
9 other person which happens as a probable and natural
10 consequence of the acts done in carrying out the common plan
11 and purpose. If two or more people are together, acting
12 together, assisting each other in committing the offense,
13 the act of one is the act of all, or as it is sometimes
14 said, the hand of one is the hand of all.

15 Prior knowledge that a crime is going to be committed
16 without more is not sufficient to make a person guilty of
17 that crime. Mere knowledge that another person is going to
18 commit a crime, even if the Defendant is present when the
19 crime is committed, is not sufficient to convict the
20 Defendant as a principal.

21 Guilt as a principal is shown by actual and
22 constructive presence at the scene as a result of prior
23 arrangement. Therefore, a finding of a prior arranged plan
24 or common scheme is necessary for a finding of guilt as a
25 principal. The State must prove beyond a reasonable doubt

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1 by competent evidence the theory of the hand of one is the
2 hand of all.

3 A principal in a crime is one who either actually
4 commits the crime or who is present, aiding, and abetting or
5 assisting in committing the crime. When a person does an
6 act in the presence of and with the assistance of another,
7 the act is done by both. Where two or more are acting with
8 a common plan or intent are present in the commission of a
9 crime, it does not matter who actually commits the crime,
10 all are guilty. The hand of one is the hand of all.

11 Present at the commission of a crime means to be
12 sufficiently near to aid, and abet and assist in the
13 commission of the crime. However mere presence at the scene
14 of a crime is not sufficient to convict one as a principal
15 on the theory of aiding and abetting.

16 Intent is also a necessary element, for there must have
17 been a common design or intent to commit the crime. The
18 crime must've been committed pursuant thereto with the
19 person aiding and abetting by some overt act. Intent means
20 intending the result which actually occurs, not accidentally
21 or involuntary. Intent may be shown by acts and conduct of
22 the Defendant and other circumstances from which you may
23 naturally and reasonably infer intent. The State must prove
24 these elements beyond a reasonable doubt.

25 Ladies and gentlemen of the jury, I'm going to charge

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1 you the substantive law with regard to the criminal offense
2 of murder. The Defendant is charged with murder. The State
3 must prove beyond a reasonable doubt the Defendant killed
4 another person with malice aforethought.

5 Malice is hatred, ill will or hostility toward another
6 person. That is the intentional doing of a wrongful act
7 without just cause or excuse with an intent to inflict an
8 injury or under circumstances that the law would infer evil
9 intent.

10 Malice aforethought does not require that malice exists
11 for any particular time before the act is committed, but
12 malice must exist in the mind of the Defendant just before
13 and at the time of the -- that the act is committed.
14 Therefore, there must be a combination of the previous evil
15 intent and the act.

16 Malice aforethought may be express or inferred. These
17 terms, express and inferred, do not mean different kinds of
18 malice, but merely the manner in which the malice may be
19 shown to exist, that is either by direct evidence or by
20 inference from the acts and circumstances which are proved.

21 Express malice is shown when a person speaks words
22 which express hatred or ill will for another or when the
23 person prepared beforehand to do an act which was later
24 accomplished. For example, lying in wait for a person or
25 any other act of preparation going to show that the deed was

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1 within the Defendant's mind would be express malice. Malice
2 may be inferred by conduct showing a total disregard for
3 human life.

4 Ladies and gentlemen of the jury, if one intentionally
5 kills another during the commission of a felony, the
6 inference of malice may arise. If facts are proved beyond a
7 reasonable doubt sufficient to raise an inference of malice
8 to your satisfaction, this inference would simply be an
9 evidentiary fact to be taken into consideration by you along
10 with all other evidence in the case. You may give it the
11 weight you think it deserves.

12 I charge you the substantive law with regard to
13 burglary. The Defendant is charged with first degree
14 burglary. The State must prove beyond a reasonable doubt
15 that the Defendant entered a dwelling without consent.

16 The dwelling is any building or portion of a building
17 in which a person ordinarily sleeps. A building constructed
18 as a dwelling that has never been occupied cannot be
19 considered a dwelling for purposes of burglary, but a
20 building is a dwelling even if the residents are temporarily
21 absent from the building.

22 In order to prove that the Defendant entered the
23 dwelling the State does not have to show that the
24 Defendant's entire body entered the dwelling. The smallest
25 entry is sufficient. It may be any part of the body such as

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1 a hand, or foot or even an instrument such as a hook or
2 other substance.

3 In addition, the State does not have to prove that
4 force was used to gain entry. If a person enters a building
5 by using deception, artifice, trick or misrepresentation to
6 get consent to enter, this is an entry without consent.

7 Next, the State must prove beyond a reasonable doubt
8 that the Defendant intended to commit a crime, either a
9 felony or a misdemeanor, at the time of the entry. The mere
10 entry into a dwelling without consent is not burglary.

11 If the intent to commit a crime is formed after the
12 entry, it is not burglary. On the other hand, if the
13 Defendant intended to commit a crime at that time of the
14 entry, it is burglary even if the intent was abandoned after
15 the entry. It does not matter that the intended crime was
16 not completed. Intent may be shown by acts and conduct of
17 the Defendant and other circumstances from which you may
18 naturally and reasonably infer intent.

19 Finally, the State must prove beyond a reasonable doubt
20 that when entering, while in the dwelling, or when fleeing
21 the Defendant or an accomplice was armed with a deadly
22 weapon or explosive. A deadly weapon is any article,
23 instrument or substance which is likely to cause death or
24 great bodily harm.

25 Whether an instrument has been used as a deadly weapon

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1 depends upon the facts and circumstances of each case. The
2 following are examples of instruments which may be deadly
3 weapons; A pistol, shotgun, rifle, dirk, dagger, knife,
4 slingshot, metal knuckles, a razor, gasoline, a firebomb,
5 Molotov cocktail or lighter fluid.

6 A gun may be a deadly weapon even if it is not
7 operating or when entering while -- while in the dwelling or
8 when fleeing the Defendant or an accomplice caused physical
9 injury to anyone not participating in the crime, or when
10 entering while in the dwelling or when fleeing the Defendant
11 or an accomplice displayed what was or appeared to be a
12 knife, pistol, revolver, rifle, shotgun, machine gun or
13 other firearm or the Defendant entered or remained in the
14 dwelling in the nighttime. Nighttime is the period between
15 sunset and sunrise in which there's not enough daylight to
16 recognize a person's face except by artificial light or
17 moonlight.

18 Ladies and gentlemen of the jury, I'm going to charge
19 you the substantive law with regard to attempted armed
20 robbery. The Defendant is charged with attempted armed
21 robbery. In order to prove this offense the State must
22 first prove beyond a reasonable doubt that the Defendant
23 acted with specific intent to take the personal property
24 from the person or presence of another person.

25 Property is in the presence of a person if it is within

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1 the person's reach, inspection, observation or control so
2 that the person could, if not overcome with violence or --
3 or prevented by fear, keep possession of the property. An
4 attempt is an effort to accomplish a crime which does not
5 succeed.

6 Attempt -- an attempt includes a specific intent to do
7 a particular criminal act along with an act falling short of
8 that -- of the act intended. There must be some overt act
9 committed in the effort to commit a crime. Intent means
10 intending the result which actually occurs, not accidentally
11 or involuntary. Intent may be shown by acts and conduct of
12 the Defendant and other circumstances from which you may
13 naturally or reasonably infer intent.

14 The State must also prove beyond a reasonable doubt
15 that the Defendant intended to carry the property away
16 intending to permanently deprive the owner of the property
17 to keep the property from the Defendant's [sic] own use.
18 The attempted taking and carrying away of the property must
19 have been done with violence or by putting the owner of the
20 property in fear of violence.

21 Finally, the State must prove beyond a reasonable doubt
22 that the Defendant was armed with a deadly weapon during the
23 robbery. A deadly weapon is any article, instrument or
24 substance which is likely to cause death or great bodily
25 harm. Whether an instrument has been used as a deadly

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1 weapon depends upon the facts and circumstances of the case.

2 The following are examples, once again, of a deadly
3 weapon; Pistol, shotgun, rifle, dirk, dagger, knife,
4 slingshot, metal knuckles, a razor, gasoline, firebomb,
5 Molotov cocktail and lighter fluid. A gun may be a deadly
6 weapon even if it is not operating.

7 I'm going to charge you the substantive law with regard
8 to conspiracy. The Defendant is charged with conspiracy.
9 The State must prove beyond a reasonable doubt that the
10 Defendant combined with one or more persons for the purpose
11 of committing an unlawful act or committing a lawful act by
12 unlawful means.

13 There must be a mutual understanding, agreement or
14 common intention and plan. Mere passive knowledge of or
15 consent to the criminal conduct of another is not enough to
16 make a person a conspirator. There must be guilty knowledge
17 and participation.

18 Similarly, the fact that the Defendant may have
19 associated with another person or met with another person
20 and discussed common aims and interests does not necessarily
21 establish proof of the existence of a conspiracy or that the
22 Defendant was involved in a conspiracy. On the other hand,
23 it is not necessary that the agreement be a formal one, that
24 it be in writing and that the person hold a meeting and
25 expressly state the terms of the common plan or that the

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1 agreement be stated in words between them.

2 The agreement of a criminal conspiracy may come into
3 being through an implied mutual understanding. Willful,
4 intentional and knowing adoption by two or more persons of a
5 common plan is sufficient. No overt acts need to be shown
6 to establish a conspiracy.

7 A conspiracy may be shown by circumstantial evidence
8 and the conduct of the parties. In order to convict the
9 Defendant of conspiracy the State must prove beyond a
10 reasonable doubt not only that the Defendant knew of the
11 unlawful conduct, but that the Defendant agreed to combine
12 with the other persons -- person or persons for the purpose
13 of accomplishing the unlawful conduct.

14 I'm going to charge you the law with regard to
15 possession of a weapon during the commission of a violent
16 crime. The Defendant is charged with possession of a weapon
17 during the commission of a violent crime. The State must
18 prove beyond a reasonable doubt that the Defendant was in
19 possession of a firearm or visibly displayed what appeared
20 to be a firearm during the commission of a violent crime.

21 A firearm means any machine gun, automatic rifle,
22 revolver, pistol or any weapon which will, is designed to or
23 may be readily converted to expel a projectile. In order to
24 find the Defendant guilty of possession of a weapon during
25 the commission of a violent crime you must first find the

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1 Defendant guilty of either committing a violent crime or
2 attempting to commit a violent crime.

3 Ladies and gentlemen of the jury, murder, burglary,
4 first degree, and attempted armed robbery are all violent
5 crimes. The State must prove beyond a reasonable doubt that
6 the weapon furthered, advanced or helped in the commission
7 of the crime.

8 Ladies and gentlemen of the jury, I'm going to come
9 forward and share with you the verdict form. Bear with me
10 just one moment.

11 (Pause)

12 **THE COURT:** Madam Forelady, I'm going to ask if you
13 could stand. I'm going to go over with you this verdict
14 form. It is a two-page document that's entitled verdict.
15 It's got the State of South Carolina, County of Greenville.
16 It's got the caption here and the indictments and the
17 numbers.

18 And for each charge it says as to the charge of murder,
19 we, the jury, unanimously find the Defendant not guilty or
20 guilty. And it goes through for burglary, first, attempted
21 armed robbery, conspiracy and possession of a weapon during
22 the commission of a violent crime.

23 The verdict form at the end reminds you, as I'm
24 charging you now, that the verdict must be unanimous. That
25 can't be 11 to one, six to six, eight to four. Everyone has

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1 to agree. And when you reach a verdict, I'm going to ask
2 that you date it, sign it, inform the bailiff and we'll
3 receive you back into the courtroom.

4 I'm going to ask if you could have a seat. I'm going
5 to talk with you a little bit about the deliberation
6 process.

7 Madam Forelady, you're going to be charged with the
8 responsibility of presiding over the deliberation process.
9 And that essentially means that you're to ensure that
10 everybody's voice is heard. Make sure that everybody has
11 input. I'm also going to mention to you that if anyone gets
12 up to use the bathroom, stop deliberations because everyone
13 has to participate in all of the deliberation process.

14 There might be questions that develop during the
15 process. And you've heard me charge the law. Really the
16 questions of fact, y'all are -- that's a hard question that
17 y'all are going to have to resolve. I can't help you in
18 that regard.

19 If there's a question with regard to the law, I can
20 help you with that, if there's some confusion in that
21 regard. However, I don't think there are going to be any
22 questions because y'all have paid close attention to the
23 evidence, y'all are armed with all the information that you
24 need to make a factual finding.

25 You paid very close attention to the law. So I don't

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1 anticipate there is going to be any questions. If there's
2 some confusion in your mind, if there's a question that
3 comes up, and you don't know whether it's a question of fact
4 or law, write it down, and I'll help you if I can.

5 And every time I send you out to the jury room, I'll
6 tell you not to discuss the case, not to begin
7 deliberations. And once again I'm going to ask you to do
8 that because I'm going to have to talk to these very fine
9 lawyers to see whether or not they have an objection to the
10 manner in which I charged the law.

11 If I've inadvertently left something out or put
12 something in that wasn't supposed to be there, if there's
13 something that we need to straighten out in that regard, we
14 would bring you back in. And do not begin deliberations
15 until you receive instructions.

16 If, after I've discussed it with these lawyers, there's
17 no need for us to revisit the jury charge, then we will
18 gather up all the documentary evidence, the bailiff will
19 give you that, give you a pencil and some pads to aid you in
20 the deliberation process and will tell you to begin to
21 deliberate, but do not do that until then.

22 I believe our alternates are Jeffery Burnette and Lisa
23 Bishop, is that correct?

24 **MR. BURNETTE:** Yes, Your Honor.

25 **THE COURT:** I'm going to ask that y'all remain with us

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1 here in the courtroom. I'll talk with you momentarily. And
2 I'm going to ask that everyone remain seated as the jury
3 exits the courtroom. But, once again, do not begin
4 deliberations until we tell you to do so. Thank you very
5 much.

6 (Whereupon the jury exited the courtroom at 10:46 am)

7 **THE COURT:** Mr. Burnette and Ms. Bishop, thank you so
8 much for your time. I know y'all feel like y'all have been
9 invited to a dance and didn't get to dance, but you are sort
10 of our insurance policy.

11 You know, we try cases throughout the year and it's
12 quite often, probably more often than not, that we have to
13 activate an alternate juror, particularly in a criminal case
14 it's necessary that you have twelve people deliberate in the
15 verdict. And quite often people get sick, sometimes they
16 get in a wreck on the way to court.

17 Sometimes they know a particular witness as Bubba, but
18 his name is Theodore, and they don't recognize that they are
19 very close with them until they testify. So a number of
20 different conflicts can come up. And if -- and if we didn't
21 have alternates, we'd just have to start the process all
22 over again. Have either of you ever served on a jury
23 before?

24 **MR. BURNETTE:** No, sir.

25 **MS. BISHOP:** No, sir.

1 **THE COURT:** Well, hopefully it's been a learning
2 process. Hopefully you've learned a little bit about how
3 our judicial system works. And I always like to ask jurors
4 if y'all have any questions, I'd be happy to answer them.
5 Do y'all have any questions?

6 **MR. BURNETTE:** No, sir.

7 **MS. BISHOP:** No.

8 **THE COURT:** Nobody ever asks me any questions. I was
9 hoping that y'all would ask me one that would be a
10 complicated one I could let my law clerk answer it for you.
11 But, nonetheless, thank y'all for being here.

12 I think there -- I wish I could excuse you for the
13 week, but it might be that we are going to try another case.
14 The bailiff will give you instructions with regard to how to
15 handle the balance of the week. Thank you so much. And
16 y'all are free to leave. The bailiff will assist you and
17 tell you when you need to report back. Thank you very much.
18 All right.

19 (Whereupon the alternates exited the courtroom)

20 **THE COURT:** Is there any objection to the jury charge
21 or any additional requests from the State?

22 **MR. McMASTER:** Nothing from the State, Your Honor.

23 **THE COURT:** Anything from Defense?

24 **MR. RICHEY:** Nothing, Your Honor.

25 **THE COURT:** I'm going to ask each of you to come

1 forward and to go through the -- I'm going to ask that all
2 of the evidence be placed, perhaps, on this table over here.
3 Make sure that all of it's together and that -- I'm going to
4 ask each of you once we get it in a pile, make sure that all
5 of the evidence is in that pile and there's not anything in
6 the pile that is not in evidence.

7 (Pause)

8 **THE COURT:** I'm going to ask the State, all the
9 evidence been placed on the cart, is everything on that cart
10 in evidence?

11 **MR. McMASTER:** Yes, Your Honor.

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

14 **MR. McMASTER:** No, Your Honor.

15 **THE COURT:** All right. Mr. Richey, is everything --
16 are you satisfied that everything on that cart is in
17 evidence?

18 **MR. RICHEY:** Yes, sir.

19 **THE COURT:** Is there anything on the cart that's not in
20 evidence?

21 **MR. RICHEY:** No, sir.

22 **THE COURT:** I'm going to ask the bailiff, if they
23 would, carry the evidence to the -- to the jury room and
24 tell them to begin deliberations. Sir, I'm going to ask if
25 you could carry that in there, give them whatever paper and

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1 writing utensils and tell them to begin deliberations.

2 **THE BAILIFF:** They've got a verdict form, right?

3 **THE COURT:** They do.

4 **THE BAILIFF:** How about these? Are they going?

5 **MADAM COURT REPORTER:** No.

6 **MR. McMASTER:** That is not in evidence.

7 **THE COURT:** Everything that's in evidence is on that

8 cart. All right. And we'll stand at ease.

9 (Whereupon the jury began deliberating at 10:54 am)

10 (Whereupon court was in recess at 10:54 am)

11 (Whereupon court reconvened at 11:48 am)

12 **THE COURT:** I understand they've reached a verdict.

13 Anything from the State before we receive the verdict?

14 **MR. McMASTER:** No, Your Honor.

15 **THE COURT:** Anything from Defense?

16 **MR. RICHEY:** No, sir.

17 **THE COURT:** We're ready for the jury.

18 (Whereupon the jury entered the courtroom at 11:49 am)

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

20 **MADAM FORELADY:** Yes, sir.

21 **THE COURT:** Is it unanimous?

22 **MADAM FORELADY:** Yes, sir.

23 **THE COURT:** I'm going to ask if you could give the
24 verdict form to the clerk -- to the bailiff and have the
25 bailiff present it to the clerk.

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1 (Pause)

2 **THE COURT:** The verdict is in proper form. I'm going
3 to ask the clerk to publish the verdict. I'm going to ask
4 the Defendant if he will stand.

5 **MADAM CLERK:** The State of South Carolina versus
6 Tristian Xavier-Marian Cummings, on indictment numbers 2016-
7 GS-23-8778, 8782, 8780, 8773 and 8779, as to the charge of
8 murder, we, the jury, unanimously find the Defendant guilty.

9 As to the charge of burglary, first degree, we, the
10 jury, unanimously find the Defendant guilty.

11 As to the charge of attempted armed robbery, we, the
12 jury, unanimously find the Defendant guilty.

13 As to the charge of conspiracy, we, the jury,
14 unanimously find the Defendant guilty.

15 As to the charge of possession of a weapon during the
16 commission of a violent crime, we, the jury, unanimously
17 find the Defendant guilty.

18 And it is signed by Beverly Terlizzi, the jury
19 Forelady. If this is your verdict, so say you all. Please
20 signify by raising your right hand.

21 (Whereupon all jurors raised their right hand)

22 **THE COURT:** Very good. All right. Any additional
23 request for polling from the State?

24 **MR. McMASTER:** None from the State, Your Honor.

25 **THE COURT:** Any from Defense?

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1 **MR. RICHEY:** No, Your Honor.

2 **THE COURT:** All right. Ladies and gentlemen -- Madam
3 Forelady, ladies and gentlemen of the jury, rules of ethics
4 do not allow me as the Judge to comment on a particular
5 verdict, but I can thank you for your time and your
6 consideration in this matter. How many of you have never
7 served on a jury before?

8 (Whereupon most jurors responded)

9 **THE COURT:** Quite a few. Hopefully it's been a
10 learning experience. And I know that when you came here
11 Monday you had no idea really what you were going to be
12 involved in. But the jury system that we have is a hallmark
13 of our democracy. And it's the best system ever devised to
14 resolve such disputes.

15 I know y'all had other places you would rather be, but
16 it's the only system -- and you were compelled to be here.
17 It wasn't really an invitation. You were subpoenaed to be
18 here and you had to show up. And if you think about it, we
19 would not be able to achieve the same sort of finality and
20 wisdom that members of the community are able to render this
21 system.

22 I think that these matters should not be resolved by
23 judges, it should not be resolved by professional jurors and
24 it should not be resolved by people who have absolutely
25 nothing better to do. People who are out working, regular

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1 everyday citizens bring wisdom to these type things. And
2 for that I'm very appreciative.

3 I will ask the solicitor, is there other -- are there
4 other cases to be tried this week?

5 **MR. McMASTER:** There is one more on Thursday, Your
6 Honor.

7 **THE COURT:** Very good. I wish that I could turn you
8 loose for the week, but there's going to be one more. And
9 we'll select probably 14 more jurors. And you'll have to be
10 -- you'll be compelled to be there and participate in that
11 process.

12 I always ask jurors at the conclusion of the case if
13 there's any questions that you have about particular legal
14 rulings or any questions at all. Any questions from
15 anybody?

16 (No response)

17 **THE COURT:** All right. Thank you very much. You have
18 discharged your duty as the trier of fact. Now it's my job
19 as the judge of the law to render a sentence. You do not
20 have to participate in that or witness that. However, you
21 have time invested in it, and if you would like to, you can
22 -- you can go out into the audience, it's a public forum,
23 and you can watch that process if you would like.

24 But, otherwise, the bailiff will assist you in
25 returning to the jury room. Thank you very much. And we'll

SENTENCE OF THE COURT

342

1 see you in the morning, perhaps. Thank you.

2 (Whereupon the jury exited the courtroom at 11:55 am)

3 **THE COURT:** Mr. Richey, I'm going to ask if you'd bring
4 Mr. Cummings before the Court. And I'll hear first from the
5 State with regard to sentencing.

6 **MR. RICHEY:** Judge, prior to that, I'd just renew my
7 motion for directed verdict. And I would ask the Court to
8 set aside his verdict and grant a new trial.

9 **THE COURT:** Okay. And your motions are noted for the
10 record and denied and ask that you bring your client
11 forward.

12 **MR. RICHEY:** Thank you, Your Honor.

13 **MR. McMASTER:** Your Honor, I'm going to give the
14 sentencing sheets to the clerk.

15 **THE COURT:** Very good.

16 (Pause)

17 **THE COURT:** Mr. McMaster, I'll be glad to hear from the
18 State with regard to sentencing.

19 **MR. McMASTER:** Your Honor, I think the evidence was
20 overwhelming due to the quick verdict by the jury of guilty
21 on all counts. I've spoken with Mr. White's mother, who is
22 here. She does not wish to address the Court at this time
23 although she has been properly notified to be here.

24 And we would ask that you impose a life sentence at
25 this time, Your Honor. We said that at the outset, that's

SENTENCE OF THE COURT

343

1 what we were going to ask for if we got a conviction on all
2 charges. This is a very serious matter. And, Your Honor,
3 the client does have, I mean, the Defendant does have some
4 prior record that I could go into at the appropriate time.

5 **THE COURT:** Now would be the appropriate time.

6 **MR. McMASTER:** Your Honor, he has a possession with
7 intent to distribute marijuana, a discharging a firearm into
8 a vehicle in 2011. He also has a possession with intent to
9 distribute marijuana in 2013. He does have one thousand,
10 one hundred and thirty (1,130) days of credit.

11 **THE COURT:** One thousand (1000) ...

12 **MR. McMASTER:** One hundred and thirty (130) days. That
13 is as of today.

14 **THE COURT:** Anything further from the State?

15 **MR. McMASTER:** No, Your Honor.

16 **THE COURT:** Mr. Richey, you're recognized. I'll be
17 glad to hear from you, your client or anybody who would like
18 to speak on his behalf.

19 **MR. RICHEY:** Thank you, Your Honor. Your Honor, he is
20 27 years old, resides in Greenville. I would ask the Court
21 to consider in sentencing that under this murder charge he
22 would have to get at least 30 -- 30 years. And I want the
23 Court -- and I think the Court knows this, he'd have to do
24 that day for day.

25 I think that sentence in comparison with what the co-

SENTENCE OF THE COURT

344

1 defendant would get -- I understand the co-defendant would
2 get some benefit from testifying, but the max that the co-
3 defendant would be 30 years under sentence, but at eighty-
4 five percent. In light of that, I believe 30 years would be
5 a substantial sentence for this Defendant.

6 As I said before, I believe the co-defendant's, the
7 benefit that he's getting out of it is not being under the
8 day for day. And my client -- I'd ask the Court to consider
9 concurrent sentences because he's going to have to do what
10 you give him.

11 I mean, it's not going to be any good time. It's not
12 going to be any of that. He's going to have to do what you
13 give him. And I'd ask the Court to consider concurrent
14 sentence in this case. We respect what the jury has issued,
15 but we'd ask the Court to consider that.

16 **THE COURT:** All right. Mr. Cummings, you don't have to
17 say anything, but if you'd like to, I'd be happy to hear
18 anything that you have to say.

19 **MR. CUMMINGS:** Yeah. First, I want to give my
20 condolences to the family and also to my family for what
21 happened here today.

22 And I also want to say that I did not do it. And I
23 want to let it be known that I put in motion after motion
24 for my representation because I wasn't happy of the things
25 that was going on and things that were being said to me

SENTENCE OF THE COURT

345

1 during -- during this whole three years.

2 But other than that, like I said, I want to give my
3 condolences to the family and my family. I want to give my
4 condolences to the Court just for even being here in this
5 position.

6 **THE COURT:** All right. Anybody else would like to
7 speak on Mr. Cummings' behalf? Yeah, I'll be glad to hear
8 from anybody.

9 **MR. THOMPSON:** Yes, sir, Your Honor. My name is Thomas
10 Thompson. I'm the grandfather of his sons. And I just felt
11 compelled to speak up for him.

12 I've been knowing this young man, you know, since he's
13 -- since he's been a young man. He, you know, he hadn't had
14 a fair shake all the way around in life. And I know that
15 doesn't justify the outcome of what has happened here today
16 with the family. And I'm sorry to your family for the loss.

17 A lot of times young men are running around not
18 understanding the consequences of their actions. And the
19 magnitude smacks them in the face when they're standing here
20 facing you, Your Honor.

21 Your Honor, I'm asking you on behalf of my grandsons
22 for this man. I know he deserves whatever you hand him, but
23 I'm pleading on his behalf, his sons, for him another chance
24 at life.

25 If you give this man a life sentence, he's got no

SENTENCE OF THE COURT

346

1 chance at life. But if you give him a number, he can redeem
2 himself. I promise you. I can't -- I can't guarantee
3 another man's actions, but I can guarantee his boys will be
4 okay. And I'll do everything in my power to help guide
5 them.

6 I'm a 50 year old man, and I understand what it means
7 to stand right here and fight for your life. And I'm
8 pleading. Somebody gave me another chance one day. So I'm
9 here asking for a young black man, got nothing to do with
10 color, but it's got to do with life and mercy. I'm asking
11 you for your mercy. I'm pleading for him.

12 If he don't have the words to say it, I'll say it for
13 him, save his life, please. Please. Give his children
14 another chance to have a father so they don't become a
15 statistic like this. I'm begging. I'm begging. I needed
16 it. He needs it. God in heaven knows I prayed for it today
17 for him.

18 I haven't spoken to him. I haven't heard from him.
19 All I know is his boys. All I know is mercy is needed. And
20 all I'm doing is pleading to the Court for mercy. That's
21 all I'm asking. Please. In the name of the Lord, in the
22 name of Jesus just give him one more chance to see life.
23 Please. Please. Please. That's all I have to say.

24 **THE COURT:** Very good. Anything else?

25 **MR. RICHEY:** No, Your Honor.

SENTENCE OF THE COURT

347

1 (Pause)

2 **THE COURT:** Mr. Cummings, on indictment 2016-GS-23-
3 08778, murder, the sentence of the Court is you be committed
4 to the State Department of Corrections for a period of 35
5 years, sentence to run concurrent, credit for one thousand,
6 one hundred and thirty (1,130) days.

7 With regard to indictment 2016-GS-23-08782, burglary,
8 first degree, the sentence of the Court is you be committed
9 to the State Department of Corrections for a period of 35
10 years, sentence to run concurrent, credit for one thousand,
11 thirty [sic] (1,030) days.

12 With regard to indictment 2016-GS-23-08780, attempted
13 armed robbery, the sentence of the Court is you be committed
14 to the State Department of Corrections for a period of 20
15 years, sentence to run concurrent, credit for one thousand
16 and thirty [sic] (1,030) days.

17 With regard to indictment 2016-GS-23-08779, possession
18 of a weapon during the commission of a violent crime, the
19 sentence of the Court is you be committed to the State
20 Department of Corrections for a period of five years,
21 sentence to run concurrent, credit for one thousand, thirty
22 [sic] (1,030) days.

23 With regard to indictment 2016-GS-23-08773, conspiracy,
24 the sentence of the Court is you be committed to the State
25 Department of Corrections for a period of five years,

SENTENCE OF THE COURT

348

1 sentence to run concurrent, credit for one thousand, thirty
2 [sic] (1,030) days. Good luck to you.

3 **MR. RICHEY:** Thank you.

4 (Hearing Ended at 12:06 pm)

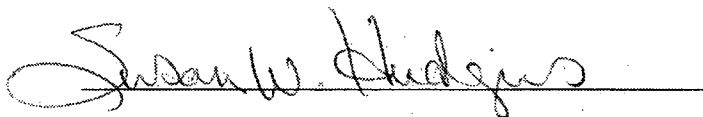
5 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 8th - 10th day of April 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 27, 2019

A handwritten signature in cursive script, reading "Susan W. Hudgins", is written over a horizontal line.

Circuit Court Reporter

WITNESSES

Michael Fortner

Greenville County Sheriffs Office

3/6/2016

ARREST WARRANT NUMBER

2016A2330201924

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:DOCKET NO. 2016-GS-23-
WCM

008773

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2016

THE STATE

vs.

TRISTIAN XAVIER-MARIAN CUMMINGS

Indictment for

0049

CONSPIRACY

VIOLATION § 16-17-0410

ENTERED
ACCT

FILED

OCT 03 2016

Clerk of Court
Greenville County

0-5

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

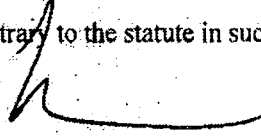
At a Court of General Sessions, convened on
County present upon their oath:

JUN 27 2017

the Grand Jurors of Greenville

That TRISTIAN XAVIER-MARIAN CUMMINGS did in Greenville County, on or about the 6th day of March 2016, willfully and unlawfully combined with SIMEON TAFARI WILLIAMS for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: murder and/or attempted armed robbery and/or burglary. This is in violation of §16-17-0410 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR11605
BAR # 11605

WITNESSES

Michael Fortner

Greenville County Sheriffs Office

3/6/2016

ARREST WARRANT NUMBER

2016A2330201920

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:DOCKET NO. 2016-GS-23-
WCM

008778

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2016

THE STATE

vs.

TRISTIAN XAVIER-MARIAN CUMMINGS

Indictment for:

0116

MURDER

VIOLATION § 16-03-0010, 0020

ENTERED
ACCT

FILED

OCT 03 2016

Clerk of Court
Greenville County

30-life

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

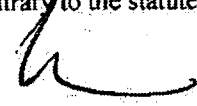
INDICTMENT FOR
MURDER

JUN 27 2017

At a Court of General Sessions, convened on the Grand Jurors of Greenville
County present upon their oath:

That TRISTIAN XAVIER-MARIAN CUMMINGS did in Greenville County, on or about the 6th day of March, 2016, unlawfully and with malice aforethought kill JERYL WHITE by means of shooting, and that JERYL WHITE died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR11605
BAR # 11605

WITNESSES

Michael Fortner

Greenville County Sheriffs Office

3/6/2016

ARREST WARRANT NUMBER

2016A2330201923

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:DOCKET NO. 2016-GS-23-
WCM

008779

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

2017
TERM 2016

THE STATE

vs.

TRISTIAN XAVIER-MARIAN CUMMINGS

Indictment for

0549

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

ENTERED
ACCT

FILED

OCT 03 2016

Clerk of Court
Greenville County

0-5

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF A WEAPON DURING THE COMMISSION OF A
CRIME

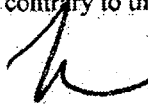
At a Court of General Sessions, convened on
County present upon their oath:

JUN 27 2017

the Grand Jurors of Greenville

That TRISTIAN XAVIER-MARIAN CUMMINGS did in Greenville County, on or about the 6th day of March, 2016, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Murder, Burglary and Attempted Armed Robbery. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR11605
BAR # 11605

WITNESSES

Michael Fortner

Greenville County Sheriffs Office

3/6/2016

ARREST WARRANT NUMBER

2016A2330201921

**ACTION OF GRAND JURY
TRUE BILL**

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-

WCM

008780

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2016

THE STATE

vs.

TRISTIAN XAVIER-MARIAN CUMMINGS

Indictment for

0026

ATTEMPTED
ARMED ROBBERY

VIOLATION § 16-11-0330

ENTERED
ACCT

FILED

OCT 03 2016

Clerk of Court
Greenville County

0-20

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED
ARMED ROBBERY

At a Court of General Sessions, convened on

JUN 27 2017

the Grand Jurors of Greenville

County present upon their oath:

That TRISTIAN XAVIER-MARIAN CUMMINGS did in Greenville County, on or about the 6th day of March, 2016, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, attempted to take by means of force or intimidation, goods or monies described as: money from the person or presence of JERYL WHITE. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

11605
BAR # 11605

WITNESSES

Michael Fortner

Greenville County Sheriffs Office

3/6/2016

ARREST WARRANT NUMBER

2016A2330201922

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-
WCM

008782

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June TERM ²⁰¹⁷ 2016

THE STATE

vs.

TRISTIAN XAVIER-MARIAN CUMMINGS

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

ENTERED
ACCT *JP*

FILED

OCT 03 2016

Clerk of Court
Greenville County

15-life

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on

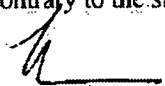
JUN 27 2017

the Grand Jurors of Greenville

County present upon their oath:

That TRISTIAN XAVIER-MARIAN CUMMINGS did in Greenville County, on or about the 6th day of March 2016, willfully and unlawfully enter the dwelling of JERYL WHITE located at 34 Burgess Avenue, Greenville, South Carolina, without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: by being armed with a deadly weapon and/or did cause physical injury to the victim and/or displayed a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm and/or by entering and/or remaining did occur during the night time hours. This is in violation of §16-11-0311 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

11/605
BAR # 11605

360

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Tristian Xavier-Marian Cummings

AKA:

Race: BLACK Sex: M Age: 27DOB: [REDACTED] SS# [REDACTED]Address: [REDACTED] DrCity, State, Zip: Greenville, SC 29611-7447DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Conspiracy, (gs)

IN THE COURT OF GENERAL SESSIONS 0-54 JVINDICTMENT/CASE#: 2016GS2308773A/W#: 2016A2330201924Date of Offense: 3/6/2016S.C. Code § 16-17-0410CDR Code #: 0049

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049 ✓

☒ 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] 11605. McMaster, William SC Bar# [REDACTED] Defendant RICHEY, RODNEY SC Bar# 09506
 Attorney for Defendant

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: 4-10-19☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 1030 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

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 (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 \$ 128.75Clerk of Court/ Deputy Clerk Paul B. WickensimerCourt Reporter: S. Hudgins

SCCA/217 (04/2018)

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 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge [Signature]Judge Code: 2140Sentence Date: 4/10/19

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Tristian Xavier-Marian Cummings

AKA:
 Race: BLACK Sex: M Age: 27

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Dr

City, State, Zip: Greenville, SC 29611-7447

DL#: [REDACTED] SID#: [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was
 TO: Murder (gs)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2308778

A/W#: 2016A2330201920

Date of Offense: 3/6/2016

S.C. Code § 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010, 0020 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 Levud 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

McMaster, William

11605

SC Bar#

Defendant

RICHEY, RODNEY
 Attorney for Defendant

09506

SC Bar#

WHEREFORE, the Defendant is committed to the: ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 35 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: 4-10-19

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 1130 days

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

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

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 (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/ca
3% to County (if paid in installments)	\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date:

362

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Tristian Xavier-Marian Cummings

AKA:
 Race: BLACK Sex: M Age: 27

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Dr

City, State, Zip: Greenville, SC 29611-7447

DL#: [REDACTED] SID#: [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was
 TO: Weapons / Poss. Weapon During Violent Crime

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2308779

A/W#: 2016A2330201923

Date of Offense: 3/6/2016

S.C. Code § 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ \$17-25-45
 w/minor 1st or Lowd 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: McMaster, William 11605 SC Bar# Defendant RICHEY, RODNEY 09506 SC Bar#
 Attorney for Defendant

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: 4-10-19

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 1030 days

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

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 (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/ca
3% to County (if paid in installments)	\$ 3.75

TOTAL: \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: S. Hudgins

SCCA/217 (04/2018)

Presiding Judge: Michael Hardy

Judge Code: 2140

Sentence Date: 4/10/19

☐ Appointed PD or appointed other counsel.
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

363
0-20yr
OVCOUNTY OF Greenville
STATE VS.
Tristian Xavier-Marian CummingsAKA:
Race: BLACK Sex: M Age: 28DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] DrCity, State, Zip: Greenville, SC 29611-7447DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Robbery, Attempted Armed RobberyINDICTMENT/CASE#: 2016GS2308780A/W#: 2016A2330201921Date of Offense: 3/6/2016S.C. Code § 16-11-0330(B)CDR Code #: 0026

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury: (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature]

11605

McMaster, William

SC Bar#

Defendant

RICHEY, RODNEY
Attorney for Defendant

09506

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 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: 4-10-19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 10 30 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

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 (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/ca	\$
3% to County (if paid in installments)	\$	\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: Paul B. Wickens

SCCA/217 (04/2018)

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 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2140Sentence Date: 4/10/19

364

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Tristian Xavier-Marian Cummings

AKA:

Race: BLACK Sex: M Age: 28DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] DrCity, State, Zip: Greenville, SC 29611-7447DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Burglary, First DegreeIN THE COURT OF GENERAL SESSIONS 15mg-LifeINDICTMENT/CASE#: 2016GS2308782A/W#: 2016A2330201922Date of Offense: 3/6/2016S.C. Code § 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ 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]

11605

McMaster, William

SC Bar#

Defendant

RICHEY, RODNEY
Attorney for Defendant

09506

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 35 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: 4-10-19☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 1030☐ 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 PTUP

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

_____ days/hours Public Service Employment

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
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§56-1-286 (DUI Breath Test)	\$25
Proviso (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

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 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/ Deputy Clerk

Court Reporter:

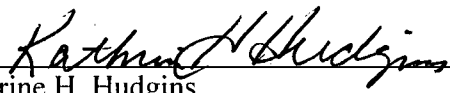
Presiding Judge

Judge Code: 240Sentence Date: 4/10/19

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,


Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 20th day of December, 2019.

RECEIVED
DEC 20 2019
SC Court of Appeals