

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DASHAUN LIVAUGHN SIMMONS,

APPELLANT

APPELLATE CASE NO 2018-001128

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JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 Q. What was the next thing that happened after y'all
2 pulled over?

3 A. A dude came through the cut and my brother was
4 talking.

5 Q. Let me back up for just a second. When you pulled
6 down that road, did you have to turn around at any point?

7 A. Yeah, 'cause that road, down the road, the GPS
8 wasn't reading right so we had to turn around and come
9 back up.

10 Q. Looking for a certain address?

11 A. Yeah.

12 Q. Let me show you what's been marked as State's
13 Exhibit 1. Is there a pointer up there, Jujuain? Can
14 you recognize that picture?

15 A. Yes.

16 Q. Okay. So, if you would, if you'll stand up and
17 make sure you speak loudly enough for the court reporter
18 to hear you and the jury to hear you, you can use this
19 pointer, and show me from what direction you first came
20 down the road.

21 A. First rode by, rode this way.

22 Q. And did you go further up the road?

23 A. Yes.

24 Q. What did you do when you drove up further down the
25 road?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. We turned around in the driveway.

2 Q. And where did you then come?

3 A. We turned around, and we came farther up this
4 bush.

5 Q. Say that again a little louder?

6 A. We turned around and we parked right here on the
7 side of the bush.

8 Q. On the side of those bushes?

9 A. Yeah.

10 Q. Tell the jury, if you would, when you were going
11 down the street and turning around, did you see another
12 vehicle?

13 A. Yes. I seen a green car back in right there.

14 Q. Back in right there?

15 A. Yeah.

16 Q. And did you see that vehicle early on move at any
17 point?

18 A. Yeah, eventually move right here, in a row.

19 Q. Down there?

20 A. Uh-huh.

21 Q. Okay. You can go ahead and have a seat.

22 So you indicated that your brother was talking to
23 somebody at first; is that correct?

24 A. Yes.

25 Q. Did anybody approach your side when your brother

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 was first talking to someone on the passenger side?

2 A. Say that again?

3 Q. Did anybody come on your side when that person
4 came to speak to Kadeem at first?

5 A. No.

6 Q. And the first part of that conversation, did it
7 appear to be friendly or did it appear to be hostile?

8 A. Friendly.

9 Q. Then what happened?

10 A. And then that's when the person hit my brother.

11 Q. And where was your brother when he hit him?

12 A. In the car.

13 Q. What happened then?

14 A. That's when somebody came with a gun.

15 Q. And where -- did you see where he came from?

16 A. No.

17 Q. When he came with the gun, what happened with you?

18 A. He told us to get out the car.

19 Q. The first guy that approached the vehicle, did he
20 have on -- what kind of shirt did he have on?

21 A. The first guy?

22 Q. The first guy.

23 A. A red shirt.

24 Q. And the second guy who had a gun, what kind of
25 shirt did he have on?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. I really don't kind of know, but I think white
2 shirt.

3 Q. White shirt?

4 A. Yeah.

5 Q. When he came up with the gun, did he come all the
6 way to your side or did he just point the gun and have
7 y'all move?

8 A. He came on my brother's side first and then he
9 came on my side.

10 Q. Did the guy with the gun say anything to y'all?

11 A. Don't move or I'll shoot.

12 Q. And then what did somebody tell you to do?

13 A. Get out of the car and get on the ground.

14 Q. Get out of the car and get on the ground?

15 A. Yes.

16 Q. In looking at this photograph, could you tell us
17 where you were on the ground, or is it hard to tell from
18 this shot?

19 A. I can't really tell from that picture.

20 Q. Let me see if I have another picture. Let me show
21 you State's Exhibit 11. Do you see the bush on that
22 picture?

23 A. Right over there.

24 Q. Stand up with the pointer, if you don't mind.

25 A. Right over here, there is the bush. We was, like,

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 laying right in here. I was laying right here. My
2 brother was over here.

3 Q. Okay. So stay there for a second, but you are,
4 Jujuain, going to have to speak a little louder.

5 Which way was your car pointed at that time?

6 A. This way toward that way.

7 Q. Towards the vehicle that you see in that photo?

8 A. Yes.

9 Q. And so show us again. You laid down where?

10 A. Right here and right there (indicating).

11 Q. And your brother laid down where?

12 A. Over here (indicating).

13 Q. And are you doing the best can you in telling us
14 where two years later?

15 A. Yes.

16 Q. Okay. After the two of you got on the ground --
17 you can have a seat now for me.

18 After the two of you were put on the ground --
19 tell us this first: Did they tell you to get on the
20 ground?

21 A. Yes.

22 Q. And where was the guy in the red shirt and where
23 was the guy in the white shirt when you laid down? Were
24 they near you?

25 A. One of the guys was near me, in the red shirt.

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 Q. And did you get a look at him then?

2 A. Not really.

3 Q. So he puts you down on the ground?

4 A. Uh-huh.

5 Q. Could you tell the jury what, if anything, they
6 were saying to y'all?

7 A. Where the money at? And he kept saying, Where is
8 it at? Where is it at?

9 Q. Where is it at? Where is it at?

10 A. Uh-huh.

11 Q. And did you also say they said the word "money,"
12 or did they use another word?

13 A. That's it. He just kept saying, Where's it at --

14 Q. Now, the guy in the red shirt, do you remember how
15 tall you thought he might be?

16 A. About five-eleven.

17 Q. The guy in the red shirt?

18 A. Uh-huh.

19 Q. What is his weight? Do you remember about how big
20 you thought he was?

21 A. About 200 pounds.

22 Q. And then the guy in the white shirt, about how
23 tall did he seem?

24 A. About five-ten.

25 Q. Okay. After you were on the ground, what

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 happened?

2 A. I was on the ground. He kept telling me -- dude
3 kept kicking me in the head, asking me where it was at.

4 Q. Let me just stop you there for just a second.
5 When y'all laid down, did y'all lay down on your own or
6 was there any pushing y'all down?

7 A. Laid down on our own.

8 Q. And when someone -- you said he stomped you on
9 your head?

10 A. Yeah.

11 Q. Who stomped you in the head?

12 A. Dude in the red shirt.

13 Q. And what was he saying to you or asking of you
14 when he stomped you in the head?

15 A. Where's it at?

16 Q. Where's it at?

17 A. Uh-huh.

18 Q. Were either you or Kadeem saying anything at this
19 point?

20 A. Tell him we ain't have none.

21 Q. Do you remember what you did with your keys when
22 you got out of the car?

23 A. I had them in my hand.

24 Q. And when you were laying down, do you remember
25 whether you had them or not?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. Yeah, I had them.

2 Q. At some point, are you asked -- what happens after
3 you say, We don't have anything? We don't have anything?
4 What's the next thing that happens?

5 A. I got stomped in the head, and my teeth were
6 pushed back at the time.

7 Q. Your teeth were pushed back?

8 A. Yeah.

9 Q. Did you have any bleeding?

10 A. Yeah.

11 Q. Then what happened?

12 A. We kept telling him we didn't have none, and
13 Kadeem -- I can't -- told us to open the trunk.

14 Q. Told what?

15 A. Kept telling him we had nothing, and then dude
16 told us to shut up, and I kept talking and dude shot by
17 my head.

18 Q. Now, when you say a dude shot by your head, was
19 that the guy in the red shirt or the guy in the white
20 shirt?

21 A. White shirt.

22 Q. Tell the jury what the weapon looked like.

23 A. A long assault rifle.

24 Q. A long assault rifle?

25 A. Yeah.

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 Q. And when it shot near your head, was it close to
2 you?

3 A. Yeah. I felt the bullet fragment come out the
4 gun.

5 Q. Then what happened?

6 A. Then my ears starts ringing, and I can't really
7 hear nothing after that until like a few seconds later,
8 and they told us -- told him get off the ground and open
9 the trunk.

10 Q. Who told you to get off the ground and open the
11 trunk?

12 A. The dude in the red.

13 Q. And did you?

14 A. Yeah.

15 Q. Where was the guy with the weapon when you were
16 getting off the ground?

17 A. He was over there by my brother.

18 Q. And what was he doing with the weapon?

19 A. He had it pointed at my brother.

20 Q. And where on your brother did he have it pointed?

21 A. Like, on his head, on his chest.

22 Q. When you went over, did you open the trunk for
23 them?

24 A. Uh-huh.

25 Q. You did?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. Yeah, I did.

2 Q. Tell the jury, when you opened the trunk, did you
3 see anything in the trunk?

4 A. Suitcase.

5 Q. And at the time you saw it, was the suitcase
6 opened or was the suitcase closed?

7 A. It was closed.

8 Q. Do you remember what color the suitcase --

9 A. I can't really say if it was closed or opened.

10 Q. You don't remember?

11 A. It was just laid out flat, so probably was closed.

12 Q. Do you remember what color the suitcase was?

13 A. Black.

14 Q. Okay. And what happened with the suitcase after
15 you opened the trunk?

16 A. I lay back on the ground.

17 Q. Did they tell you to lay back on the ground?

18 A. Yeah.

19 Q. And did you see anything happen with the suitcase
20 at that point?

21 A. I laid back on the ground. One dude took the
22 suitcase out of the trunk.

23 Q. The dude did?

24 A. Yeah.

25 Q. Which dude?

—JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY—

- 1 A. The dude in the red.
- 2 Q. Could you see where he took it?
- 3 A. Put it in the other car, the green car that was
- 4 back in the driveway.
- 5 Q. Say that again. I'm sorry.
- 6 A. Put it in the green car that was backed in the
- 7 driveway.
- 8 Q. And when you say green car, are you talking about
- 9 a light shade or a dark shade?
- 10 A. Dark shade.
- 11 Q. After the suitcase got put in the other car, then
- 12 what happened?
- 13 A. About a minute or so later, my brother and the
- 14 other dudes touched one of the guns and two shots rang
- 15 out.
- 16 Q. Let me ask you about that. Before that happened,
- 17 did you see a female, or was it after that happened?
- 18 A. It was before.
- 19 Q. Tell us about seeing the female.
- 20 A. The female picked up the keys before I opened the
- 21 trunk.
- 22 Q. I still didn't catch -- did what to the trunk?
- 23 A. The female picked up the keys, got the keys from
- 24 me before I opened the trunk.
- 25 Q. Before you opened the trunk?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. Yeah.

2 Q. When she picked up the keys, could you tell us
3 whether anything drew your attention? Was there anything
4 about the way she picked them up was odd at the time?

5 A. Like, with a paper towel or something.

6 Q. So she wasn't touching the keys directly?

7 A. No.

8 Q. And when she could not get the trunk open, that's
9 when they made you go over there?

10 A. Yeah.

11 Q. When you were over at the trunk area, was the guy
12 with the red shirt with you?

13 A. Yeah.

14 Q. Did you get a good look at him at that point?

15 A. Yeah, at the trunk.

16 Q. And was there anything else about the guy in the
17 white shirt that was distinguishable? Did you hear how
18 he talked?

19 A. Yeah. I heard him talk.

20 Q. Was there anything unusual about the way he spoke?

21 A. Yeah. He had a Geechie accent.

22 Q. Do you remember what kind of shoes the two guys
23 had on?

24 A. No. It was two years ago.

25 Q. Do you remember what color shorts they had on?

—JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY—

1 A. I think the dude in the red had red shorts on, if
2 I ain't mistaken.

3 Q. And do you remember anything distinguishable about
4 the type of shorts the guy with the gun had on?

5 A. No.

6 Q. Now, I'm going to jump ahead for just a second,
7 but you gave a statement later that morning, or that
8 afternoon, afterwards, right?

9 A. Uh-huh.

10 Q. And so is it fair to say that the details you gave
11 then, you may have remembered more back then than you do
12 now?

13 A. Yeah.

14 Q. Okay. You've told us about the guy in the red
15 shirt having stomped you in the head. Could you tell the
16 jury whether he did that on more than one occasion, or
17 was there just one stomping?

18 A. More than one occasion.

19 Q. Did anything happen to one of your teeth while you
20 were out there?

21 A. I was missing -- one of my teeth had chipped. The
22 other one was pushed back.

23 Q. Okay. Now, you were getting ready to tell us
24 about the your brother and the guy tussling. Is that how
25 you described it?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. Uh-huh.

2 Q. Where were you when that happened?

3 A. I was on the ground.

4 Q. And can you describe that for us, what happened?

5 A. He was over there. He had a gun pointed at me,
6 and they started tussling and two shots rang out, and I
7 jumped off the ground.

8 Q. Now, before that happened, had anything happened
9 with your pockets?

10 A. Before what?

11 Q. Before your brother got shot, had they made any
12 effort to see if y'all had anything on you, the two guys?

13 A. Yeah, but he didn't go in our pockets.

14 Q. They didn't go in your pockets?

15 A. No.

16 Q. But he kept asking you if you had something?

17 A. Yeah.

18 Q. And when you described the gun before as a long
19 rifle, did it have a banana clip?

20 A. Yes.

21 Q. What type of gun did it look like?

22 A. An AK47.

23 Q. When your brother got shot, did he say anything?

24 A. After the shots rang out he said, Bro, I'm hit.

25 Q. What did you do?

—JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY—

1 A. I jumped up and ran.

2 Q. And when you ran, which direction did you run
3 then?

4 A. The opposite direction the car was facing.

5 Q. So showing you again State's Exhibit 1, which
6 direction did you run?

7 A. I ran that way (indicating).

8 Q. And could you hear what was going on behind you at
9 that point?

10 A. Yeah.

11 Q. What could you hear?

12 A. Car door shutting.

13 Q. You have told us previously about seeing the girl
14 when she was picking up the keys?

15 A. Yeah.

16 Q. Do you remember how her hair was that night?

17 A. It was a ponytail.

18 Q. Do you remember what kind of shoes she had on?

19 A. No.

20 Q. And, again, if you remembered it on May 17th, that
21 was closer to when it had happened?

22 A. Yeah.

23 Q. As you were running on the road, could you tell us
24 whether or not a car came up behind you?

25 A. Yeah. A car had, like -- yeah, a car was driving

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 fast behind me.

2 Q. Say that again? I'm sorry.

3 A. I said a car was driving fast behind me.

4 Q. Okay. And did you stay on the road or did you cut
5 through somewhere?

6 A. I cut through some people's yard, jumped the
7 fence, fell in the ditch.

8 Q. After you jumped over a fence and fell in a ditch,
9 what did that area look like? Were you trying to hide
10 somewhere?

11 A. It was, like, a new housing development. I ran in
12 the porta-potty.

13 Q. Showing you what has been marked as State's
14 Exhibit 50, this is a daytime shot, Jujuain. Just tell
15 me whether you can recognize it. Does that appear to be
16 the porta-potty where you hid?

17 A. Yes.

18 Q. Now, after you got into the porta-potty, what did
19 you do?

20 A. Called my brother, my other brother.

21 Q. When you were running down the street before you
22 cut through all the yards, did you throw out that little
23 baggy of marijuana?

24 A. Yeah.

25 Q. And then when you got in the porta-potty, did you

—JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY—

1 throw out another little baggy of marijuana that was in
2 the toilet area?

3 A. Yeah, but I wasn't trying to get to my phone.

4 Q. When you were in the porta-potty, you were trying
5 to get to your phone?

6 A. Uh-huh.

7 Q. What about when you were running down the street?
8 Did you intentionally do it there?

9 A. No.

10 Q. You were just trying to get it out?

11 A. Uh-huh.

12 Q. You've admitted to the jury y'all smoked pot that
13 night, right?

14 A. Uh-huh.

15 Q. So when you got in the porta-potty, the first
16 phone call you made was to whom?

17 A. My brother, my other brother.

18 Q. And why did you call your brother?

19 A. Because I didn't know what to do at the time.

20 Q. And which brother was that that you called?

21 A. Rasheed Generette.

22 Q. What did he suggest you do?

23 A. Call 911.

24 Q. And did you, in fact, call 911?

25 A. Yes.

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 Q. When you called 911, did you know where you were?

2 A. No.

3 Q. Did you think you were in Charleston?

4 A. Yes.

5 MS. SHEALY: Beg the Court's indulgence for
6 just a minute. At this time -- I beg the Court's
7 indulgence for just a minute.

8 At this time we would like to play the 911
9 call.

10 THE COURT: Go ahead.

11 (State's Exhibit No. 121 was marked for
12 identification and admitted into evidence.)

13 (Whereupon, the 911 call was played for the
14 jury.)

15 BY MS. SHEALY:

16 Q. Was that the end of your phone call?

17 A. Yes.

18 Q. And at the end of the phone call, did it end
19 because the other officers came to the porta-potty?

20 A. Yes.

21 Q. Okay. So let me ask you a couple questions about
22 your 911 call.

23 When they asked you to get a piece of paper to
24 tell them an address, you indicated it's on your phone?

25 A. Yeah.

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 Q. When you say, It's on my phone, what did you mean
2 by that?

3 A. Say that again?

4 Q. On the 911 call, when the dispatcher is asking
5 you, Can you get a piece of paper? or Where are you,
6 what's the address? and you said, It's on my phone, were
7 you talking about the GPS or the texting?

8 A. Yeah. I was talking about Kadeem's phone.

9 Q. Kadeem's phone?

10 A. Uh-huh.

11 Q. And when they asked you your name, you gave them
12 your name?

13 A. Yes. Well, I can't remember. I think I lied to
14 them at first.

15 Q. You're talking about the officers who came up to
16 the porta-potty?

17 A. Uh-huh.

18 Q. I'm talking about the 911 tape. You gave the name
19 Jujuin Hemingway; is that correct?

20 A. Yes.

21 Q. Now, the dispatcher also asked you, can you give
22 them a description, a description, and can you tell the
23 jury what was going on in your mind during that 911 call?

24 A. My brother's safety.

25 Q. Did it seem to you like it was taking too long,

—JUJUAIN HEMINGWAY — DIRECT BY MS. SHEALY—

1 the phone call?

2 A. Yeah. I thought he was playing around.

3 Q. When officers came to the porta-potty -- could you
4 tell the jury, when they approached the porta-potty, what
5 did they have in their hands?

6 A. Guns.

7 Q. And were you scared?

8 A. Yeah.

9 Q. When Officer Buckhannon asked you your name, did
10 you give him the right name?

11 A. No.

12 Q. Why?

13 A. I was scared.

14 Q. Okay. Did you then give him the right name?

15 A. Once we got to the hospital.

16 Q. And when Officer Buckhannon asked you about a
17 description of the people, did you tell him what you told
18 us today about the red shirt and the white shirt?

19 A. Yeah.

20 Q. And the heights of the two people?

21 A. Yes.

22 Q. The size of the two people?

23 A. Yes.

24 Q. Now, when you went to the hospital, did you know
25 what was going on with Kadeem?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. No. They wouldn't let me know.

2 Q. Did you know Kadeem made his way back to the
3 vehicle?

4 A. No.

5 Q. When did you learn that, do you remember?

6 A. When the detectives came to question me the first
7 time.

8 Q. When the detectives did? Before that night, did
9 you know Denzel Heyward?

10 A. No.

11 Q. Did you know Dashaun Simmons?

12 A. No.

13 Q. Did you know Quansantrina Rivers?

14 A. No.

15 Q. And of those three people, the guy in the red
16 shirt, the guy in the white shirt, or the girl with the
17 ponytail, who did you have the best look at?

18 A. The guy in the red shirt.

19 Q. Had you ever heard the nickname before this
20 incident Fat?

21 A. No.

22 Q. Or Reef?

23 A. No.

24 Q. When those officers approached you at the
25 porta-potty, did they put your hands in handcuffs?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. Yeah.

2 Q. Tell us how your shirt looked that night. Do you
3 remember?

4 A. Blood.

5 Q. Huh?

6 A. There was blood.

7 Q. Bloody? Do you know how your face looked?

8 A. My mouth was bleeding.

9 Q. Was most of the bleeding coming from your mouth
10 injury?

11 A. Yeah.

12 Q. Let's just take a second to talk about that for a
13 minute, and I realize this isn't as important as
14 everything else, but what did you have to have done to
15 your mouth because of what happened that night?

16 A. Crowns. I had to wear, like, a wire for, like,
17 three months.

18 Q. Say that again?

19 A. I had to wear a wire in my mouth for three months.

20 Q. So it's been several visits to try to get that
21 straight?

22 A. Yeah.

23 Q. Is that correct? Okay. Now, when you were at the
24 hospital, what did you ask the doctors and nurses?

25 A. Is my brother okay?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 Q. What was the biggest concern of yours that day,
2 that night?

3 A. My brother.

4 Q. Did you know whether he was alive?

5 A. No.

6 Q. Did you know whether he died?

7 A. No.

8 Q. Did you know whether he was at the hospital?

9 A. Yeah. They told me he was at the hospital.

10 Q. Did they let you go see your brother?

11 A. No. They won't let me see him.

12 Q. Did you ask to be able to see your brother?

13 A. Yes.

14 Q. And they wouldn't let you go see him?

15 A. Yeah.

16 Q. How long were you there before anyone from your
17 family got there?

18 A. About an hour and 30 minutes.

19 Q. When did you learn that your brother had died?

20 A. About 30 minutes after my family got here.

21 Q. Who told you?

22 A. Well, I think the doctor walked in the room and
23 told all us.

24 Q. At the same time?

25 A. Uh-huh.

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 Q. How long did you stay at the hospital that night?

2 A. About two-and-a-half hours, three hours.

3 Q. Do you remember exactly how long?

4 A. No.

5 Q. And is it fair to say -- from your family your mom
6 was there?

7 A. Uh-huh.

8 Q. Was Kadeem's mom there too?

9 A. No, she wasn't there.

10 Q. Your mom was there, and who else was there?

11 A. A couple nephews, Kadeem's brother, and my sister.

12 Q. Is it fair to say everyone was pretty upset?

13 A. Yeah. Everybody was upset.

14 Q. And who did you ride back to Longs with?

15 A. My mom and my brother, my nephew.

16 Q. Your mother, Loretta Hemingway, was she close to
17 Kadeem?

18 A. Yeah. She was like his mom too.

19 Q. She loved him like a son?

20 A. Yeah.

21 Q. And when you got to your house on the 17th, can
22 you describe to the jury what was going on at your house?

23 A. There was a crowd. There was a lot of people
24 there at the time.

25 Q. There were a lot of people what?

—JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY—

1 A. There was a lot of people at the time we got
2 there.

3 Q. Now, at that point had you slept at all the hours
4 of the -- the evening hours of May 16th into the morning
5 hours of 17th? Had you had any sleep?

6 A. No. I had no sleep.

7 Q. How did you react when you got to your house and
8 saw it was crowded with people?

9 A. I really didn't want nobody around at that time.

10 Q. And why was that, Jujuaain?

11 A. Because I wanted to be by myself.

12 Q. Had you had the opportunity to even think the
13 whole thing through?

14 A. No. I didn't have the opportunity to.

15 Q. On that same day then, on the 17th, did some
16 detectives show up at your house?

17 A. Yeah.

18 Q. And was that Detective Alexander and Detective
19 Kahn?

20 A. Yeah.

21 Q. When they got there, how long would you say you
22 had talked to them, do you remember? Was it a long time?

23 A. I would say about two hours, an hour and 30
24 minutes.

25 Q. And when you were talking with them, was there

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 cousins and other family members still around the house?

2 A. Yes.

3 Q. At some point do y'all try to go someplace quiet
4 so you can talk to the officers?

5 A. Told everybody to get out of the house.

6 Q. And when you were talking to the officers, would
7 you tell the jury whether or not your mother, Loretta
8 Hemingway, was present for some of that?

9 A. Yeah. She was present for some of it.

10 Q. And what about your brother Kareem? Was he also
11 there?

12 A. Yeah.

13 Q. Could you describe to the jury, were you excited
14 about talking to the detectives that night?

15 A. No. I ain't want to talk to them at the time.

16 Q. And why didn't you want to talk to them?

17 A. Because I ain't have no time to even think about
18 the simple fact that my brother had passed.

19 Q. Frankly, Jujuaain, had you had an opportunity to
20 cry at that point?

21 A. Yeah, but it wasn't really like -- yeah, I had an
22 opportunity to cry.

23 Q. When you were talking to Detectives Alexander and
24 Kahn, did you begin with writing a statement?

25 A. Yeah.

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 Q. And that was after they kept questioning you?

2 A. Yeah.

3 Q. Tell the jury, did the detectives seem pleased
4 with your amount of detail at that point?

5 A. No.

6 Q. Were they getting frustrated with you?

7 A. Not really. They were just telling me for more
8 detail.

9 Q. And when they were asking for more detail, did --
10 Kareem and your mother, were they trying to encourage you
11 to be more cooperative?

12 A. Yeah.

13 Q. So when you first started writing a statement --
14 was it a three-page statement?

15 A. Yes.

16 Q. And is that when your mother was saying, Be more
17 cooperative, and Kareem was saying, Tell them what you
18 know?

19 A. Yes.

20 Q. So after you wrote that three-page statement, did
21 the officers tell you to start all over?

22 A. Yes.

23 Q. And did you finally give them more detail that
24 night?

25 A. Yes.

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 Q. And when you did, you had to start back over
2 writing your statement; isn't that correct?

3 A. Yes.

4 Q. And was that an eight-page statement?

5 A. Yes.

6 Q. And that was on the 17th?

7 A. Yes.

8 Q. After you hadn't slept?

9 A. Yes.

10 Q. After you learned that your brother had been shot
11 dead?

12 A. Yes.

13 Q. Did you begin to realize that it was important for
14 them to have a description as best you could of who did
15 this to you?

16 A. Yes.

17 MS. SHEALY: Beg the Court's indulgence just
18 one minute.

19 BY MS. SHEALY:

20 Q. I may have to grab that statement back from you.
21 When you gave the statement, did you give the details
22 about the color of shirt?

23 A. Yes.

24 Q. What about the description of heights and the
25 pounds?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. Yes.

2 Q. And did you tell them where you all had driven
3 that night?

4 A. Yeah. I told them.

5 Q. The best that you could?

6 A. Yeah.

7 Q. Did you tell them about the type of gun?

8 A. Yeah.

9 Q. What did you say about the guy who kicked you?
10 I'll hand you a statement if you want to look at it.

11 What kind of description did you give them?

12 A. Saying what type of description?

13 Q. Yeah.

14 A. Two hundred pounds, red shirt, facial hair.

15 Q. Facial hair? And then regarding the guy who had
16 the gun, do you recall what you told the officers?

17 A. Black male, 150 pounds, black male, Geechie
18 accent, white shirt.

19 Q. And did you give as much details as you could that
20 evening under the circumstances?

21 A. Yes.

22 Q. Now, they asked you whether or not you could
23 identify the black male wearing the red shirt with the
24 low-cut hair and the beard when you saw a line-up. Do
25 you remember them asking you that?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. Yes.

2 Q. And what did you answer?

3 A. No.

4 Q. When they asked you whether you could identify a
5 picture of the person with the --

6 A. I told them yeah.

7 Q. Now, that night, you were not shown any line-up;
8 is that correct?

9 A. No.

10 Q. That is correct, you weren't shown one?

11 A. No. I wasn't shown one.

12 Q. That evening when you were being interviewed, did
13 your brother Kareem say anything to you about what the
14 talk was?

15 A. Say that again?

16 Q. When you were being interviewed by Detective Kahn
17 and Detective Alexander, did your brother Kareem say
18 anything in your presence about the name or the nickname
19 he was hearing?

20 A. No.

21 Q. That evening you don't remember that?

22 A. No. He didn't say anything about it.

23 Q. And is it fair to say that when Detective Kahn and
24 Detective Alexander were questioning you that they --
25 sometimes they would be talking to other people at the

—JUJUAIN HEMINGWAY — DIRECT BY MS. SHEALY—

1 party, one of them would, while the other was talking to
2 you?

3 A. Yeah.

4 Q. Now, the next day did Detective Alexander come
5 back?

6 A. Yes.

7 Q. And when he came back, did he have some line-ups
8 for you to look at?

9 A. Yes.

10 Q. And did you, in fact, look at them?

11 A. Yes.

12 Q. Now, first --

13 MS. SHEALY: Beg the Court's indulgence for
14 just a moment.

15 At this times I move these two exhibits into
16 evidence without objection.

17 THE COURT: All right.

18 MS. SHEALY: And they're 164 and 165.

19 THE COURT: They're admitted.

20 (State's Exhibit Nos. 164 and 165 were marked
21 for identification and admitted into evidence.)

22 BY MS. SHEALY:

23 Q. When Detective Alexander showed you the line-ups,
24 did he try to suggest to you in any way who you should
25 choose?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. No.

2 Q. And, in fact, did he ask you a series of -- or
3 tell you a series of things that you should consider in
4 looking at a line-up?

5 A. I can't really remember.

6 Q. Well, take a look at the cover sheet on 165. Do
7 you remember initialling each of those?

8 A. Oh, yeah, I remember.

9 Q. Okay. And you signed the page. When he showed
10 you this line-up -- Sam --

11 MR. APOSTOLOU: I just wanted to reiterate my
12 previous objection to that.

13 THE COURT: They were overruled.

14 BY MS. SHEALY:

15 Q. This is the cover sheet we were just speaking
16 about, Jujuain; is that correct?

17 A. Yes.

18 Q. And in showing you page two, did you recognize
19 anyone in that?

20 A. No.

21 Q. And showing you State's Exhibit 164, is that the
22 cover sheet that you initialed and signed?

23 A. Yes.

24 Q. And is there a place on that document where you
25 can reflect whether or not you could ID someone?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. Uh-huh.

2 Q. Did you indicate that you could or --

3 A. Couldn't.

4 Q. Could not? And no was checked?

5 A. Yes.

6 Q. Now, when he showed you this line-up, could you
7 identify someone?

8 A. Yes.

9 Q. Well, can you explain to the jury why you didn't
10 tell Detective Alexander that.

11 A. Because I was angry at the time, and I was upset
12 about the fact my brother was gone.

13 Q. Why did that affect whether or not you ID'd the
14 person that was involved?

15 A. Because I was mad.

16 Q. And showing you page two of this line-up, can you
17 see that well, or should I bring that over to you?

18 A. I can see it.

19 Q. Did you recognize someone in this?

20 A. Yes.

21 Q. What number?

22 A. Three.

23 Q. Who was number three?

24 A. Denzel.

25 Q. At the time you didn't know his name was Denzel,

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 though, did you?

2 A. No.

3 Q. Tell the jury, who was number three as it related
4 to what happened that night? What did number three do?

5 A. Had on a red shirt.

6 Q. And what did he do to you?

7 A. Stomped me.

8 Q. And where did he take you in relationship to your
9 car?

10 A. To his trunk.

11 Q. And was he yelling out that evening at y'all?

12 A. Yeah.

13 Q. And is he the one that took the suitcase to the
14 trunk or to their car?

15 A. Yeah.

16 Q. So when Detective Alexander left that night, did
17 you tell him at any point, I lied. I really can identify
18 the person?

19 A. Say that again?

20 Q. When Detective Alexander left Longs that night,
21 after you said you could not make an ID, did you ever
22 correct that with Detective Alexander? Did you ever say,
23 I lied?

24 A. I can't remember.

25 Q. What happened the next day, on the 19th?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. I got questioned again by a detective.

2 Q. And did you see a new officer, Charles Lawrence,
3 the next day?

4 A. Yes.

5 Q. And did he come to Longs?

6 A. Yes.

7 Q. And did he come along with Detective David Owen?

8 A. Yes.

9 Q. When they got there, did they take you from your
10 home to another location?

11 A. Yeah, to a police station.

12 Q. How did going into a police station make you feel?

13 A. Uncomfortable.

14 Q. Uncomfortable? Were you scared you might be in
15 some kind of trouble?

16 A. Yeah, at the time.

17 Q. And is that because you didn't make the ID the
18 night before?

19 A. Yes.

20 Q. When you got there, did Detective Lawrence show
21 you three line-ups?

22 A. Yes, showed me three line-ups.

23 Q. And let's go through those if we can. When y'all
24 were at the sheriff's office, were y'all in, like, a
25 conference room?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. Yeah.

2 MS. SHEALY: Your Honor, I would like to go
3 ahead and get these marked as well, subject to the
4 earlier objection.

5 MR. APOSTOLOU: Correct.

6 MS. SHEALY: And those numbers are --

7 THE COURT: When you say one was marked, are
8 offering them for admission?

9 MS. SHEALY: I am.

10 THE COURT: They're admitted over defendant's
11 objection.

12 (State's Exhibit Nos. 166, 167, and 168 were
13 marked for identification and admitted into evidence.)

14 BY MS. SHEALY:

15 Q. Now, when you were given these lineups, and this
16 was on the 19th, did you have any idea that a girl in
17 Charleston was talking about what happened?

18 A. No.

19 Q. Showing you what's been marked as State's Exhibit
20 168, was there a similar cover sheet?

21 A. Yes.

22 Q. And did you look through the photographs of the
23 females?

24 A. Yes.

25 Q. Did you recognize anybody?

JUUUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. No.

2 Q. So one female, you could not recognize her by that
3 one picture; is that correct?

4 A. Yes.

5 Q. A second female, and you could not recognize her
6 by that picture?

7 A. Yes.

8 Q. And a third female, you could not recognize her by
9 that picture?

10 A. Yes.

11 Q. Showing you State's Exhibit 167, similar cover
12 sheet?

13 A. Yes.

14 Q. And could you recognize anyone on the 17th that
15 was shown to you that night?

16 A. No.

17 Q. Could you not identify that photograph?

18 A. No.

19 Q. That photograph?

20 A. No.

21 Q. That photograph?

22 A. No.

23 Q. That photograph?

24 A. No.

25 Q. Or this photograph?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. No.

2 Q. When the guy with the white T-shirt, the whole
3 time you saw him, what did he have in his hands?

4 A. Gun.

5 Q. Showing you State's Exhibit 166, similar cover
6 page?

7 A. Yes.

8 Q. And when you looked through this line-up that
9 night, were you able to identify someone?

10 A. Yes.

11 Q. You were this time?

12 A. Yes.

13 Q. And you hadn't the night before?

14 A. Yes.

15 Q. But this is a different line-up; is that correct?

16 A. Yes.

17 Q. And when you were shown the following photographs,
18 how did you indicate on the photograph itself who you
19 could identify?

20 A. Circled it.

21 Q. So you didn't ID this person; is that correct?

22 A. No.

23 Q. You did not identify this person; is that correct?

24 A. No.

25 Q. You did not identify this person; is that correct?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. No.

2 Q. Or this one?

3 A. No.

4 Q. Or this one?

5 A. No.

6 Q. But you did identify this one?

7 A. Yes.

8 Q. And you circled it and also put the date and your
9 initials; is that correct?

10 A. Yes.

11 Q. And the time?

12 A. Yes.

13 Q. And the person that you circled, who was he? What
14 did he do the night in question?

15 A. That's the one that stomped.

16 Q. Stomped you?

17 A. Yeah.

18 Q. What did you write where it indicated that you
19 could write something about your ID?

20 A. He had a goatee and he was the one standing in the
21 driveway.

22 Q. The one standing in the driveway?

23 A. Yeah.

24 Q. When y'all first drove up?

25 A. Yeah.

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 Q. Is he the one that went to your brother's side of
2 the car first?

3 A. Yeah.

4 Q. Is he the one that stomped you?

5 A. Yes.

6 Q. Read the first part of that sentence.

7 A. His face, he's got fat jowls and a goatee.

8 Q. Fat jowls and a goatee?

9 A. Yeah.

10 Q. When Detective Lawrence showed you these line-ups,
11 did you tell him that you could have identified him the
12 night before?

13 A. Yes.

14 Q. You told Detective Lawrence on that date that you
15 could have identified the guy the day before? Do you
16 understand what I'm asking?

17 A. No, no, I don't think so.

18 Q. You've told us that you saw the picture the night
19 before, but you refused to ID him; is that correct?

20 A. Uh-huh.

21 Q. Did you tell Detective Lawrence that?

22 A. No -- I don't remember telling him.

23 Q. Did you ever tell Detective Owens that?

24 A. No. I don't remember telling him that either.

25 Q. The person that you've ID'd, can you tell us, is

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 he in the courtroom?

2 A. Yes.

3 Q. Point him out to us?

4 A. (Indicating.)

5 Q. What does he have on?

6 A. Glasses.

7 Q. Did he have glasses on that night?

8 A. No.

9 Q. Did he have on a coat jacket?

10 A. No.

11 Q. Tie?

12 A. No.

13 MS. SHEALY: Beg the Court's indulgence for
14 just one moment.

15 BY MS. SHEALY:

16 Q. Do you remember how you got to the police station
17 when Detective Owen and Detective Lawrence took you to
18 that conference room? Do you remember how y'all got
19 there?

20 A. I rode down.

21 Q. In a police car?

22 A. Yeah.

23 Q. Who rode with you?

24 A. I think my brother.

25 Q. Kareem?

JUJUAIN HEMINGWAY - DIRECT BY MS. SHEALY

1 A. Yeah.

2 Q. And Kareem was the one, the first night the
3 detectives came, that was trying to encourage you to tell
4 everything?

5 A. Yeah.

6 Q. Do you remember Kareem ever telling you that he
7 heard the name Fat as being involved in this?

8 A. I remember him saying that.

9 Q. He told the detectives that's the name he was
10 hearing?

11 A. Yeah.

12 MS. SHEALY: I have no further questions.
13 Please answer any the defense attorneys may have.

14 THE COURT: Tell you what: Why don't we take
15 a ten-minute break before we begin cross-examinations.
16 We've been doing this for a little while after lunch.

17 So take ten minutes. Don't begin
18 deliberations or discussions about the case, and we'll
19 see you back in just a few minutes.

20 (In open court, jury not present.)

21 THE COURT: Mr. Hemingway, while we're on a
22 break, you can't talk to anybody. If you need to use the
23 rest room, I'll have the bailiffs take you to one of
24 these back here. You're not allowed to talk to anyone
25 while you're on the witness stand.

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 (Recess taken.)

2 (In open court, jury present.)

3 THE COURT: All right. Are you ready to do
4 your cross?

5 MR. APOSTOLOU: I am, Your Honor.

6 THE COURT: All right. Go ahead.

7 CROSS-EXAMINATION

8 BY MR. APOSTOLOU:

9 Q. May it please the Court: All right, Jujuain.
10 Never been to Charleston before this incident; is that
11 correct?

12 A. No.

13 Q. And you had no idea why you were here this time?

14 A. No.

15 Q. Your brother came to you and said, Let's go; is
16 that correct?

17 A. Uh-huh, yeah.

18 Q. And that's all you know?

19 A. Yeah.

20 Q. He didn't say he was coming to do business or
21 anything like that?

22 A. No.

23 Q. Okay. And you don't have any business down here,
24 right?

25 A. No.

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 Q. Because you never been here before, right?

2 A. Uh-huh.

3 Q. Okay. And when you got there, you never looked in
4 the trunk of the car?

5 A. No.

6 Q. And, presumably, the suitcase was already in the
7 trunk because you didn't see them loading the suitcase in
8 the car; is that right?

9 A. No.

10 Q. And you had never been to Johns Island before
11 because you had never been to Charleston? You have to
12 get to Charleston from Longs to get to Johns Island,
13 right?

14 A. Uh-huh.

15 Q. And you didn't know that Kadeem went to South
16 Carolina State sometimes?

17 A. No.

18 Q. Okay. Did you know coincidentally that Denzel
19 Heyward did go to South Carolina State?

20 A. No.

21 Q. Okay. And you -- I've read your statements, or
22 heard your statements, and you guys were lost; is that
23 correct?

24 A. Yeah.

25 Q. So you guys came down here from Longs, just didn't

—JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU—

1 know where --

2 A. That's what I wrote in my statement.

3 Q. Yeah, I know, but we're just asking about your
4 testimony now. So you were driving down here from Longs?

5 A. Yeah.

6 Q. Y'all got confused as to where you are?

7 A. Uh-huh.

8 Q. You decided to just go head back to Longs?

9 A. Uh-huh.

10 Q. Ended up on Johns Island?

11 A. Uh-huh.

12 Q. You parked on the side of the road?

13 A. Uh-huh.

14 Q. You -- he was going to his app on his phone? I
15 guess that's a GPS?

16 A. Yeah.

17 Q. And that's when this whole incident occurred?

18 A. Yeah. That's what I wrote on the statement.

19 Q. She's taking down everything you say, so you have
20 to speak clearly so we have a nice clean record, okay?

21 A. Yeah.

22 Q. Okay. Thank you.

23 It was really just dumb luck y'all ended up on
24 Cynthia Avenue to begin with, wasn't it?

25 A. Yeah.

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 Q. Your brother did not sell drugs, did he, Jujuain?

2 A. I wouldn't know that. He wouldn't let me know
3 that.

4 Q. You didn't know what he did?

5 A. Yeah.

6 Q. And you didn't sell drugs, did you?

7 A. No.

8 Q. And when you guys were rolling down here from
9 Longs, you didn't have an AK47 in the car, did you?

10 A. No.

11 Q. And since it's just kind of coincidence that y'all
12 ended up on Cynthia Avenue on Johns Island, when this
13 person walked up to you, you didn't know who it was, did
14 you?

15 A. No, I didn't.

16 Q. And your brother didn't either because it's just
17 dumb luck that you happened to be there to begin with,
18 right?

19 A. Yeah.

20 Q. Is that correct?

21 A. Say that again.

22 Q. Your brother didn't know the person that walked up
23 on y'all in Johns Island --

24 A. I don't know what he knew.

25 Q. But it would be phenomenally coincidental --

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

- 1 A. What are you laughing for?
- 2 Q. What's that?
- 3 A. Quit laughing. Ain't nothing funny.
- 4 Q. I'm sorry?
- 5 A. Quit laughing. Ain't nothing funny.
- 6 Q. Okay. All right. I understand the seriousness of
- 7 the matter, but the person that came up to your car -- I
- 8 mean, you guys live in Longs. You're lost. You stop on
- 9 Johns Island. It would be a very, very small chance that
- 10 you would happen to know the person that came up to
- 11 y'all, right?
- 12 A. I ain't know. I don't know what my brother know.
- 13 Q. Okay. First time you saw the suitcase it was
- 14 after this incident occurred?
- 15 A. Yeah.
- 16 Q. And that was after the trunk was opened?
- 17 A. When they opened the trunk, I seen the suitcase.
- 18 Q. And that's the first time you saw the suitcase?
- 19 A. Yeah.
- 20 Q. What color was the suitcase?
- 21 A. Black.
- 22 Q. What kind of size was it?
- 23 A. About that long and that wide (indicating).
- 24 Q. But you have no idea what the contents of that
- 25 were?

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 A. No.

2 Q. You testified to Ms. Shealy a couple minutes ago
3 that you had several stomps to your head?

4 A. Yeah.

5 Q. It wasn't just one, it was several?

6 A. Yeah.

7 Q. And, basically, he's -- the person in red, the
8 person you've identified as my client, Denzel Heyward, is
9 taking stuff from your open trunk, and he's taking it to
10 the green car, and every time he passes by, he gives you
11 a kick in the head; is that right?

12 A. Yeah.

13 Q. So how many times are we talking about?

14 A. About six, six times.

15 Q. And what all is he carrying out of the back of
16 y'all's trunk on these six different times?

17 A. I don't know what he was carrying out of the trunk
18 unless it was just a suitcase.

19 Q. Just the one suitcase?

20 A. Yeah.

21 Q. What was he carrying on the other trips?

22 A. I don't know.

23 Q. You don't know?

24 A. No.

25 Q. Was it boxes?

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 A. I don't know. I just told you I don't know what
2 he was carrying.

3 Q. But it was coming out of y'all's trunk?

4 A. Yeah. It was coming out.

5 Q. All right. And I believe you testified several
6 times you didn't know where you were, right?

7 A. Yeah.

8 Q. But when you called the 911 tape, you did identify
9 yourself as being on Johns Island, right?

10 A. Yeah.

11 Q. How did you find out at that point to inform the
12 911 operator that you were on Johns Island?

13 A. On my phone.

14 Q. It was on your phone?

15 A. Yes.

16 Q. So you checked, what, your GPS?

17 A. Yeah.

18 Q. And the phone told you you were on Johns Island?

19 A. Yeah.

20 Q. And that's how you were able to get that
21 information to the 911 operator?

22 A. Yeah.

23 Q. And then you don't know Denzel Heyward, right?

24 A. No.

25 Q. Never seen him before this incident?

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 A. No.

2 Q. All right. You've never heard the name Fat
3 before?

4 A. No.

5 Q. All right. And you didn't hear it that night on
6 the roadside, did you?

7 A. No.

8 Q. Your brother didn't say hey, Fat, what's up?

9 A. No.

10 Q. He didn't say, Hey, Fat, what are you doing with
11 an AK47?

12 A. No.

13 Q. Just never heard that name before, correct?

14 A. Correct.

15 Q. And since you never heard the name Fat, you never
16 spoke to anybody before this incident about Fat; is that
17 correct?

18 A. No.

19 Q. And nobody ever spoke to you about Fat before this
20 incident, right?

21 A. No.

22 Q. And so Ms. Shealy asked you about a couple
23 statements to the police officers, and I believe your
24 testimony was the first time you didn't do such a good
25 job, right?

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 A. Yeah.

2 Q. And the second time, you were a little more
3 accurate; is that correct?

4 A. First time they questioned me, I didn't give them
5 as much detail as the second time.

6 Q. And the second time you were more forthcoming with
7 information?

8 A. Yeah.

9 Q. All right. And pretty much since that point,
10 you've told a couple of little lies in this case to start
11 off with, right?

12 A. My name.

13 Q. That's the only lie you told? Did you tell any
14 officers that --

15 A. I told officers I ain't seen nobody. I told
16 officers I didn't see the person that did that.

17 Q. Okay. Right. I understand. Did you tell the
18 officers that the reason y'all came to Charleston was to
19 see some girls?

20 A. I don't remember that.

21 Q. You don't remember that?

22 A. No.

23 Q. Okay. Did you tell the officers you don't know
24 how you got there because your brother was driving and
25 you were in the passenger seat asleep?

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 A. I ain't never recall saying that either.

2 Q. Okay. All right. Do people call you Juice?

3 A. No.

4 Q. You never been called Juice before?

5 A. No.

6 Q. So the next day after this incident -- this
7 incident occurred on May 16, 2012, right?

8 A. Yeah.

9 Q. About 11:30-ish at night, I believe?

10 A. Yeah.

11 Q. All right. And you get out of the hospital around
12 noon on the 17th?

13 A. About 2:00, 2:30.

14 Q. And then you guys drive back up to Longs, right?

15 A. Yeah.

16 Q. All right. And then Detective Alexander and Kahn
17 come up there and meet with you; is that right?

18 A. Yeah.

19 Q. Okay. And then they interviewed you at that
20 point?

21 A. Yeah.

22 Q. And one of the questions they asked you was, Do
23 you know Fat?

24 A. I don't recall them asking me that.

25 Q. You don't recall being asked that?

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 A. I don't remember.

2 Q. You don't remember being asked that in your
3 three-hour statement that you -- interview you had with
4 the police?

5 A. No.

6 Q. Okay. Well, if it's necessary, we can go back and
7 replay it for you, if it's helpful.

8 A. Go ahead.

9 Q. Okay.

10 MS. SHEALY: I'm sorry. What was the last
11 question that was asked?

12 MR. APOSTOLOU: If the officers asked him if
13 he knew anybody named Fat.

14 BY MR. APOSTOLOU:

15 Q. I'll tell you what, Jujuain. We'll come back to
16 that.

17 Your brother, when he was first contacted with the
18 police, said Fat Chuck. Are you aware of that?

19 A. Yeah, I'm aware of that.

20 Q. And at any point in this investigation did the
21 police come to you and, Say do you know anybody named
22 Fat?

23 A. I just told you I don't remember.

24 Q. So as far as you know, no one ever asked you if
25 you knew Fat?

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 A. They just asked me a question. I told you I don't
2 remember.

3 Q. All right. So they did show you a line-up,
4 though, right?

5 A. Yeah. They showed me a line-up.

6 Q. And you recognized Denzel Heyward in that line-up?

7 A. Yes.

8 Q. And how did you recognize him? Did you recognize
9 him from being out on the roadway that day?

10 A. Yeah.

11 Q. And from no other source?

12 A. No.

13 Q. And that was line-up number one. And you chose at
14 that point not to identify and to tell the officers that
15 you did, in fact, recognize him, right?

16 A. Uh-huh.

17 Q. And then they come back the next day, right?

18 A. Yeah.

19 Q. And they have another line-up. Line-ups are
20 called six packs because there's generally six people in
21 the line-up when you look at them, right?

22 A. Uh-huh.

23 Q. And they had another six individuals, right?

24 A. Yeah.

25 Q. And one of the individuals was -- the same person

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 that was in line-up number one was in line-up number two,
2 and the other five guys were all different; is that
3 right?

4 A. Yeah.

5 Q. Okay. And so --

6 A. But first they never showed me a line-up. The
7 second day they showed me a line-up.

8 Q. I understand. That's on the 17th. They come up
9 and they question you. They don't show you a line-up,
10 right?

11 A. Yeah.

12 Q. But they do come back on the 18th and show you a
13 line-up?

14 A. Yeah.

15 Q. And they do come back on the 19th and show you a
16 line-up?

17 A. Yeah.

18 Q. So it's the next day, and that's the one with
19 Ms. Shealy, you talked about the fact that they went to
20 the police department, took you to the police department,
21 and gave you a chance to look at it down there, right?

22 A. Yeah.

23 Q. All right. And only one person in that line-up
24 was the same person?

25 A. Yeah.

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 Q. And that person happened to be Denzel Heyward?

2 A. Yeah.

3 Q. All right. So you recognized him the first time.
4 You said you didn't know him. Now you got a second
5 line-up, and he's right there again, right?

6 A. Uh-huh.

7 Q. What did that tell you?

8 A. That Dashaun have something to do with it.

9 Q. In an earlier proceeding in this case, we talked
10 about the same topic before, didn't we?

11 A. Yeah.

12 Q. And I think your testimony at that time, more or
13 less, you felt like the police must know something
14 because they keep showing you the same guy; is that
15 correct?

16 A. Yes.

17 Q. So on the second time you look at it, now you ID
18 him, right?

19 A. The third time, yeah.

20 MR. APOSTOLOU: Court's indulgence. May I
21 approach, Your Honor?

22 THE COURT: You may.

23 BY MR. APOSTOLOU:

24 Q. Jujuain, I'm going to show you the statement right
25 here, and this is the line-up that you ID'd him on. This

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 is the one that -- the date's right here, 5/19/2012, and
2 this statement right here, and you read it with
3 Ms. Shealy. I'm going to ask you to read it with me
4 again one more time.

5 A. His face, he got fat jowls and a goatee. That was
6 the guy standing at the driveway waiting for us.

7 Q. Okay. Thank you.

8 When you looked at that statement with Ms. Shealy,
9 I didn't hear you say, I know him as Fat, in that
10 statement. You wrote that in that statement, right?

11 A. Yeah.

12 Q. And I didn't hear you say that, but that is on
13 that line that you filled out on May the 19th, 2012. I
14 know him as Fat, right?

15 A. Yeah.

16 Q. And we talked about earlier proceedings in this
17 case, and I asked you about that?

18 A. Yeah.

19 Q. And you clarified that for me, that you could
20 recognize the person that was at the scene. Other people
21 have told you that his name was Fat?

22 A. Yeah.

23 Q. You put those two pieces together, and you said, I
24 know him as Fat, meaning I know him as the guy from the
25 roadside who everybody says is named Fat?

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 A. Yeah.

2 Q. Okay. So when you guys are rolling down to
3 Charleston, you don't have any idea why you're coming
4 here, right?

5 A. No.

6 Q. You weren't coming to collect money, as far as you
7 know?

8 A. No.

9 Q. Do you know who Thurston Hardiman is?

10 A. That's my cousin.

11 Q. That's your cousin? You call him T.J.?

12 A. Uh-huh.

13 Q. Okay. Now, the truth of the matter, as you just
14 told me, is you didn't have any reason why, knowing why
15 you're coming down here, right?

16 A. Uh-huh.

17 Q. So you wouldn't have told somebody that you were
18 coming to collect money because that wouldn't be the
19 truth, right?

20 A. Are you talking about a recording on the jail
21 phone? Is that what you're talking about?

22 Q. We'll talk about that in a second.

23 A. Go ahead and get to it.

24 Q. If you don't mind, I'll handle the questions. I
25 understand this is a difficult situation for you, but I

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 also understand my client is over here on trial for his
2 life.

3 MS. SHEALY: I object to the editorializing.

4 THE COURT: Mr. Hemingway, this will go a lot
5 smoother if you listen to his question and answer his
6 question. If you need to explain your answer, you can,
7 but I need you to answer his question.

8 All right? Go ahead.

9 BY MR. APOSTOLOU:

10 Q. Because you had no knowledge of why you were
11 coming here, you would never have told someone that you
12 were coming to collect money because that would not have
13 been the truth; is that correct?

14 A. Say that again.

15 Q. Okay. Because you had no knowledge of why you
16 were coming to Charleston, South Carolina, you were just
17 rolling down here with your brother at his request, you
18 would not have told somebody before this incident
19 occurred from the time you left Longs until the time you
20 guys got lost on Johns Island you would not have told
21 someone that you were coming down here to collect some
22 money.

23 A. No, I didn't tell nobody.

24 Q. What's that?

25 A. No, I didn't tell nobody.

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 Q. So let's go back to T.J., Thurston Hardiman.

2 A. I never told nobody.

3 Q. Okay. Do you remember where Thurston Hardiman was
4 somewhere around May 16 of 2012?

5 A. He was in jail.

6 Q. He was in jail. And jail phone calls are
7 recorded, aren't they?

8 A. Yeah.

9 Q. And you and Thurston Hardiman had a conversation
10 on the drive while you guys were coming down to
11 Charleston; is that correct?

12 A. Him and my brother had a conversation.

13 Q. And you weren't on the phone at all?

14 A. No.

15 Q. Okay. Who answered the phone first?

16 A. Who answered the phone first?

17 Q. Uh-huh.

18 A. I think I answered the phone first.

19 Q. Okay. So you answered the phone, and Thurston
20 Hardiman calls you on a recorded jail call on May the
21 12th, 2012, right?

22 A. Yeah.

23 Q. And he asks you, What are you doing?

24 MS. SHEALY: Your Honor, I'm going to object.
25 This was on May 12th; is that what you said?

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 MR. APOSTOLOU: I'm sorry. I apologize. May
2 the 16th.

3 BY MR. APOSTOLOU:

4 Q. On May the 16th, y'all have a phone call from
5 Thurston Hardiman. You guys are already in the car,
6 rolling down to Charleston.

7 He asks you, Where are you going?

8 And you tell him, We're going to Charleston.

9 And he says --

10 MS. SHEALY: Objection to the hearsay.

11 THE COURT: What are you offering him for?

12 MR. APOSTOLOU: This is an inconsistent
13 statement --

14 MS. SHEALY: Your Honor, could we approach
15 the bench?

16 (Discussion held at sidebar.)

17 BY MR. APOSTOLOU:

18 Q. Jujuaain, in this conversation when you and your
19 brother are driving from Longs to Charleston and you
20 talked to T.J. Hardiman --

21 A. No.

22 Q. You already testified you answered phone when he
23 called?

24 A. I answered the phone. I didn't talk to him.

25 Q. Did you tell him you were going to Charleston to

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 collect some --

2 A. No.

3 MS. SHEALY: Your Honor, I object. He
4 indicated he didn't talk to him.

5 THE COURT: He said -- his question is, did
6 you tell him, so he's entitled to ask him that.

7 Now, he may have denied that he didn't talk
8 to him and he followed up. Sometimes people remember
9 things, sometimes they don't.

10 BY MR. APOSTOLOU:

11 Q. Did you tell him you were going to Charleston to
12 collect a debt?

13 A. No.

14 Q. Do you know the jail calls are recorded?

15 A. Yeah.

16 Q. Do you know that the State of South Carolina
17 picked up those jail tapes, Detective Owen here signed
18 off on those tapes, and, as part of the discovery of this
19 case, the sharing of the information, provided them to my
20 office?

21 A. Uh-huh.

22 Q. And I have the conversation right now, so I'm
23 going to play the phone call for you, and then we'll talk
24 about whether you said that to T.J. Hardiman.

25 MS. SHEALY: May we approach, Your Honor?

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 THE COURT: Okay.

2 (Discussion held at sidebar.)

3 THE COURT: Let me send the jury out.

4 (In open court, jury present.)

5 THE COURT: Do you have the tape?

6 MR. APOSTOLOU: I do, Your Honor. It says
7 that a couple more times in here.

8 (Whereupon, the tape was played.)

9 THE COURT: I couldn't tell what was said.

10 MR. APOSTOLOU: Okay. It's a little
11 difficult.

12 THE COURT: It's a lot difficult. What does
13 he say? What is he saying there?

14 MR. APOSTOLOU: He says, I'm on my way to
15 Chucktown.

16 What the F are you doing down there?

17 Going to get some money.

18 MS. SHEALY: I did not hear that.

19 THE COURT: I heard the Chucktown part.

20 MS. SHEALY: And then the next part that
21 plays is something about, Can you go get the money back?

22 I mean, it doesn't sound connected at all to
23 this --

24 THE COURT: I'm not saying that --

25 MR. APOSTOLOU: Going to Chucktown.

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 What are you going there for?

2 Some money.

3 THE COURT: Well, can you play it? If that's
4 what the jury hears, it says --

5 MS. SHEALY: Your Honor -- I'm sorry. I
6 shouldn't interrupt. What in that tells us that it's
7 Jujuain making that statement? Because the mother of
8 Kadeem is telling me that's Kadeem.

9 MR. APOSTOLOU: Well, it switches over to
10 Kadeem on the phone.

11 THE COURT: Well, the witness testified that
12 he took the call and that it sounded like it was the
13 same.

14 Ultimately, the jury will have to decide
15 whether it was somebody else, but he has laid the
16 foundation to say, Did you say this?

17 He said no. He's got something that says
18 opposite. He said, I took the call, but I didn't say
19 anything else.

20 So that theoretically impeaches it, if that's
21 what he said --

22 MS. SHEALY: I don't believe that he has laid
23 the foundation. There is nothing about what he wants to
24 play that suggests when the phone call was made, to what
25 phone number it was made, what the date was, or anything.

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 I mean, if he wants to bring somebody up from
2 Horry County to establish those things, that's one thing.

3 MR. APOSTOLOU: Judge, have a records
4 custodian from the jail under subpoena. I have got the
5 tape that the State produced to us. It's got the date on
6 there of 5/16/2012 at 2139.

7 MS. SHEALY: That still doesn't satisfy
8 laying the foundation for it.

9 THE COURT: Well, the foundation is, did you
10 make a phone call on such and such a date to such and
11 such a person?

12 And if he says that it is to this person
13 that's in jail on the 16th of May 2012, which he has
14 done, that's all the foundation he's got to lay.

15 MS. SHEALY: But, number one, he didn't place
16 the phone call. The phone call is being placed to
17 whatever number is being called.

18 THE COURT: But he has admitted that he was
19 involved in that phone call. He just doesn't admit what
20 was said in the phone call.

21 MS. SHEALY: But what we have not asked of
22 him yet is whether he admits in that phone call that was
23 just played.

24 What Mr. Apostolou just asked him was, Did
25 you receive a phone call from Thurston Hardiman?

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 And he said, Yes, I answered it.

2 So there's nothing in the record to establish
3 from this witness that that phone call is the one he was
4 referencing when Mr. Apostolou asked him that question.

5 MR. APOSTOLOU: It's his voice on the phone,
6 Judge.

7 THE COURT: Well, I think he's laid enough of
8 a foundation to play that tape, the first part of it
9 there. All right?

10 MR. APOSTOLOU: Judge, since we have the jury
11 out, perhaps -- there is a second phone call as well.

12 THE COURT: And when is it?

13 MR. APOSTOLOU: It is the day after.

14 THE COURT: And to who was it made?

15 MR. APOSTOLOU: It's between Jujuain
16 Hemingway and Thurston Hardiman. In this phone call,
17 made after this incident occurs and right after the
18 police leave, Mr. Hemingway tells him it was Fat, tells
19 him all sorts of -- convinces him of who Fat is.

20 Hardiman says, I don't know Fat.

21 And he says, Oh, you know. Him he went to --
22 it is crystal clear in this nine-minute tape that
23 Mr. Hemingway has known Fat for a long time.

24 He says in this tape that they're going to
25 Charleston to collect money. He says -- he says a lot of

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 things in this tape, and every single one is different
2 than his testimony here today.

3 THE COURT: And to who is he making the
4 statement?

5 MR. APOSTOLOU: It's the same two people.

6 MS. SHEALY: I think we need Thurston
7 Hardiman in here.

8 THE COURT: Well, Thurston Hardiman, where is
9 he?

10 MR. APOSTOLOU: I do not know the location of
11 Thurston Hardiman.

12 MS. SHEALY: Thurston Hardiman could tell us
13 who he was speaking to.

14 MR. APOSTOLOU: The testimony that is
15 important is from Mr. Hemingway.

16 THE COURT: I think the foundation is laid
17 about the phone call, if he admits that he made the phone
18 call to this person. I don't know where the guy is, no
19 one knows where the guy, is but if it was made to the
20 jail and he's admitting to that --

21 MS. SHEALY: He hasn't admitted to anything
22 about the second phone call.

23 THE COURT: Well, we haven't gotten there,
24 but if he lays that foundation, we're not going to make
25 him jump through the same hoops, but if he gets to the

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 point where -- first of all, Mr. Apostolou has got to ask
2 him these questions, and if he says the same thing and
3 denies it, then he gets to impeach him, but if he admits
4 it, then he doesn't get to impeach him. But if he asks
5 him and he denies it, then he can play it.

6 You ready?

7 MR. APOSTOLOU: I am, Judge.

8 THE COURT: Okay. Bring the jury back in.

9 (In open court, jury present.)

10 BY MR. APOSTOLOU:

11 Q. Mr. Hemingway, I'm going to play you a tape.

12 (Whereupon, the tape was played for the
13 jury.)

14 BY MR. APOSTOLOU:

15 Q. In that phone call, prepaid collect call from
16 Thurston, that's you and your cousin Thurston talking
17 about it. You answered the phone, and you testified
18 before the jury that you did, and you tell him you're
19 going down to Charleston to collect some money?

20 A. I answered the phone, but that wasn't me talking.

21 Q. Okay. At what point did you hand that phone off?

22 A. When I answered the phone and accepted the call.

23 Q. So you didn't talk to him at all in that
24 conversation at all?

25 A. No.

—JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU—

1 Q. Okay. All right. And you never told him that you
2 were going to Chucktown? That wasn't you?

3 A. I just told you that.

4 Q. Okay. Well, there's two people in the car, right?
5 There's you and there's Kadeem.

6 A. Uh-huh.

7 Q. And there's two different people talking on that
8 telephone call, so one of them has to be you, right?

9 A. Play it.

10 Q. Want me to play it? Okay.

11 MS. SHEALY: Your Honor, I object to this
12 phone call.

13 THE COURT: Stop it --

14 MS. SHEALY: May we approach?

15 THE COURT: Yeah. He has denied that was
16 him. We played the part that you wanted to impeach him
17 on, and he said it's not him.

18 MR. APOSTOLOU: Well, he said he didn't
19 answer the phone. There is two people in the car. Both
20 of them say --

21 BY MR. APOSTOLOU:

22 Q. All right, Jujuain. So that is about two hours
23 before this incident, right?

24 A. I don't know.

25 Q. Okay. And you two talked about it. After this

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 incident, you talked to T.J. again the next day, right?

2 A. No.

3 Q. You never talked to him the next day?

4 A. No.

5 Q. Okay. Did you know that he places a prepaid call,
6 jail call, to that exact same number?

7 A. Say that again?

8 Q. That he places a prepaid cellphone to that exact
9 same number the next day?

10 A. I don't recall getting a phone call.

11 Q. You don't recall getting a phone call. Do you
12 recall telling him that Fat is the one that shot Kadeem?

13 A. No.

14 Q. Do you remember telling him that you were going
15 down -- the reason you went to Charleston was because he
16 owed some money to you two?

17 A. No.

18 Q. Do you remember telling him that the money was
19 both of y'all's?

20 A. No.

21 Q. Do you remember telling him that they didn't get
22 anything -- that they didn't get anything in this armed
23 robbery?

24 A. No.

25 Q. And the reason they didn't get anything is because

—JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU—

1 you didn't have anything; is that right?

2 A. I don't know. Play the tape.

3 MS. SHEALY: Your Honor, could we approach
4 again? I'm sorry.

5 (Discussion held at sidebar.)

6 BY MR. APOSTOLOU:

7 Q. Jujuaain, that's you on the phone talking to your
8 cousin, T.J. Hardiman, right after the detectives leave,
9 May the 17th, the day after your brother, unfortunately,
10 was killed; is that correct?

11 A. I don't remember.

12 Q. You don't remember? Okay. Well, we learned a lot
13 of information from that call.

14 MS. SHEALY: Your Honor, could we have that
15 CD marked into evidence, please?

16 MR. APOSTOLOU: Judge, if I need to play it
17 again -- I'll just leave it in there. We'll put it into
18 evidence.

19 THE COURT: Okay.

20 (Defendant's Exhibit No. 5 was marked for
21 identification and admitted into evidence.)

22 BY MR. APOSTOLOU:

23 Q. So, first of all, it sounds a lot like you know
24 Fat in that conversation, right?

25 A. No.

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 Q. No? How do you know he goes to South Carolina?
2 Because he says he's the biggest nigger -- pardon my
3 language; I do apologize for it, circumstances -- he was
4 the biggest nigger but the biggest bitch on campus, and
5 you said, I know.

6 Your cousin's -- you tell him, It was Fat.

7 Your cousin says, Fat?

8 And you say, Man, you know that nigger?

9 He says, I know him, yeah.

10 I think you was locked up with that nigger or
11 something, man.

12 And then he says, Did he mention my name?

13 And you said --

14 MS. SHEALY: Your Honor, I think we've
15 already listened to the recording. I don't think we need
16 to have him testify to the recording.

17 THE COURT: Overruled. Go ahead.

18 BY MR. APOSTOLOU:

19 Q. And you said, No. I remember you saying you was
20 locked up with that nigger, or bro said you was locked up
21 with that nigger or something.

22 It sounds like you had conversations about
23 Mr. Heyward before; is that right?

24 A. With some people at the sitting down.

25 Q. Some people where? What is that? I'm sorry.

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 A. By the gathering at my house.

2 Q. So that's when you heard Fat?

3 A. Yeah.

4 Q. Okay.

5 A. That's what my brother was talking about.

6 Q. That's what you're talking about?

7 A. That's what my brother was talking about.

8 Q. Well, I mean, I hate to be -- your brother,
9 unfortunately, passed away at this time, right?

10 A. Yeah.

11 Q. And your brother wasn't at your house that day,
12 unfortunately, right?

13 A. No.

14 Q. And you said, I remember bro said you were locked
15 up with that nigger.

16 A. I could have been talking about anybody.

17 Q. Okay. Could have been talking about anybody? All
18 right.

19 How did you know that the Fat in the conversation
20 -- your cousin says, In Georgetown?

21 And you say, No, in Charleston.

22 How do you know that Fat lives in Charleston?

23 A. Just told you. I had a conversation with some
24 people at the gathering.

25 Q. So your testimony today is that everything that

—JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU—

1 you've testified to up until this point is truthful,
2 right?

3 A. Everything is true. I got no reason to lie.

4 Q. Okay. Except for all of the information in this
5 phone call you found out in the hours after your brother
6 had passed away; is that right?

7 A. Say that again?

8 Q. All of the information -- you talk a lot about
9 stuff about Fat in this conversation. You talk about the
10 fact that he had been locked up with Thurston Hardiman.
11 You talk about the fact that you and Thurston had had a
12 conversation with him.

13 We have all of Thurston's jail calls. It went
14 from the call on the 16th to the call on the 17th.

15 MS. SHEALY: Your Honor, again, I'd ask that
16 he ask a question and not editorialize.

17 THE COURT: Ask a question.

18 BY MR. APOSTOLOU:

19 Q. Thank you.

20 Did you talk to Thurston Hardiman in between those
21 two phone calls?

22 A. What two phone calls?

23 Q. The phone call that we played on the 16th and the
24 phone call we just played on the 17th, because in this,
25 you testify that you had talked to -- or you state in

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 here that you had talked to Hardiman about Fat, and if
2 he's in jail, then you couldn't have talked to him about
3 it, right?

4 A. Say that again.

5 Q. We just heard you say that you talked to Thurston
6 Hardiman about Fat: No, I remember you saying that he
7 was locked up with that nigger, and if your testimony
8 today is that you had never heard of Fat until after the
9 incident, then you would have had to have that
10 conversation with Thurston Hardiman between the time that
11 you got back and people told you about it and this other
12 phone call.

13 So my question to you is, did you have another
14 conversation with Thurston Hardiman earlier in that day?

15 A. I told you I had a conversation with people at the
16 gathering.

17 Q. Right, but you didn't tell me you had a
18 conversation with Thurston Hardiman. So did you have
19 another conversation with Thurston Hardiman before that
20 one on that day?

21 A. No.

22 Q. Okay. Let's go to it, Jujuaain.

23 You also said that Fat owed you some bread. You
24 said that it was both of our bread, and you weren't going
25 to let bro ride down by himself. You were going to go

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 with him, right?

2 A. I don't remember saying that, but I don't remember
3 getting a phone call from Thurston.

4 Q. Okay. Well, you just heard it, and what you say
5 is:

6 So that -- Goddamn, no. I ain't going to let bro
7 go. No, I ain't going to let bro ride down there by
8 himself, so I ride with him. You see what I'm saying?
9 It's both our bread.

10 So when you say both our bread, are you talking
11 about money?

12 A. I don't remember.

13 Q. Okay. And you say, I'm riding with him.

14 And then he says, They didn't get nothing, did
15 they?

16 And you say, Oh, no. We didn't have shit.

17 So, in fact, they didn't get anything out of your
18 car, did they, because you didn't have anything in your
19 car?

20 A. I told you, when I got out the car, there was a
21 suitcase.

22 Q. Okay. But you told Thurston Hardiman, No --

23 He says, Did we get -- they didn't get nothing,
24 did they?

25 And you said, Oh, no. We didn't have shit.

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 So no, meaning no they didn't get anything, and
2 the reason they didn't get anything is because you didn't
3 have shit, because you were going down there to collect a
4 debt from him, and that is why you went down there to
5 begin with, right?

6 A. I was going with my brother.

7 Q. All right. Okay.

8 A. And it really don't matter what they was going to
9 collect. My brother's dead. That's all that matters
10 right now.

11 Q. I can respect that, I truly can, but my client has
12 an interest in the truth.

13 MS. SHEALY: Objection, Your Honor.

14 MR. APOSTOLOU: All right.

15 BY MR. APOSTOLOU:

16 Q. All right. Jujuaain, never been to Charleston
17 before; is that right?

18 A. No.

19 Q. Okay. You and your brother drove down here. This
20 incident happened in May of 2012. You and your brother
21 Kadeem drove to Denzel Heyward's house right around the
22 corner from Cynthia Avenue on Johns Island in December
23 2011, about four-and-a-half months before this incident
24 occurred, yes?

25 A. No.

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 Q. You brought him some marijuana and there were
2 other people in the room one of which is by the name much
3 Devron Cohen, and you came down there, you brought him
4 some marijuana, you hung out, you smoked marijuana with
5 him. Devron Cohen was in the room with you, and then you
6 guys went back to Myrtle Beach; is that correct?

7 A. No.

8 Q. You know that Devron Cohen is on our witness list
9 and Devron Cohen was here earlier today and will be
10 coming back again? Do you know that?

11 A. No.

12 Q. Okay. Do you want to change your story that you
13 weren't in Charleston in December 2011?

14 A. No.

15 Q. Who is Kelton Chestnut?

16 A. I don't know Kelton.

17 Q. You don't know Kelton Chestnut? You heard of him?
18 Okay. He's from Longs, isn't he? You guys grew up with
19 him, didn't you?

20 A. I don't know Kelton. I just heard of him.

21 Q. You've heard of him but you don't know him? Okay.
22 Did your brother know him?

23 A. I don't know.

24 Q. Okay. Did you know that he's Denzel Heyward's
25 roommate at South Carolina State?

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 A. No.

2 Q. Okay. Did you drive over to South Carolina State
3 with your brother and sell Kelton Chestnut and Denzel
4 Heyward some marijuana?

5 A. No.

6 Q. Never did that?

7 A. No.

8 Q. Did you hang out in a room with Travis Seabrook at
9 South Carolina State and smoke some pot when you gave
10 Denzel the marijuana and then drove back at Longs?

11 A. No.

12 Q. Did you know Travis Seabrook is on our witness
13 list and was here earlier today?

14 A. No.

15 Q. Okay. Is it necessary for me to call them for you
16 to tell the truth, Jujuain?

17 A. Do what you want to do.

18 Q. What's that?

19 A. Do what you want to do.

20 Q. Okay. All right. You met Denzel Heyward through
21 Kelvin Chestnut who y'all grew up with. He's Denzel's
22 roommate. You started selling marijuana to him, right?

23 A. No.

24 Q. He owed y'all some money. He was having a hard
25 time paying. How this works is, you got him the

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 marijuana. They pay you back with cash. You give him
2 more money, and that is kind of how the cycle works,
3 right?

4 A. No. I don't know what you're talking about.

5 Q. All right. Denzel hadn't paid you, so you and
6 your brother drove down here, and you demanded that he
7 come out and meet you all because you wanted to get your
8 money, right?

9 A. I don't know what you're talking about.

10 Q. Okay. And Denzel said -- you had been to his
11 house, right around the corner on Hobson Lane, right
12 around the corner from Cynthia Avenue before, so he said,
13 I'll meet you out there, and that's how you ended up
14 meeting out there. He didn't live there any longer, but
15 you had already been familiar --

16 MS. SHEALY: Is there a question?

17 BY MR. APOSTOLOU:

18 Q. And that's how you ended up on Cynthia Avenue on
19 this night, isn't it?

20 A. I don't know how we end up there.

21 Q. Okay.

22 A. I was doing what my brother told me to do.

23 Q. All right. Well, that's not what you testified
24 earlier. You testified that you were lost and it was
25 just dumb luck that you ended up on Cynthia Avenue,

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 right?

2 A. That was my first statement.

3 Q. This was what?

4 A. That was my first statement.

5 Q. That was your first statement? Okay. Well,
6 what's the truth, Jujuaain?

7 A. That my brother got killed. That's the truth.

8 Q. I understand that.

9 A. I'm telling the truth. My brother got killed.

10 Q. You have a brother named Hasheem, don't you?

11 A. Not related by blood, but yeah, we're brothers.

12 Q. Are you aware of the fact that he was arrested
13 with an AK47 --

14 MS. SHEALY: Objection, Your Honor.

15 BY MR. APOSTOLOU:

16 Q. -- ten months before this?

17 MS. SHEALY: May we approach?

18 (Discussion held at sidebar.)

19 THE COURT: Ladies and gentlemen: That last
20 statement was completely inappropriate, and I'm ordering
21 that you disregard it.

22 BY MR. APOSTOLOU:

23 Q. The reason that you said in there that you didn't
24 have shit is you were collecting money from him. It
25 doesn't make any sense for him to try to rob you, does

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 it?

2 A. So what are you trying to say?

3 Q. I'm trying to say that you guys went down there to
4 collect the debt from him, that you guys brought the AK47
5 in your car, yes?

6 A. So if I brought an AK47, do you think my brother
7 would be killed that day?

8 Q. Did you bring an AK47 in the car that day,
9 Jujuain?

10 A. No.

11 Q. When you met Denzel Heyward out there, y'all
12 started to talk. You wanted the money. He didn't have
13 it. Y'all got mad. You and Denzel got into a fist
14 fight, right?

15 A. Man, quit trying to make up something that never
16 happened.

17 Q. Okay. And then your brother ran to try to get the
18 AK47 out of the car; is that correct?

19 A. No.

20 MR. APOSTOLOU: Court's indulgence.

21 MS. SHEALY: Your Honor, could we approach?

22 (Discussion held at sidebar.)

23 BY MR. APOSTOLOU:

24 Q. You loved your brother, didn't you, Jujuain?

25 A. What kind of question is that?

—JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU—

1 Q. I know you loved him, and it's a sad thing. You
2 want to see somebody pay for what happened to him, right?

3 A. Yep.

4 Q. And that is why you're not telling the truth
5 because these guys ended up with these charges, and
6 you're saying what you need to say to try to get them
7 convicted of them so somebody pays for your brother; is
8 that correct?

9 A. Yeah. It's the truth.

10 Q. Okay. What is the truth?

11 A. They killed my brother.

12 Q. Okay. The truth is that you and Kadeem came to
13 Charleston to collect both --

14 A. No. Like I just told you, it doesn't matter what
15 we came to Charleston for. It matter that my brother
16 dead.

17 Q. I'm going to ask you a question. I would like you
18 to answer that. You and Kadeem came to collect both of
19 your money, not just his money, both of your money. Your
20 statement earlier was, Nigger owed us some bread. It was
21 both our money.

22 A. I just told you it wasn't me.

23 Q. You told -- you called Denzel and told him y'all
24 were coming and he needed to meet y'all out there? Is
25 that yes?

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 A. Say that again?

2 Q. Y'all called Denzel, and you told him that you
3 needed to meet him out on Johns Island where you had been
4 four months earlier, and you needed him to meet you
5 there; is that correct?

6 A. No.

7 Q. Denzel came, but he didn't have all the money he
8 owed y'all for marijuana that he had sold you, right?

9 A. No. I don't recall that.

10 Q. That made y'all angry, and you ended up getting
11 into a fist fight; is that right?

12 A. No.

13 Q. And that's why your face looked like you had been
14 in a bar fight, like the officer testified earlier,
15 because you were on the losing end of that argument,
16 right?

17 A. No.

18 Q. While y'all were on the ground fighting, your
19 brother ran to y'all's car and pulled out the AK47,
20 right?

21 A. No.

22 Q. And accidental shot rang out when Denzel Simmons
23 jumped in to stop your brother from pulling that gun out.
24 They started wrestling over the AK47; isn't that right?

25 A. No.

JUJUAIN HEMINGWAY - CROSS BY MR. APOSTOLOU

1 Q. And that's when a shot skimmed off, and that's the
2 first time you saw that, was when the shot skimmed by
3 y'all's head, right?

4 A. No.

5 Q. Because you and Denzel were on the ground
6 wrestling, and that's when the shot was accidentally
7 fired off, right?

8 A. No.

9 Q. Nobody was trying to kill you at that time, right?

10 A. No.

11 Q. And when the shot fired off, you went running into
12 the woods. Denzel took off; is that correct?

13 A. No.

14 Q. And how did you get GSR on your hand, Jujuain? Is
15 that from gunshot residue? Did you handle the AK47?

16 A. No.

17 Q. Did you help put it in the car?

18 A. No.

19 Q. So I'm going to ask you, did you know Denzel
20 Heyward before this incident?

21 A. No.

22 Q. Did you know Fat before this incident?

23 A. No.

24 Q. Did you go to South Carolina State University in
25 his dorm room and smoke marijuana?

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 A. No.

2 Q. Did you go to Johns Island at his house, right
3 around this corner, in Christmas of 2011 with your
4 brother and smoke pot?

5 A. No.

6 Q. And sell him some marijuana?

7 A. No.

8 MR. APOSTOLOU: Court's indulgence.

9 I don't have any more questions, Jujuain.

10 THE COURT: Mr. McCoy?

11 MR. McCOY: Thank you, Judge.

12 CROSS-EXAMINATION

13 BY MR. McCOY:

14 Q. We're going to jump right into it, okay?

15 We heard earlier on testimony that your brother
16 had two telephone numbers. Do you remember what they
17 were?

18 A. The one was a 742; the other was a 694.

19 Q. If I was to tell you 742-87[REDACTED], does that sound
20 accurate?

21 A. Yeah, that's about right.

22 Q. And if I were to tell you 694-29[REDACTED], does that
23 sound accurate?

24 A. I don't remember that number.

25 Q. You said there was a 694 number, though, right?

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 A. Yes.

2 Q. It sounds about right?

3 A. Yeah.

4 Q. And we already heard that you had a couple of
5 telephones that night. Do you remember the numbers you
6 had in 2012?

7 A. No.

8 Q. If I were to tell you 855-82 [REDACTED] does that sound
9 familiar?

10 A. Yeah.

11 Q. Okay. And if I were to tell you 694-50 [REDACTED], does
12 that sound familiar?

13 A. Yeah, that sounds familiar.

14 Q. Okay. And let's go back to you and your brother
15 in Longs, South Carolina, in May of 2012, okay? Y'all
16 were hanging out that night; is that accurate?

17 A. Who?

18 Q. You and your brother?

19 A. What date?

20 Q. This was the night of the incident before you
21 drove down to Charleston. Were y'all hanging out all day
22 or just that night?

23 A. About 5:00 that day.

24 Q. 5:00 that day? Had you gotten off work and then
25 gone to hang out with them, or were you unemployed at

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 this time?

2 A. No, I was just -- I was off that day.

3 Q. You were off that day?

4 A. Uh-huh.

5 Q. And when y'all were hanging out, did y'all smoke
6 marijuana while you all were together in Longs?

7 A. I can't even remember.

8 Q. You can't remember? Do you know what y'all were
9 doing that night? Were y'all just hanging out watching
10 TV?

11 A. Playing a game.

12 Q. Playing games? What kind of games were y'all
13 playing, video games?

14 A. Yeah.

15 Q. Did your brother or did you receive a phone call
16 that prompted you to go down to Longs -- or go down to
17 Charleston?

18 A. Say that again?

19 Q. Did you or your brother receive a phone call that
20 prompted y'all to get in the car and leave?

21 A. I never received a phone call. I don't know if my
22 brother received it.

23 Q. Okay. And we've heard a lot of interesting
24 testimony today in terms of why you really went down to
25 Charleston in terms of collecting bread.

JUJUAIN HEMINGWAY - CROSS BY MR. MCCOY

1 Now, did your brother tell you, Hey, I need to go
2 down to Charleston to do this?

3 A. No.

4 Q. Did he tell you he needed to handle some business?

5 A. No.

6 Q. He didn't tell you that?

7 A. Huh-uh.

8 Q. Do you remember saying that in a statement?

9 A. He never told me what he was going out there for.
10 He told me he was going out for some business, though.

11 Q. He did tell you he was going out for some
12 business?

13 A. Yeah, but he never told me what he was going out
14 there for.

15 Q. So you hop in the car with him and you drive?

16 A. Yes.

17 Q. And is your testimony here today in open court,
18 under risk of perjury, which that solicitor can charge
19 you with right here, that you've never been to Charleston
20 before?

21 A. No.

22 Q. Okay. So y'all hope in the car, and you're
23 driving, correct?

24 A. Yeah.

25 Q. Heading down to Charleston?

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 A. Yeah.

2 Q. Your brother is on the phone, receiving texts,
3 receiving phone calls, correct?

4 A. Yeah. He was receiving phone calls.

5 Q. Let me back up a little bit. You testified a
6 little earlier today that you don't know if your brother
7 sold any sort of drugs; is that correct?

8 A. Uh-huh.

9 Q. And you're denying that you and your brother went
10 to SC State and sold people drugs; is that correct?

11 A. Uh-huh.

12 Q. And you're denying going to Johns Island selling
13 people drugs earlier in December of 2011, correct?

14 A. Uh-huh.

15 Q. Was there ever an occasion where your brother
16 would text you pictures of marijuana or drugs to your
17 cellphone?

18 A. I don't recall him doing it.

19 Q. If I were to show you a photograph, would that
20 recollect your memory?

21 A. Yeah.

22 Q. Okay. I will show you first some photographs --

23 MR. McCOY: I'm going to approach and have
24 these marked as defense exhibits, please.

25 THE COURT: All right.

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 MR. McCOY: And I'm marking this for ID only,
2 Judge.

3 (Defendant's Exhibit No. 1 was marked for
4 identification.)

5 BY MR. McCOY:

6 Q. I'm going to show you what has been marked for ID
7 purpose only as Defense No. 1, okay? If you can take a
8 look at that, this is saying it's coming from an outgoing
9 phone number of 855-82 [REDACTED] to an incoming number of
10 694-50 [REDACTED], and those are the numbers that we testified
11 earlier and put on our record, okay? Could you take a
12 look at those and tell me what those are?

13 A. Marijuana.

14 Q. What is it?

15 A. Marijuana.

16 Q. And are these consistent? I want you to look at
17 all of them, now, because there are a couple of them in
18 here, okay? And are these consistent with numbers or
19 pictures that have been texted between you and your
20 brother?

21 A. I don't recall him texting me.

22 Q. You don't recall him texting it?

23 A. No.

24 MR. McCOY: At this time I would move
25 Defendant's Exhibit 1 into evidence based on the fact

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 we've laid a foundation with the phone numbers and based
2 on the fact he's taken a look at these photographs.

3 MS. SHEALY: Your Honor, our position would
4 be that the proper foundation has not been laid.

5 THE COURT: How do we know where he got those
6 from?

7 MR. McCOY: Sir?

8 (Discussion held at sidebar.)

9 MR. McCOY: Thank you, Judge.

10 BY MR. McCOY:

11 Q. Jujuain, where I left off with you, we're taking a
12 look at some photographs that have been texted from your
13 brother to you on April the 23rd, and you've gone through
14 them and you have looked at them, and you've told the
15 jury what they are. There are photographs of marijuana
16 that is being texted between the phones, correct?

17 A. Yeah.

18 Q. Okay. If we take a look at the last photograph
19 that's in, that's not a small bit of marijuana, is it?

20 A. No.

21 Q. That's not? I mean, that's a decent amount,
22 correct?

23 A. Yeah.

24 Q. How much do you think that is?

25 A. Huh?

—JUJUAIN HEMINGWAY - CROSS BY MR. McCOY—

1 Q. You don't know?

2 A. No.

3 Q. When you're getting pictures of this on your
4 phone, you don't know what that is?

5 A. No.

6 Q. If you aren't dealing in drugs and your brother is
7 not dealing in drugs and it's not a scenario that you
8 surround yourself with on a daily basis, why are you
9 getting photographs of weed on your phone? And large
10 quantities of weed at that.

11 A. I don't know.

12 Q. Don't know? You don't have an answer for that?

13 A. No.

14 Q. And that's the best you can bring in this
15 courtroom is I don't know?

16 A. Yeah.

17 Q. That's it?

18 A. Uh-huh.

19 Q. Okay. All right. So we started talking about
20 your ride down to Charleston with your brother, okay, and
21 you're testifying you ain't never been down there, that
22 you ain't never had any deals with Fat or anybody
23 associated with Fat, and that's accurate, all right?
24 You're riding down the road, and you're on the way down.
25 You get to Charleston and you get to Johns Island and you

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 park your car; is that accurate?

2 A. Yeah.

3 Q. And you testify and you also state in one of your
4 statements that right away, once you park, a guy comes up
5 to the passenger side door and just pops your brother in
6 the face; is that what happened?

7 A. First statement.

8 Q. First statement?

9 A. Yeah.

10 Q. So I know you've given a couple statements, and I
11 know it's getting mighty confusing in here, so is that
12 true or is that not true?

13 A. It is true.

14 Q. It is true?

15 A. I didn't give the details in the first statement.

16 Q. Okay. Didn't give details in the first statement.
17 All right. So your brother is getting popped, okay, in
18 the front seat of the car, correct?

19 A. Yeah.

20 Q. Does he get slapped with an open hand, or does he
21 get punched with a fist?

22 A. I don't know. I was just looking at the phone,
23 and he got hit in his face.

24 Q. Okay. Let's back up a second again. So --

25 A. So I don't know if it was an open hand or a punch.

JUJUAIN HEMINGWAY - CROSS BY MR. MCCOY

1 All I know is he hit him.

2 Q. So you pull up, and you were on your phone; is
3 that accurate to say now?

4 A. Yeah.

5 Q. This is the first I'm hearing of this too, so
6 you're on your phone. You're pulling up. You pull over
7 to the side of the road, and is your brother's window
8 down or is his door open?

9 A. Opened the door.

10 Q. He opened the door?

11 A. Yeah.

12 Q. And you testified earlier the keys are in the
13 ignition. You don't notice when the door opens and your
14 brother gets popped in the face?

15 A. Yeah. I looked up.

16 Q. Where did he get hit in the face?

17 A. I told you, I was looking at my phone.

18 Q. You're looking at your phone, so do you look up
19 after you hear a smack, or do you look up after you know
20 some sort of contact has been made?

21 A. I hear a smack.

22 Q. You hear a smack, so you don't know whether it's
23 an open hand smack or if it's a punch?

24 A. Uh-huh.

25 Q. All right. Who threw this punch?

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 A. The guy in the red.

2 Q. The guy in the red. And the guy that you
3 testified who was in the white shirt, where was he?

4 A. I didn't see him. He went out of curve.

5 Q. You didn't see him. He went out of curve.

6 A. Uh-huh.

7 Q. We heard a lot of testimony that a storm was
8 coming that night. Do you remember that? Do you
9 remember if it was getting ready to rain that night?

10 A. It was getting ready to rain that night, but I
11 didn't know if it did rain that night.

12 Q. Okay. Did you not see anybody come around,
13 including the guy in the red shirt, because you were on
14 your phone still?

15 A. Say that again?

16 Q. Did you not see anybody else come around? The guy
17 you already testified to who had a gun, you didn't see
18 him come around because you were still on your phone?

19 A. I see him after the punch, after my brother got
20 punch in the face.

21 Q. Okay. And after your brother gets punched in the
22 face, does he just stand there, the dude in the red just
23 stand there? What does he do?

24 A. Try to -- he punched him in the face, and the dude
25 came up with the gun, said, Don't move.

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 Q. What were you doing on the phone? Were you
2 texting somebody or trying to find out where you are on a
3 map? What were you doing?

4 A. I can't remember what I was doing on the phone.

5 Q. You don't remember what you were doing on the
6 phone?

7 So all of a sudden, your brother's door opens up.
8 Y'all have no idea why you're there. You have no idea
9 who you're even meeting, or why you even pulled over to
10 this particular location, but it's just happenstance that
11 there are some guys there that are waiting for you; is
12 that correct?

13 A. Yeah.

14 Q. All right. And once the door opens, your brother
15 has been popped, other guy, in the white shirt, runs up
16 with a big assault rifle, and what does he do? Does he
17 point it at your brother or point it at you?

18 A. Point it at my brother first.

19 Q. Okay.

20 A. We were right there beside each other, so
21 basically pointed it at both of us.

22 Q. Did your brother say anything or do anything at
23 this time?

24 A. No.

25 Q. He's just sitting there in the car?

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 A. Yes.

2 Q. He's just taking a lick to the face?

3 A. Yeah.

4 Q. Have you put your phone down yet?

5 A. I been put my phone down.

6 Q. You been put your phone down. Why didn't you just
7 hit the gas and take off?

8 A. It's an AK47. It has 30 rounds.

9 Q. It has how many rounds?

10 A. Thirty.

11 Q. How do you know that?

12 A. Who doesn't know that?

13 Q. I don't know that. So you're telling me -- let's
14 talk about that a little more.

15 Tell me about your familiarity with AK47s. You
16 testified that you didn't bring it down there, okay?
17 Your brother didn't bring it down there. Y'all didn't
18 load it up in the car, but you're just telling me now
19 that an AK47 -- and the reason why you didn't run and
20 just hit the gas on your car is because they have 30
21 rounds in a clip; is that correct?

22 A. Yes.

23 Q. Tell me how you know they have 30 rounds in a
24 clip.

25 A. What, an AK47?

JUJUAIN HEMINGWAY - CROSS BY MR. MCCOY

1 Q. Yeah.

2 A. You learn -- you could learn that from anywhere.

3 Q. Tell me how you know it. Tell me how you learned
4 it.

5 A. How I learned?

6 Q. How you learned it?

7 A. Video games.

8 Q. Video games?

9 A. Yeah.

10 Q. So what happens on a video game where you see an
11 AK47 is the truth, and that's reality?

12 A. Man -- come on, man. You don't know it hold 30
13 rounds, man?

14 Q. I would like to take a poll of this audience, take
15 a poll of the folks sitting in here, and I guarantee you
16 they have no idea that an AK47 has 30 rounds in a clip,
17 okay? Does that sound fair?

18 A. What sound fair?

19 Q. Does it sound fair that you think that people
20 should know that an AK47 has 30 rounds in a clip?

21 A. That ain't asking me --

22 Q. I'm asking you a question. Do you think most of
23 the people in this room know an AK47 has 30 rounds to a
24 clip?

25 A. Yeah.

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 Q. Okay. Do you ever take the opportunity to Google
2 or learn more information about AK47s?

3 A. No.

4 Q. Did you ever take the opportunity to talk about it
5 with your friends or to exchange text messages about it
6 with friends?

7 A. No.

8 Q. So you know about AK47s from video games?

9 A. Yeah.

10 Q. What game was it? Why is that funny, first of
11 all?

12 A. Because you're trying to sit around and play me
13 like I had something to do with my brother getting
14 killed.

15 Q. I'm not playing anything. I'm trying to find out
16 the truth, okay? That's all we're trying to do to you,
17 all right? Do you understand that?

18 A. You understand me?

19 Q. What am I supposed to understand from you?

20 A. That you're sitting here trying to play me like I
21 had something to do with my brother getting killed.

22 Q. I'm just trying to find out the truth. That's
23 what I'm asking you.

24 A. I am telling you the truth.

25 Q. All right. Can you tell me what video game you

JUJUAIN HEMINGWAY - CROSS BY MR. MCCOY

1 learned about AK47s from?

2 A. Call of Duty.

3 Q. What is it?

4 A. Call of Duty.

5 Q. Okay. I'll move on from it. I don't even
6 understand what you said.

7 You didn't hit the gas because everybody knows
8 AK47s have 30 rounds in a clip, so you don't want to play
9 around with that; is that accurate?

10 A. Yes.

11 Q. All right. So your brother has been hit. You put
12 the phone down, guys with the guns standing right there,
13 and the guy in the red is standing right there, okay, on
14 the passenger side. Do you then get out of the car at
15 that point?

16 A. Yeah. Told him to get out of the car.

17 Q. They told you to get out of the car?

18 A. Yeah.

19 Q. When you get out of the car, do you circle around
20 the back or do you circle around the front?

21 A. The back.

22 Q. You walk around the back, and are you walking or
23 are you running over there?

24 A. Walking.

25 Q. Okay. Is your brother out of the car at this

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 point?

2 A. Yeah.

3 Q. All right. And what are y'all doing? Are y'all
4 standing up beside the back of the car?

5 A. I laid down on the ground.

6 Q. You got on the ground immediately?

7 A. Yeah.

8 Q. Did they tell you to get on the ground?

9 A. Yeah.

10 Q. And when you get on the ground, are you lying
11 down, face down?

12 A. Yeah.

13 Q. And your stomach is on the ground?

14 A. Yeah.

15 Q. Don't you have your hands out like this
16 (indicating)?

17 A. Yeah.

18 Q. Do you remember how you placed your hands?

19 A. Stretched out.

20 Q. Stretched out. And both you and your brother are
21 down there, and you've testified that they continually
22 asked you, Where is it? Where is it? Where is it? Do
23 you know what they're referring to?

24 A. No.

25 Q. You have no idea?

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 A. Huh-uh.

2 Q. And once that happens and once you don't really
3 know what they're talking about, do y'all tell them that?
4 Do you say, Hey, listen. I don't know what you're
5 talking about?

6 A. Yeah, I told them that one time. I really don't
7 remember saying it, but I probably did.

8 Q. Did your brother tell them that?

9 A. I don't remember.

10 Q. You don't remember? Well, let's take a break from
11 that line of questioning, okay?

12 Do you operate -- or do you have a Facebook
13 account under Jujuain Hemingway in Longs, South Carolina?

14 A. Yeah.

15 Q. And do you maintain and monitor that Facebook
16 page?

17 A. I used to have. I don't have it no more.

18 Q. You used to have that page?

19 A. Yeah.

20 Q. You don't have it anymore?

21 A. Huh-uh.

22 Q. And do you know what Instagram is?

23 A. What?

24 Q. Do you know what Instagram is?

25 A. Yeah.

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 Q. And do you have an Instagram name?

2 A. Yeah.

3 Q. What is it?

4 A. I used to have an Instagram. It was in Jujuain.

5 Q. Do you have an Instagram under SMG Young Heavy?

6 A. No.

7 Q. That's not you?

8 A. Huh-uh.

9 MR. McCOY: Your Honor, may I approach the
10 witness?

11 THE COURT: You may.

12 BY MR. McCOY:

13 Q. If I were to show you some photographs from that
14 Instagram, would that refresh your memory?

15 A. Yep.

16 MR. McCOY: Judge, can I have a moment,
17 please?

18 I'm going to mark these, Judge, for ID
19 purposes only at this point in time, and I have three
20 photographs.

21 (Defendant's Exhibit Nos. 2, 3, and 4 were
22 marked for identification.)

23 BY MR. McCOY:

24 Q. What does SMG refer to?

25 A. I don't know.

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 Q. Is it an affiliation you're part of?

2 A. No.

3 Q. It's not?

4 A. No.

5 MR. McCOY: May I approach the witness,
6 Judge?

7 THE COURT: Yeah.

8 BY MR. McCOY:

9 Q. I'm going to show you a couple photographs here.
10 Do you recognize that person in that photograph?

11 A. That's me.

12 Q. That's you? Okay. I'm going to show you this
13 too. Do you recognize anybody in this photograph?

14 A. Yeah, myself.

15 Q. You do? Is that you right there?

16 A. Uh-huh.

17 Q. Do you recognize anybody in this photograph?

18 A. Yeah.

19 Q. Who is that?

20 A. Me.

21 Q. And that's you?

22 A. That's not me here.

23 Q. That's not you? All right. Let's take a look at
24 the one that you identified that you said was you. It's
25 got a moniker down here that says, Keep calling the shots

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 and let the runners do the rest. MOB affiliated.

2 MS. SHEALY: Objection, Your Honor. May we
3 approach?

4 THE COURT: Let me send y'all out for a few
5 minutes while we take up a legal matter, and don't begin
6 deliberations or discussions about the case.

7 (In open court, jury not present.)

8 THE COURT: All right. What do you want to
9 talk to me about?

10 MS. SHEALY: If we could get those three
11 items --

12 MR. McCOY: They're right here.

13 MS. SHEALY: I think at this point in the
14 record, Mr. Hemingway has indicated -- which ones did
15 he -- he indicated that's him in this, he indicated
16 that's him in this, and he said he doesn't think that's
17 him.

18 We may need to approach you.

19 THE COURT: What are these of? Why are you
20 offering this?

21 MR. McCOY: When you're in camera, Your
22 Honor, evidence of identity in terms of the victim in the
23 case, alleged victim in the case, and if this is going
24 straight toward identity --

25 THE COURT: This is the witness, not the

—JUJUAIN HEMINGWAY - CROSS BY MR. McCOY—

1 victim, right?

2 MR. McCOY: He is a victim.

3 THE COURT: All right. So he's -- what is
4 the question about his identity? Why do you want to put
5 this in?

6 MR. McCOY: I'm establishing the identity of
7 what he does, how he operates his life, Your Honor. He
8 says he's not dealing drugs. He's not involved in this.

9 Obviously, there is a -- we're not convinced
10 that the guns weren't brought down by the victim in the
11 case. The victim is deceased in this case, and if we can
12 establish there was some sort of identity or trade or
13 characteristic in terms of how they acted or acted
14 leading up to this, Your Honor, I think all these
15 photographs are relevant, based on that. This is 404 and
16 that's --

17 Could we have the witness step down while
18 we're doing this?

19 THE COURT: Yeah. Take him out. You can use
20 the rest room, and don't talk to anybody.

21 (Witness excused.)

22 THE COURT: All right. You want these
23 pictures that he's identified that is him to come in for
24 what purpose and under what rule, 404(a)2?

25 MR. McCOY: I would cite 404(a)2, and I don't

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 see why 404(b) doesn't apply.

2 THE COURT: Well, 404(b) would be against
3 your client.

4 MR. McCOY: But, Judge -- I mean, Judge, I
5 don't think the rule necessarily reads that when you talk
6 about evidence of crimes or --

7 THE COURT: I haven't seen what these are
8 showing that he's done wrong. I mean, he's talking on a
9 telephone, and he is pointing at some other dude. So
10 that's not wrong.

11 MR. McCOY: That's why I'm asking him what
12 this caption means down here, because it's talking about
13 he's letting the runners do the running and sell the
14 drugs while he's calling the shots from the cellphone.

15 THE COURT: If they call the shots, Young
16 Jeff -- are you saying he's Young Jeff?

17 MR. McCOY: Yes.

18 THE COURT: All right. What does
19 MOB affiliated?

20 MR. McCOY: That's why I want to ask him
21 that. If he's sitting there saying he's letting the
22 runners run the drugs and he's calling the shots from a
23 cellphone, I think it's absolutely pertinent where drugs
24 were obviously involved in this case. Judge, this one
25 too.

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 THE COURT: Well, there is no -- what does
2 SMG --

3 MR. McCOY: It's a Blood affiliation in
4 Myrtle Beach, gangs.

5 MS. SHEALY: Judge, we have nothing that ties
6 this defendant to the language that's used on those
7 shots, number one.

8 Number two: How does this go to any
9 character trait that's relevant?

10 MR. McCOY: I think it also goes to impeach
11 him, Judge, based on the fact he says he's not selling
12 drugs --

13 THE COURT: Well, as I understand their
14 theory, at least where they appear to be heading, is he
15 is saying I was just riding along with my brother to
16 joyride, and they're saying, No, you were really going
17 down there to collect a drug debt.

18 And, in fact, I don't know whether they're
19 going to do it or not. They seem to be arguing they
20 might even have been the first aggressor. I don't know
21 if we're going on a self-defense kind of thing or not,
22 but, if nothing else, it's this whole theory of, well,
23 this is going to be used to rebut that he wasn't going
24 down there for a joyride, but he was going down there for
25 some kind of drug-related activity.

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 MS. SHEALY: Judge -- first of all, I don't
2 even know what those are in the scheme of what they are.
3 I don't understand what Instagrams are; but, number two,
4 it certainly doesn't go as to peacefulness, a character
5 trait as to peacefulness, as is required by the rule.

6 Thirdly, we don't know that the language used
7 on the Instagram is his language.

8 THE COURT: Well, if that's his account --

9 MS. SHEALY: How do you know it was it his
10 account? He hasn't said that is his account.

11 MR. McCOY: He said that's him in the
12 pictures, and I'm asking --

13 MS. SHEALY: That doesn't mean it's his
14 account.

15 MS. SAVAS: Just because you're in a
16 photograph in Instagram does not mean you're the one who
17 put that photograph up.

18 MS. SHEALY: Absolutely not.

19 MS. SAVAS: The user has not been
20 authenticated. We don't know who wrote that caption of
21 the text, so it's unfair to say --

22 THE COURT: If it's not his account, he's not
23 responsible for what somebody else wrote.

24 MS. SAVAS: Correct, yes.

25 MR. McCOY: Judge, I'm also offering this

—JUJUAIN HEMINGWAY - CROSS BY MR. McCOY—

1 under 404(b) in terms of identity and motive.

2 I mean, when you look at the motive he has
3 for going down to Charleston is to sell drugs, we can sit
4 there and ask him -- I want to just ask him what this
5 means -- can I finish what I'm saying, please?

6 When we're looking at Instagram, we're
7 looking at photographs, the ones we have right here. All
8 I want to do is ask him what these depictions mean. If
9 he is talking about -- if he sits there and says he's
10 talking about running drugs and calling shots from behind
11 the scenes on a cellphone, then obviously that's clearly
12 a motive. That shows his identity.

13 THE COURT: You have to establish first that
14 this is his account and that he wrote these; otherwise,
15 it's somebody taking something that he's a picture of and
16 writing something on it. I mean, they could take a
17 picture of you and write that on it, and that doesn't
18 make you a drug dealer.

19 MR. McCOY: I totally agree, Judge.

20 THE COURT: So whoever wrote SMG Young Jeff
21 is the person who would be responsible for what is
22 written on there.

23 MR. McCOY: I'll ask him if that's his
24 account, and if it's not his account, we'll move on.

25 Could I finish what I'm saying, please?

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 MS. SAVAS: Yes.

2 MR. McCOY: I want to ask him if it's his
3 account and if he wrote that down there, and if he didn't
4 write it, I'll move on.

5 THE COURT: If he says this is his account,
6 then you can pursue it, all right?

7 MR. McCOY: Okay.

8 THE COURT: If it's not his account, then
9 he's not responsible for what's written down there.

10 MR. McCOY: Okay.

11 THE COURT: Okay? Fair enough?

12 MR. McCOY: And if he denies it, then I'll
13 move on.

14 THE COURT: Okay. Because otherwise it's
15 just pictures, which he's admitted, but the captions,
16 he's not responsible for if it's not his account and he
17 didn't write it.

18 MR. McCOY: I understand that.

19 THE COURT: Okay?

20 MR. McCOY: Thank you.

21 MS. SHEALY: If we could take a quick rest
22 room break --

23 THE COURT: That's what I'm going to do.

24 (Recess taken.)

25 MS. SHEALY: Judge, I just want to make sure

—JUJUAIN HEMINGWAY - CROSS BY MR. McCOY—

1 for the record that when Mr. McCoy shows Mr. Hemingway
2 those photos of sorts -- well, let's approach.

3 (Discussion held at sidebar.)

4 THE COURT: All right. Are we ready then?

5 MR. McCOY: Yes, Judge.

6 THE COURT: Bring the jury in.

7 (In open court, jury present.)

8 THE COURT: All right. You may resume.

9 MR. McCOY: Thank you, Judge. Judge, may I
10 approach and have some things marked for ID purposes as
11 well too?

12 THE COURT: Sure.

13 (Defendant's Exhibit Nos. 6, 7, 8, 9, 10, and
14 11 were marked for identification.)

15 BY MR. McCOY:

16 Q. When we left off, we were talking a little bit
17 about an Instagram page and a couple of photos that you
18 identified that you were actually in, but can you tell me
19 and tell the Court whether this particular Instagram is
20 your page, the SMG? Is that your page?

21 A. No.

22 Q. It's not your page?

23 A. It's a fake page.

24 Q. It's a fake page?

25 A. Yeah.

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 Q. What does a fake page mean?

2 A. It's where you take your photos and put them on
3 there.

4 Q. So that's not your page?

5 A. No.

6 Q. But you did testify earlier that Jujuain Hemingway
7 from Longs, South Carolina Facebook page was a Facebook
8 that was monitored by you and is your account; is that
9 correct?

10 A. Say that again?

11 Q. You did testify earlier that you did have a
12 Facebook page under your name, Jujuain Hemingway, in
13 Longs, South Carolina that you monitored; is that
14 correct?

15 A. I'll be honest. It was mine, but people could
16 like your page.

17 Q. But is that your page?

18 A. It was my page.

19 Q. It was your page? Did you make a post that talked
20 about you being 16 years old --

21 MS. SHEALY: Your Honor, may we approach?

22 THE COURT: Let me send the jury back out.

23 (In open court, jury not present.)

24 (Discussion held at sidebar.)

25 (In open court, jury present.)

JUJUAIN HEMINGWAY - CROSS BY MR. McCOY

1 BY MR. McCOY:

2 Q. Jujuain, if you would give me one moment -- I'm
3 going to withdraw that line of questioning, okay?

4 I'm going to wrap up here, okay? I'm going
5 to ask you a couple more questions. I know it's been a
6 long day for you, but, again, you are up here today,
7 under oath, under risk of perjury and under risk of being
8 prosecuted by the solicitor, that you're telling the
9 truth; is that correct?

10 A. Yes.

11 Q. And you're denying the fact that you had ever been
12 to Charleston, correct?

13 A. Yes.

14 Q. Denying the fact you had ever been to Johns
15 Island, correct?

16 A. Yes.

17 Q. Denying the fact that you've ever sold drugs to
18 anybody that Fat knows or Fat's associates; is that
19 correct?

20 A. Yes.

21 Q. And you're denying the fact that you did not bring
22 this gun down to Charleston; is that correct?

23 A. Yes.

24 MR. McCOY: Judge, I don't have any other
25 questions.

JUJUAIN HEMINGWAY - REDIRECT BY MS. SHEALY

1 THE COURT: All right. Do you have redirect?

2 MS. SHEALY: I do, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. SHEALY:

5 Q. Jujuain, would you please tell the jury, how did
6 it make you feel when Mr. Apostolou chuckled about the
7 subject matter?

8 MR. APOSTOLOU: Objection, Judge. Relevance.

9 MS. SHEALY: I think it is relevant.

10 THE COURT: No, move on to something else.

11 BY MS. SHEALY:

12 Q. I need to tell you something. If you've been
13 involved with drugs with Denzel Heyward or Dashaun
14 Simmons, you need to tell the jury this now, please.

15 A. I wasn't involved.

16 Q. You were not?

17 A. No.

18 Q. How many brothers did Kadeem have?

19 A. About eight.

20 Q. Eight brothers?

21 A. Uh-huh.

22 Q. And are any of the other brothers near your age?

23 A. Yeah, uh-huh.

24 Q. Okay. Now, did you and your brother -- and if you
25 did, tell us -- did you and your brother -- as far as you

JUJUAIN HEMINGWAY - REDIRECT BY MS. SHEALY

1 knew, were y'all going to pick up drugs from who they say
2 is -- Denzel Heyward likes to purchase drugs? Were y'all
3 going to sell him drugs, as far as you knew?

4 A. No.

5 Q. Were you going to get some money from him, as far
6 as you knew?

7 A. I don't know.

8 Q. You don't know?

9 A. No.

10 Q. Now, one of the questions they asked you, you
11 answered about your brother, He wouldn't have let me
12 known if he did.

13 A. Yeah.

14 Q. In other words, were there things that Kadeem was
15 involved with that he kept from you?

16 A. He didn't let me know everything he was doing.

17 Q. He didn't let you know everything he was doing?

18 A. Uh-huh.

19 Q. And when you testified that when you went down
20 Cynthia Drive, y'all had to turn around, and then you
21 pulled over.

22 A. Yeah.

23 Q. You thought you were lost?

24 A. Yeah. I thought we was lost.

25 Q. And as far as you knew --

JUJUAIN HEMINGWAY - REDIRECT BY MS. SHEALY

1 A. My brother thought we was lost.

2 Q. Okay. And as far as you knew, he was getting
3 directions from someone.

4 A. Yeah.

5 Q. Is that correct?

6 A. Uh-huh.

7 Q. When Denzel Heyward walked over to the passenger
8 side of the car, at first you said it was casual talk; is
9 that right?

10 A. Yeah.

11 Q. So did you know Fat before that night?

12 A. No.

13 Q. From the conversation that Fat and your brother
14 had at the window, or that passenger door, did it look
15 like maybe they did know each other?

16 A. Yeah.

17 Q. And then things changed?

18 A. Yeah.

19 Q. Now, your cousin, was it Mr. Chestnut? No,
20 Thurston Hardiman.

21 A. Yes.

22 Q. He's your cousin?

23 A. Yeah.

24 Q. And he's Kadeem's cousin?

25 A. No.

—JUJUAIN HEMINGWAY - REDIRECT BY MS. SHEALY—

1 Q. He's not Kadeem's cousin, he's just your cousin?

2 A. Uh-huh.

3 Q. The recording that we heard today, it sure sounded
4 like he knew Fat, right?

5 A. Yeah.

6 Q. From what we heard today?

7 A. Uh-huh.

8 Q. And the voice on the phone said, His name's Fat,
9 when they were asked a question; is that correct?

10 A. Yeah.

11 Q. Does that sound like that might have been a
12 conversation you had with him?

13 A. Say that again?

14 Q. Do you think that was you on the phone that had
15 that conversation with him?

16 A. I don't know. That was two years ago.

17 Q. Okay. Do you remember every phone call you had on
18 the night that your brother was shot and killed?

19 A. No.

20 Q. Do you remember every phone call you had the day
21 after your brother had been shot and killed?

22 A. No.

23 Q. And would you agree that in that conversation,
24 Thurston's the one who knew everything about Fat; is that
25 correct?

JUJUAIN HEMINGWAY - REDIRECT BY MS. SHEALY

1 A. From my understanding. I ain't know nothing about
2 it.

3 Q. Let me ask you something. If Heyward and Simmons
4 were looking for big money or drugs and all they got was
5 a suitcase, that wouldn't be shit, would it not?

6 MR. McCOY: Objection. Speculation.

7 MR. APOSTOLOU: And leading the witness.

8 THE COURT: That is completely -- I'll let
9 you restate your question. I'm trying to understand
10 where you were going with that. It sounded to me like an
11 improper question.

12 MS. SHEALY: Well, let me ask it differently,
13 then.

14 THE COURT: All right.

15 BY MS. SHEALY:

16 Q. Jujuaain, tell the jury what got taken from you
17 that night.

18 A. A suitcase and some food.

19 Q. And that food came out of the back seat?

20 A. Yeah.

21 Q. And do you know, based on what they said to you,
22 what Fat and what Reef were looking for? Were they
23 looking for clothes?

24 A. They weren't looking for clothes.

25 Q. Well, what did they ask you for?

JUJUAIN HEMINGWAY - REDIRECT BY MS. SHEALY

1 A. They asked, Where's it at? Somebody said
2 something about some money one time.

3 Q. They're asking for money?

4 A. Uh-huh.

5 Q. Did they also ask for marijuana, or do you
6 remember?

7 A. I can't remember.

8 Q. Well, as far as you know, did they get marijuana?

9 A. If they got marijuana, they would have left us
10 alone.

11 Q. As, far as you know, did they get money?

12 A. No. I empty out my pockets, so whatever I had in
13 my pockets they probably got that.

14 Q. They probably got that?

15 A. Yeah.

16 Q. And during that phone conversation with -- I keep
17 messing up the name. Is that Thurston Hardiman?

18 A. Uh-huh.

19 Q. During that conversation, he indicated that Fat
20 was dealing drugs at South Carolina State?

21 A. I don't recall saying --

22 Q. Okay. But Fat had gone to South Carolina State;
23 is that correct?

24 A. I think that's what he said.

25 Q. Okay. And during that conversation, there was

JUJUAIN HEMINGWAY - REDIRECT BY MS. SHEALY

1 mention of your being kicked in the face; is that
2 correct?

3 A. Uh-huh.

4 Q. And when Thurston asked, How are you doing? you
5 said, They shot my bro; is that correct?

6 A. Uh-huh.

7 Q. Now, Mr. McCoy asked you when you were on the
8 pavement and your hands were down and you were face down,
9 the back of your hands would have been face up; is that
10 correct?

11 A. Yeah.

12 Q. And when you were in that posture, the first shot
13 that Reef made, which was near you, your hands were down
14 like this; is that correct?

15 A. Uh-huh.

16 Q. There is no question that you and your brother
17 were smoking marijuana that night; is that correct?

18 A. Yes.

19 Q. And as y'all were driving to Charleston, y'all
20 don't know what all Kadeem knew --

21 MR. APOSTOLOU: Judge, leading the witness.
22 Objection.

23 BY MS. SHEALY:

24 Q. What did you know about what Kadeem knew as y'all
25 drove to Charleston?

JUJUAIN HEMINGWAY - REDIRECT BY MS. SHEALY

1 A. Nothing. I knew he was on the phone. People kept
2 calling.

3 Q. Now, you used a phrase that I wasn't familiar
4 with, "the setting up". What do you mean by "the setting
5 up"?

6 A. It's like a family gathering.

7 Q. And is that a family gathering after someone has
8 died?

9 A. Yeah.

10 Q. And you indicated that at that family gathering
11 that was the first time you had heard the name Fat?

12 A. Yeah.

13 Q. Did you know who Fat was?

14 A. No.

15 Q. And you've indicated to us there were friends and
16 family members at the setting up?

17 A. Yes.

18 Q. And was that kind of the talk, that Fat did it?

19 A. Yeah.

20 Q. And before that night, you never heard of Fat?

21 A. No.

22 Q. And had you ever heard of Reef?

23 A. No.

24 Q. Did you and your brother bring an AK47 to Cynthia
25 Drive?

JUJUAIN HEMINGWAY - REDIRECT BY MS. SHEALY

1 A. No.

2 Q. Who had the AK47?

3 A. The dude in the white shirt.

4 Q. Did he have it from the beginning to the end?

5 A. Yes.

6 Q. And the statement that you gave, and the date is
7 important, on May 17th, can you tell the jury what you
8 indicated about how many times Denzel had kicked you
9 initially?

10 A. And two times.

11 Q. Okay. And did you put that in your statement?

12 A. Yeah.

13 Q. And then, if you would, tell us what you said on
14 May 17th about how things went with Fat, beginning on
15 page two. You can just go ahead and start with that,
16 please.

17 MR. APOSTOLOU: I would object to him reading
18 his statement here. This is question and answer.

19 MS. SHEALY: They asked him about what he
20 said initially, Your Honor.

21 THE COURT: Go ahead.

22 BY MS. SHEALY:

23 Q. Yes, we'll start there. We're going to go on to
24 the next page, and put your microphone over there.

25 A. Kicked him two times. Knocked my teeth out. Then

—JUJUAIN HEMINGWAY - REDIRECT BY MS. SHEALY—

1 the dude shot by my head and I stayed still. Dude in the
2 red made me get up off the ground and open the trunk.
3 Then they start removing stuff from the bins to the green
4 car. Every time he would walk past me, he would kick me
5 in the face.

6 After he kicked me, him and the dude in the white
7 was on my brother. They was moving a lot and that's when
8 I heard boom boom. Then I heard my brother say, Bro I'm
9 hit. That's when I got up and started running the
10 opposite way.

11 Q. Okay. The opposite way. So that day, you
12 indicated the repeated stomping of your head by Denzel
13 Heyward; is that correct?

14 A. Yes.

15 Q. Do you know whether or not you told them about the
16 girl picking up the keys on that occasion? Do you need
17 to see your statement?

18 A. Yeah. I told them she picked up the keys.

19 Q. And tell the jury what you said about how she
20 picked them up.

21 A. At the time I was lying on the ground, girl picked
22 up the keys. I threw it in the road. She picked it up
23 with a rag or something and threw it in the car.

24 Q. Tell this jury if you ever knew Quansantrina
25 Rivers before that night.

JUJUAIN HEMINGWAY - REDIRECT BY MS. SHEALY

1 A. No.

2 Q. Did you even know her name after that night?

3 A. No.

4 Q. Did you know that she turned herself in and gave a
5 similar statement?

6 A. No.

7 Q. What did you tell the police on May 17th about the
8 type of weapon that was used.

9 A. Black male with a banana clip, skinny brown --
10 black male with a banana clip.

11 Q. Then do you describe the person that had that?

12 A. Skinny, brown-skinned, five-ten, white shirt with
13 shorts.

14 Q. Okay. So when you gave your statement that night,
15 you remembered more clearly about what type of clothing
16 he had on?

17 A. Yeah.

18 Q. And what do you say about the description of the
19 guy who stomped you?

20 A. Six-one, about 200 pounds, had a red shirt on, got
21 facial hair, black male.

22 Q. What was the last thing you said?

23 A. Black male.

24 Q. Black male. And the girl that you saw, tell the
25 jury, May 17th, how did you describe how she looked?

JUJUAIN HEMINGWAY - RECROSS BY MR. APOSTOLOU

1 A. Black female, 150 pounds; hairstyle, ponytail; had
2 on jeans, blue/gray shirt.

3 Q. And gave those details that night.

4 How did Dashaun Simmons and Denzel react to the
5 fact that y'all did not have a bunch of money or a bunch
6 of drugs?

7 A. Agitated and mad.

8 Q. Say that again?

9 A. Agitated and mad.

10 Q. Was Dashaun Simmons agitated and mad when he took
11 an AK47 and shot your brother twice?

12 A. Yes.

13 Q. Was Denzel Heyward agitated and mad when he
14 stomped you in the head?

15 A. Yes.

16 MS. SHEALY: Beg the Court's indulgence just
17 one moment.

18 Mr. Hemingway, I have no further questions.
19 Please answer any follow-up questions they may have.

20 RECROSS-EXAMINATION

21 BY MR. APOSTOLOU:

22 Q. Jujuain, Ms. Shealy asked you a lot of questions
23 about what you said to the police when you were being
24 interviewed while the police were there, and you told her
25 what you told the police, right?

JUJUAIN HEMINGWAY - RE CROSS BY MR. APOSTOLOU

1 But when you were on the phone, when the police
2 weren't around, and they asked you if you got -- they
3 didn't get nothing?

4 Your answer was, Oh, no. We didn't have shit.

5 And then, upon further inquiry, you said, I'm
6 about to talk to you. Hold up.

7 And then you said, Yeah, bro. Nigger owed us some
8 bread and shit, "us" being the pronoun for you and
9 Kadeem.

10 So that's the information that you told your
11 cousin when the police weren't around. They didn't get
12 shit; the money was owed to y'all, right?

13 A. You heard the tape.

14 MR. APOSTOLOU: Nothing further.

15 THE COURT: Mr. McCoy?

16 MR. McCOY: No, sir.

17 THE COURT: All right. You can step down.

18 Okay, folks. That's where we will break for
19 today. Let me ask you to be in the jury room by 9:15
20 tomorrow. I know we worked a little bit later tonight,
21 and we'll try our best to get it finished up in the
22 morning. I think if you get here by 9:15, we should
23 hopefully be well on our way to doing that.

24 Again, when you go home this evening, don't
25 discuss the case with everybody, including other members

1 All right. They're bringing the jury in.

2 (In open court, jury present.)

3 THE COURT: All right, folks. Be seated.

4 We're going to begin today now with the State calling the
5 first witness.

6 MS. SHEALY: The State calls Dr. Nicholas
7 Batalis.

8 NICHOLAS BATALIS,
9 having been first duly sworn,
10 was examined and testified as follows:

11 THE WITNESS: My name is Nicholas Batalis,
12 B-a-t-a-l-i-s.

13 MR. McCOY: Your Honor, could we approach
14 just before we get started here?

15 (Discussion held at sidebar.)

16 THE COURT: Let me send y'all out for a
17 minute.

18 (In open court, jury not present.)

19 THE COURT: Where are the photos that you
20 object to?

21 MS. SAVAS: Your Honor, if I may approach,
22 these are the three photos from the autopsy. We have put
23 them in black and white. They are of the entry and the
24 exit wound from the chest. This is not one of the five
25 we have gone through because we believe that one was

1 pretty gruesome. It's indicative of the angle that the
2 bullet has gone in and exited, which further corroborates
3 the fact that it's -- and they show the angle entering
4 and exiting the body to show that the victim was lying on
5 his back and that it was possible that someone was laying
6 on top of him, shooting at him from a near range, and in
7 explaining that, it shows the difference in coloration.

8 Now, in black and white, you can see the
9 pink, the blood, and you have those other things, but
10 they're still indicative him of being on the road rash
11 here, the exit wounds, and the way the abrasions were,
12 and we think they are more probative than prejudicial.

13 MR. McCOY: I'm okay with these photographs
14 here in terms of being more probative than prejudicial
15 for sure. My concern is with the fact that in 101, it's
16 showing us a lot of, I guess, the chest cavity being
17 pulled apart and sewn back together, which I think this
18 gunshot wound serves the purpose of what this one does as
19 well. It's the same gunshot wound, it's just a zoomed in
20 version of it, and my concern is that would be pretty
21 prejudicial for the jury to see; basically, a chest
22 cavity that's been taken apart and sewn back together.

23 THE COURT: That looks like a back to me.

24 MR. McCOY: That's his front, chest, Your
25 Honor, and his side turned back.

1 MS. SAVAS: Yes, they did open up his chest
2 cavity.

3 THE COURT: Is there any reason why you need
4 this one, number 101 and this one, or can you make your
5 point with just this one over here, number 102?

6 THE WITNESS: The one in your left hand shows
7 the details of the gunshot wound in more detail; the one
8 on your right hand provides more orientation, as it's a
9 little bit further away, to show the location of the
10 wound.

11 THE COURT: All right. Well, you know, it's
12 got stitches, but I think the jury -- it's a lot better
13 than having the chest cavity wide open. It's got
14 stitches, but it sounds to me like the probative value is
15 necessary, and I don't think there is much of the
16 prejudicial value, so I will allow it.

17 MR. McCOY: Thank you, Judge.

18 MS. SAVAS: Thank you, Your Honor.

19 THE COURT: All right. Bring the jury back
20 in.

21 MS. SAVAS: Your Honor, may the State go
22 ahead and admit these into evidence over objection?

23 THE COURT: Why don't you do it while the
24 jury is here. Get them in -- well, take a look at them.

25 MR. McCOY: I'm okay with them coming in over

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1 my objection.

2 THE COURT: All right. Then they're admitted
3 over objection.

4 MS. SAVAS: State's Exhibits 101, 102, and
5 103.

6 (State's Exhibit Nos. 101, 102, and 103 were
7 marked for identification and admitted into evidence.)

8 (In open court, jury present.)

9 MS. SHEALY: Jurors all present, Your Honor.

10 THE COURT: All right. You may proceed.

11 MS. SAVAS: Thank you, Your Honor. May it
12 please the Court:

13 DIRECT EXAMINATION

14 BY MS. SAVAS:

15 Q. Dr. Batalis, what is your occupation?

16 A. I'm a forensic pathologist.

17 Q. Where are you employed?

18 A. I'm employed at the Medical University of South
19 Carolina here in Charleston.

20 Q. And how long have you been employed as a forensic
21 pathologist?

22 A. I've been on faculty at MUSC for about
23 six-and-a-half years now.

24 Q. And is it the same position you held back in May
25 of 2012 when you worked in this case?

NICHOLAS BATALIS - DIRECT BY MS. SAVAS

1 A. It is.

2 Q. And what are your typical job duties as a forensic
3 pathologist?

4 A. So a forensic pathologist, our main -- the main
5 thing we end up doing is completing autopsies to
6 determine the cause and manner of death.

7 Q. And did you perform an autopsy of the now deceased
8 victim, Kadeem Chambers?

9 A. I did. I performed an autopsy on May 17, 2012.

10 Q. And do you recall the declared date of death?

11 A. Yes. The date of death in this case was the same
12 day, May 12, 2012, at 1:43 in the morning.

13 Q. And just to clarify, did you say May 12th or --

14 A. I'm sorry. May 17, 2012.

15 Q. And when he was brought to you, what was his
16 initial injuries?

17 A. So when we evaluated the body, there were two
18 major injuries that we identified, a gunshot wound to the
19 chest and a gunshot wound to the left eye.

20 Q. And was it submitted the date of those injuries?

21 A. The date of the injuries would be approximately
22 the same day. It was approximately midnight between the
23 16th and 17th, so a couple hours before death occurred.

24 Q. And was the cause of death determined?

25 A. Yes, it was.

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1 THE COURT: Before he offers his opinion, I
2 think you need to ask him to be qualified as an expert.

3 MS. SAVAS: Yes, Your Honor.

4 BY MS. SAVAS:

5 Q. Dr. Batalis, have you ever testified in court
6 before?

7 A. Yes, I have.

8 Q. Have you ever been qualified as an expert before?

9 A. Yes. I've been qualified as a forensic
10 pathologist in Texas, North Carolina, and South Carolina.

11 MS. SAVAS: Your Honor, at this time the
12 State would like to admit Dr. Nicholas Batalis as an
13 expert forensic pathologist.

14 MR. MCCOY: No objection, Judge.

15 MR. APOSTOLOU: No objection, Your Honor.

16 THE COURT: All right. Folks, this witness
17 has now been qualified as an expert in forensic
18 pathology. As I told you with the previous witnesses
19 that have been qualified as experts, you decide how much
20 weight to give his testimony based on all the evidence
21 that you hear throughout the trial.

22 The fact that he has been qualified as an
23 expert does not mean that you have to blindly accept his
24 opinion. You can decide how much weight to give his
25 testimony based on all of the evidence you hear

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1 throughout the trial.

2 All right? Go ahead.

3 MS. SAVAS: Thank you, Your Honor.

4 BY MS. SAVAS:

5 Q. Dr. Batalis, was a cause of death determined?

6 A. Yes, it was.

7 Q. What was that?

8 A. The cause of death was a gunshot to the chest.

9 Q. Was there any other contributing factors?

10 A. Yes. The gunshot wound of the left leg or left
11 thigh was considered a contributing factor.

12 Q. Was there a manner of death declared?

13 A. Yes, it was.

14 Q. What was that?

15 A. The manner of death was homicide.

16 Q. Providing some background on the victim, what was
17 the victim's approximate age?

18 A. It was reported to us that he was 20 years of age.

19 Q. And what was his weight and height at the time?

20 A. When we examined him, his length was 68 inches, so
21 that would be approximately five foot eight inches, and
22 he weighed 144 pounds.

23 Q. And prior to you receiving him, was there any
24 evidence of medical treatment done?

25 A. Yes. After his -- after he was injured, he was

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1 brought to MUSC and had surgery performed, so when we
2 received the body, he had already had surgery and
3 resuscitative efforts that were evident when we received
4 the body.

5 Q. And in going forward, would it help to have you
6 have a diagram before to explain which parts of the body
7 were -- received medical treatment?

8 A. I believe that would be helpful.

9 Q. Dr. Batalis, I'll ask that you come up here,
10 briefly, and if you could stand over here on this side,
11 it would be best.

12 Okay. And what exactly was the medical treatment
13 done before you had received the victim?

14 A. So just kind of working from the beginning, he had
15 a puncture mark in kind of the left elbow area. That
16 would be consistent with attempted placing an IV line.

17 He had a collar, a cervical spine collar, that was
18 around his neck, and an endotracheal tube, so the
19 breathing tube was in his mouth. He also had an
20 intravascular catheter IV extending into the right side
21 of his groin and also one in his right leg.

22 In addition to that, he also had EKG pads
23 scattered across his body and had a blood pressure cuff
24 wrapping around the legs.

25 Then a catheter, urinary catheter that extend into

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1 the urethra, so those were all signs of resuscitation.
2 In addition to that, he had evidence of prior surgery.
3 He had a large scar -- sorry, not scar. He had a large
4 suture incision that extended all the way across the
5 chest, up to the base of the neck.

6 After we opened the body, following through that,
7 there were sutures that were identified within the chest
8 and securing some of the blood vessels together and then
9 the right collarbone had also been sutured.

10 Q. Dr. Batalis, you have the marker. Could you just
11 go ahead and mark where the surgery was done on him on
12 that front side there. And what exactly what the surgery
13 that they had done in an attempt to resuscitate?

14 A. Sure. So the surgery was a thoracotomy, so that
15 basically means to open the chest, so that incision
16 approximately extended across the chest, up to the base
17 of the neck, and then it came over this way.

18 So this allowed the surgeons to open the skin, saw
19 through the ribs, open the chest to evaluate the heart,
20 the lungs, any bleeding that was going on within the
21 chest cavity.

22 Q. And, Dr. Batalis, if I show you what has been
23 marked as State's Exhibit 101, is this an accurate
24 picture of the location of where that surgery had taken
25 place?

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1 A. Yes, it is. That's a photograph that I took at
2 the autopsy.

3 Q. And what are those stitchings markings around?

4 A. So the sutures that were seen going through there,
5 those are all the surgical incisions, so that is before
6 we had manipulated the body with autopsy whatsoever. So,
7 again, what we're seeing on the screen up there is what I
8 had drawn previously on the diagram, so, again, that's
9 where the surgeons had opened the chest, and then after
10 death was pronounced, the surgeons sutured him back together
11 prior to autopsy.

12 Q. And what is that in the middle of that marking
13 right there?

14 A. So just above the tag, or case number on it, it
15 reads FA12-304, which is the unique case number. Just
16 above that was the gunshot entrance wound to the chest.

17 Q. And, Dr. Batalis, what is the point of a
18 thoracotomy?

19 A. The purpose of a thoracotomy would be to evaluate
20 the injuries and possibly treat the injuries. We knew
21 there was a gunshot wound that had traveled through the
22 chest, and that's the only way to get things open to
23 attempt to alleviate any problems that he did have.

24 Q. And was there a reason there was a larger
25 incision? Could they have perhaps done a smaller

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1 incision at the time?

2 A. It depends on each case. This one, because the
3 bullet tracked across the chest -- as you can see, the
4 entrance is near the mid-chest. The bullet then traveled
5 through the right side of the chest, so it covered a lot
6 of ground. So because the bullet traveled all the way
7 across the chest is the reason I believe they needed a
8 large incision.

9 Q. And you mentioned something about the collarbone
10 being secured. What did they do with the collarbone?

11 A. The collarbone was disrupted as the bullet
12 traveled through the body and was fractured and some
13 major blood vessels that run right underneath the
14 collarbone that had been disrupted by the bullet, so the
15 surgeons went ahead and resected, took out, the
16 collarbone.

17 Q. And in addressing this first bullet wound to the
18 chest, could you please mark on the diagram where that
19 bullet entered the body?

20 A. So I indicated the entrance location.

21 Q. And showing you what's been entered as State's
22 Exhibits 1 and 2, is this a close-up photo of that same
23 wound?

24 A. Yes, it is.

25 Q. And is there any significance about the wound

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1 itself?

2 A. Sure. The wound up there -- a couple things:
3 One, it tells us it's a gunshot entrance wound. The fact
4 that wound is oval and not circular, that's very
5 characteristic of an entrance wound. As the bullet
6 strikes the body, it spirals like a football, so it tends
7 to bore out in a spiral or oval.

8 The other thing that we can see in the wound is --
9 actually, to the very left side of it is where the hole
10 is. The entire right side of the wound there is an
11 abrasion, and that's important because it tells us which
12 direction the bullet was traveling, because on the right
13 side of the wound, there is an abrasion. That tells us
14 that the bullet struck that area first.

15 So if the bullet comes straight in, you would not
16 have much of an abrasion because it's coming straight in.
17 But on this one, the abrasion was on my left side of the
18 wound, which tells us that the bullet struck that side of
19 the skin first before it entered into the body.

20 Q. Does that show that it came -- the bullet entered
21 at a certain angle, perhaps?

22 A. Yes, it does.

23 Q. And I'm showing you what's been marked as State's
24 Exhibit 103. What is that a photo of?

25 A. So this is a picture of the decedent's right

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1 shoulder, the back and top aspect of his right shoulder,
2 and the main finding that's located just above the tag is
3 the gunshot exit wound.

4 Q. Could you go ahead and mark on the back side of
5 the diagram where that exit wound was.

6 A. So I've indicated the exit wound marked with an
7 X on the top back part of the right shoulder.

8 Q. Is there anything significant about that wound?

9 A. The exit wounds tend to be more irregular and kind
10 of jagged, so it doesn't have the circular appearance
11 that the entrance wound had, so it would be very
12 classical for an exit wound. Additionally, on the right
13 side of that you can see there are some markings in the
14 skin, so there are some abrasions, so there are several
15 scrape marks just to the right of the exit wound.

16 Q. And in your opinion could those scrapes be caused
17 by being on pavement, perhaps?

18 A. That's one way they could occur.

19 Q. And would the impact of being shot from a few
20 inches or few feet away caused such scraping or abrasion
21 significant in the manner of the exit wound?

22 A. Yes, that's possible.

23 Q. And you also mentioned there was a second gunshot
24 wound to the left thigh. Could you please indicate on
25 the front side of the diagram where that was entered.

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1 A. So this one was on the left thigh, just a little
2 bit inside of the midline.

3 Q. And was there an exit wound found with that?

4 A. No. This gunshot wound did not exit the body. It
5 traveled into the thigh and up into the pelvis, where the
6 bullet kind of broke into pieces, and we recovered those
7 pieces.

8 Q. And when you recovered those pieces, what did you
9 do with those pieces of evidence?

10 A. We recovered the bullet fragments, cleaned them
11 up, took a photograph of them in the autopsy suite. We
12 sealed them in an appropriate labelled envelope with the
13 case number, and then they were transferred to the
14 officers after the autopsy.

15 Q. Did that entrance wound indicate anything about
16 the way that the bullet had traveled into the body?

17 A. Yes. This wound, much like we had mentioned the
18 wound on the upper chest, had the abrasion on the left
19 side, which told us that the bullet was traveling toward
20 the right.

21 The entrance wound in the thigh had been an
22 abrasion and was more on the bottom aspect of the wound,
23 which, again, told us the bullet was traveling upward
24 because it struck the bottom edge of the skin first and
25 then that again helped us find that the bullet was up in

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1 the pelvis.

2 Q. And in the photograph that's been previously
3 submitted, state's exhibit, is that what you had
4 recovered out of the thigh during your autopsy?

5 A. Yes. There's a fragment of the jacket which is on
6 the left, and the two gray metal fragments are fragment
7 of bullets, again, all of which were recovered from us in
8 this general area.

9 Q. Given the direction that the bullet had entered
10 the victim on the thigh, is it possible the victim was
11 lying down on the ground at the time and someone was
12 standing over them with the shots fired?

13 A. It's possible. The main trajectory of the one on
14 the leg is predominantly upward, so if the person is flat
15 on the ground, the gun would have had to have been very
16 low to the body because it traveled a little bit front to
17 back, but if they were standing directly over them, you'd
18 expect the bullet to go straight through. The bullet's
19 predominantly traveling upwards. If they were flat on
20 the ground, it would be a lower angle.

21 Q. And would it be possible -- if he was laying on
22 the ground, could his leg have been possibly up in a
23 defensive position at the time?

24 A. Sure.

25 MR. McCOY: Object to leading, Your Honor.

NICHOLAS BATALIS - DIRECT BY MS. SAVAS

1 MR. APOSTOLOU: Objection to leading, Your
2 Honor.

3 THE COURT: Overruled.

4 THE WITNESS: The trajectory of the bullet is
5 all depending on the position of the body at the time, so
6 instead of the legs being flat like this, if the leg was
7 cocked at an angle, then if the gun was held -- if he
8 held a gun straight down like that and the leg is bent at
9 an angle, that could result in that same upward pathway,
10 so it's all in relation to how the body was positioned in
11 to the barrel of the gun when it was fired.

12 BY MS. SAVAS:

13 Q. The gunshot wound entrance, for either wound,
14 could they have been standing near each other at that
15 time?

16 A. So as far as the evidence we see in the wound, a
17 couple different things we can use to tell how far the
18 gun was from the body when it was fired. So when you
19 fire a gun, different things come out. Obviously, a
20 bullet comes out. There's also called smoke or soot that
21 comes out. Depending on the gun or the bullet, that
22 could travel up to about a foot from the body.

23 Also what will come out is flakes of burning and
24 unburned gunpowder that can strike the skin and cause
25 little abrasions or flakes. That would extend out three

NICHOLAS BATALIS - DIRECT BY MS. SAVAS

1 or four feet from the barrel of the gun to the body. We
2 did not have evidence of the soot, or stippling, around
3 either of these wounds, so that would tell us one of two
4 things: One, it was a distant wound, which to us is
5 greater than four feet away, or there was something
6 between -- so if the person had layers of clothing, that
7 would absorb that soot, or that gunpowder, so then it
8 would strike there on the body.

9 Q. When you mentioned layers of clothing, would that
10 be -- jeans material, would that prevent soot from
11 stippling on the wounds?

12 A. Yes.

13 Q. And if there was not such stippling and the victim
14 at the time was wearing jeans, would they have still been
15 in a near proximity to each other, within that three to
16 four feet you mentioned?

17 A. It could. We just have no way of telling that
18 just by examining the body.

19 Q. Did the gunshot wounds create any internal
20 bleeding?

21 A. Yes. In particular, the gunshot wound to the
22 chest caused quite a bit of internal bleeding in the
23 chest which the surgeons evacuated. Again, it did not
24 travel through the heart or the lungs.

25 It caused some bruising to the heart and lungs but

NICHOLAS BATALIS - DIRECT BY MS. SAVAS

1 caused a significant amount of bleeding by traveling
2 through the big blood vessels that take blood from your
3 heart to your arm to the upper part of your body and also
4 draining the blood back so perforating those vessels
5 resulted in some injury.

6 Q. And is there way to clearly prove which wound the
7 victim incurred first?

8 A. No, there's not.

9 Q. Going back to what you determined to be the cause
10 of death, which shot was more damaging?

11 A. The gunshot wound to the chest was most damaging
12 because of the significant bleeding it caused, which is
13 why we determined that to be the main cause of death.

14 Q. And there has been testimony that the victim had
15 been shot and then gotten up and attempted to drive a
16 vehicle. Is that possible after having these two wounds?

17 A. Definitely. While these wounds definitely
18 wouldn't feel good after getting shot, there is
19 nothing -- no injuries that would cause an immediate
20 cause of death.

21 So, again, nothing went through the heart, which
22 would cause you to bleed out within a matter of seconds.
23 Certain shots to the brain would cause immediate
24 incapacitation. Again, you'd have significant bleeding
25 from disrupting those blood vessels, but it's certainly

NICHOLAS BATALLIS - DIRECT BY MS. SAVAS

1 possible to move around and survive for a period of time.

2 Q. Okay. Were there any other lacerations, and, if
3 so, could you please mark them on the diagram as well
4 that you noticed while performing the autopsy.

5 A. There were two lacerations, or tears, of the skin
6 or blunt force trauma, so something without a sharp edge
7 striking the skin. I marked one here on the right side
8 of the forehead here with an L, and there was another one
9 on the back of the scalp.

10 Q. Did those appear to be fresh wounds?

11 A. Yes. The lacerations would have occurred
12 proximate to the time of death, or to the time of injury.

13 Q. Were there any significant markings or tattoos on
14 the victim's body?

15 A. The decedent did have a tattoo on the left forearm
16 that read Only God Knows; in addition, some scattered
17 scars and changes in pigmentation, kind of non-specific
18 scattered across the body.

19 Q. As part of your autopsy, did you also conduct a
20 toxicology report?

21 A. We did. We collected blood during the course of
22 the autopsy and submitted it to the national laboratory
23 for toxicology testing. This testing looks for between
24 300 and 400 different drugs, including a lot of illicit
25 drugs for abuse and also numerous medications.

NICHOLAS BATALIS - DIRECT BY MS. SAVAS

1 Q. And what were the drugs that you had mentioned?

2 A. And so the drugs that his testing was positive for
3 included caffeine, which is in various beverages. It was
4 positive for lidocaine, which is often used as a
5 medication; and also had Delta-9-THC, which is marijuana,
6 and metabolites of marijuana.

7 Q. And what were the amounts of the THC, or
8 metabolites of marijuana? Was it a large amount or a
9 smaller amount?

10 A. He had a relatively low amount of THC and
11 metabolite in his blood that was tested.

12 Q. What is the metabolite version? What does that
13 mean?

14 A. Metabolite is a breakdown product of the drugs, so
15 if we just have metabolite breakdown product, we don't
16 know whether the person was under the influence of the
17 drug at all because the metabolites, the breakdown
18 products, can stay in the body much longer.

19 Q. And the THC, is that more present, or recent use
20 of marijuana shown?

21 A. Yeah. The fact that the parent drug, the
22 marijuana, was found in the blood would show that there
23 was use of the drug within minutes to hours before death,
24 so he would have been under the influence of the apparent
25 compound which was actively still in his blood.

NICHOLAS BATALIS - DIRECT BY MS. SAVAS

1 Q. And given the height and weight of the victim at
2 that time and the size of his body, would that have been
3 something to incapacitate him or was it a smaller amount?

4 A. No. This would not be a level or concentration
5 that you would expect to cause incapacitation.

6 Q. And isn't it true -- is lidocaine also used for
7 something else besides medical treatment? Is it found in
8 any other forms?

9 A. The main use I'm aware of from a medical use is in
10 therapy.

11 Q. Do they mix it with any other narcotics, possibly?

12 A. Occasionally we will find lidocaine or other drugs
13 that are mixed in, particularly with cocaine, and ways
14 that -- with pure cocaine, one way to make more money is
15 to cut it up with other drugs that are white and powdery
16 to kind of mimic that, so sometimes in toxicology reports
17 where people have taken cocaine or other drugs we do see
18 other medications that also appear, and lidocaine is one
19 that sometimes does appear on occasion.

20 Q. Would you actually need the presence of that
21 narcotic, such as cocaine, in his system in order for it
22 to be used in the mixture?

23 A. Yes. Again, the parent drug of cocaine gets
24 broken down very quickly, so not necessarily that, but at
25 least the metabolites, the cocaine breakdown metabolite,

NICHOLAS BATALIS - DIRECT BY MS. SAVAS

1 exists in the system for quite a period of time.

2 So the fact that we didn't have any cocaine
3 breakdown and metabolite in the body and we did have
4 lidocaine would suggest it was for therapy versus any
5 other use.

6 Q. Can you just briefly draw the path of the bullet
7 as it entered and exited?

8 A. Sure. Starting with the gunshot wound to the
9 chest, again, here is our entrance wound. The entrance
10 is going to be on the other side, and essentially this
11 bullet traveled this direction. So the prominent
12 direction was traveling from the left side of the body to
13 the right side. It also traveled from front to back,
14 and, when it entered the front of the chest, exited the
15 back of the shoulder and just a little bit upward.

16 The gunshot wound of the left thigh again started
17 just on the midline, essentially was, for the most part,
18 straight upward, and it went backward just a little bit.
19 Again, it entered the skin. We found it about halfway
20 through the body, so, again, it's not something that was
21 straight back, mostly come straight up, a little bit
22 back.

23 Q. All right. Dr. Batalis, you can take a seat back.
24 Thank you.

25 MS. SAVAS: Beg the Court's indulgence.

NICHOLAS BATALIS - DIRECT BY MS. SAVAS

1 Your Honor, at this time the State would like
2 to admit into evidence State's Exhibit No. 161.

3 THE COURT: Is that a poster?

4 MS. SAVAS: Yes, Your Honor. That's a
5 diagram.

6 THE COURT: That's a demonstrative aid. We
7 don't usually let those come in as exhibits. He used it
8 in testimony. So the pictures come in; the demonstrative
9 aids don't.

10 MS. SAVAS: At this time State would also
11 like to admit into evidence State's Exhibit No. 163,
12 stipulation six.

13 THE COURT: Go ahead.

14 MS. SAVAS: Attorneys for the State and the
15 defense agree that Lilly Gallman, DNA analyst with the
16 South Carolina Law Enforcement Division, analyzed the
17 following items collected in the investigation of the
18 State v. Heyward and Simmons: The buccal swabs of Denzel
19 Heyward, Dashaun Simmons, Quansantrina Rivers, and
20 Jujuaïn Hemingway; a blood spot from Kadeem Chambers.

21 These items were compared with DNA found on
22 the following: Swab with red substance from roadway
23 placard C that results matched the DNA of Jujuaïn
24 Hemingway; the swab of red substance from Mercedes A.
25 The results showed it was a mixture of at least two

NICHOLAS BATALIS - CROSS BY MR. McCOY

1 individuals, with the major contributor matching the DNA
2 of Kadeem Chambers and the minor contributor matching the
3 DNA of Jujuain Hemingway. A swab of red substance from
4 Mercedes C that results matched DNA of Kadeem Chambers;
5 right fingernail clipping from Kadeem Chambers and
6 results matched the DNA of Chambers; left fingernail
7 clippings from Kadeem Chambers and results matched the
8 DNA of Kadeem Chambers.

9 Nothing further from the State. Please
10 answer any questions the defense may have for you.
11 Thank you.

12 (State's Exhibit No. 163 was marked for
13 identification and admitted into evidence.)

14 CROSS-EXAMINATION

15 BY MR. McCOY:

16 Q. Dr. Batalis, how are you today?

17 A. Good. How are you?

18 Q. Good. Specifically looking at the head area, you
19 noticed and mentioned on direction examination that there
20 was, I guess, some injuries you found that you marked on
21 the demonstrative piece out there that were kind of on
22 the top of the head; is that correct?

23 A. We had two lacerations, or tears of the skin. One
24 was on the right side of the forehead, so it would be
25 about here. The other one was on more the top of the

NICHOLAS BATALIS - CROSS BY MR. McCOY

1 head but towards the back, so back here.

2 Q. Did your report notice -- or can you find any sort
3 of trauma around the mouth?

4 A. I did not.

5 Q. Any sort of trauma around the cheek?

6 A. I did not.

7 Q. How about around the nose area?

8 A. I did not.

9 Q. And how about around the eye area?

10 A. I did not.

11 Q. And when we're taking a look at the trajectory of
12 this bullet, you've testified on direct examination that
13 it's possible -- you're not sure because you weren't
14 there, but it's possible for somebody to be lying on the
15 ground with their legs up; is that correct?

16 A. It's correct.

17 Q. And this is definitely not a situation where
18 somebody was shot straight on; is that correct?

19 A. Could you clarify what you mean by straight on?

20 Q. You testified earlier that if a bullet -- if you
21 were to be fired straight on by somebody, it wouldn't be
22 the kind of side entrance and that initial, I guess,
23 wound, that happened before the bullet goes in, it would
24 just be a circular pathway, and the same thing around the
25 back; is that correct?

NICHOLAS BATALIS - CROSS BY MR. McCOY

1 A. If by straight on you mean if I'm facing you, if I
2 fired in this direction, no, we would not expect to see
3 that. If you turned yourself just a little bit to the
4 right, if -- if you would consider this straight on, then
5 that -- something like this --

6 Q. That's a possibility, just the way of the
7 trajectory of the bullet was?

8 A. Exactly.

9 Q. And you testified it was consistent, could be
10 consistent, with a leg being in the air; is that correct?

11 A. Yes.

12 Q. How about, Dr. Batalis, if the shooter was on the
13 ground? So the shooter is lying on the ground and
14 somebody is standing above somebody, would that be
15 consistent also with a leg wound?

16 A. So you're saying with the -- a shooter on the
17 ground and the decedent standing up?

18 Q. Yes, sir.

19 A. That would be one way, again, that it could occur
20 with the gunshot wound occurring in the thigh traveling
21 upward, yes.

22 Q. And, Dr. Batalis, you weren't out there, you don't
23 know the circumstances of this particular crime, do you?

24 A. Correct.

25 Q. And there's no way for you to tell by looking at

NICHOLAS BATALIS - CROSS BY MR. APOSTOLOU

1 this, this is a self-defense case?

2 A. No, there's not.

3 MR. McCOY: Thank you.

4 CROSS-EXAMINATION

5 BY MR. APOSTOLOU:

6 Q. Dr. Batalis, earlier when you were questioned by
7 the State, you referenced a toxicology report?

8 A. Yes.

9 Q. Do you have that toxicology report?

10 A. I do.

11 Q. You testified that Mr. Chambers tested positive
12 for marijuana?

13 A. Yes.

14 Q. What is the classification of marijuana? And I
15 will draw your attention to item number three on the
16 toxicology report on the front page.

17 A. Sure, yes. I'm reading from our toxicology
18 report, again from a nationally accredited lab, and the
19 first sentence is: Marijuana is a DDA Schedule One
20 hallucinogen.

21 Q. Can you read the rest of that, the first -- just
22 top sentence there?

23 A. Sure. Pharmacologically, it has depressant and
24 reality distorting effects. Collectively, the chemical
25 compounds that compose marijuana are known as

NICHOLAS BATALIS - REDIRECT BY MS. SAVAS

1 cannabinoids.

2 Q. What is a hallucinogenic?

3 A. A hallucinogenic drug is a class of drugs that can
4 alter perception, would be the best way to put it.

5 MR. APOSTOLOU: Thank you very much. No
6 further questions.

7 THE COURT: Redirect?

8 MS. SAVAS: Yes, Your Honor. Thank you.

9 REDIRECT EXAMINATION

10 BY MS. SAVAS:

11 Q. Dr. Batalis, when mentioning the amount of that
12 marijuana and the effects of the hallucinogenic, would
13 that have been a significant amount, given the height and
14 weight of this victim, to have an impact on them of
15 incoherence?

16 A. So the height and the weight aren't that important
17 because it's a concentration that's in his blood, so
18 whether he was 400 pounds or 140 pounds, the
19 concentration is going to be same.

20 Again, it's a relatively low concentration, so
21 it's not one you would expect to have marked effects.
22 That being said, everybody under the influence of drugs
23 can act in different ways, but in the big scheme of
24 things this is a relatively low amount, yes.

25 Q. Is there anything about the angle, pathways of the

NICHOLAS BATALIS - REDIRECT BY MS. SAVAS

1 bullet in the left leg and the direction of the chest
2 wound to make it inconsistent or consistent with two
3 rapidly fired shots?

4 A. No. I would say that there's numerous ways the
5 shots could have occurred, so I couldn't comment as far
6 as the temporal relationship.

7 Q. Is there a way to determine which shot was fired
8 first?

9 A. No, there's not.

10 Q. And are the entrance of the shots possible then
11 with them laying on the ground significant with the exit
12 wound with the road rash?

13 A. Yes, that's possible.

14 MS. SAVAS: No further questions.

15 THE COURT: Recross?

16 MR. McCOY: No, sir.

17 MR. APOSTOLOU: No, Your Honor.

18 THE COURT: You may step down.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: You are free to go. Thank you.

21 All right. Next witness?

22 MS. SHEALY: Paul McManigal.

23 PAUL McMANIGAL,

24 having been first duly sworn,

25 was examined and testified as follows:

PAUL McMANIGAL - DIRECT BY MS. SHEALY

1 DIRECT EXAMINATION

2 THE WITNESS: Paul McManigal,

3 M-c-M-a-n-i-g-a-l.

4 BY MS. SHEALY:

5 Q. Sergeant McManigal, would you tell the jury,
6 please, how long have you worked at the Charleston County
7 sheriff's office?

8 A. I've been with the sheriff's office for 26 years.
9 Seventeen of those years I've been with the crime scene
10 unit known as forensic services. The last eight years
11 I've been the supervisor of that unit.

12 Q. And are you actually going to be switching
13 positions soon, I guess today?

14 A. After this is over, yes. I'm going to be moving
15 to the United States Secret Service electronic crimes
16 task force, in which case I'll be working in a different
17 capacity.

18 Q. And were you asked to -- I'd give you a better
19 word, but to dump two phones in this case? Showing you
20 State's Exhibit 129, that being a black T-Mobile
21 HTC found in the passenger side of the Mercedes?

22 A. This is one of the phones I was asked to dump.

23 Q. Okay. And also showing you State's Exhibit 138, a
24 black slider TracFone found on Kadeem Chambers at MUSC?

25 A. I was requested to dump this phone. I was unable

PAUL McMANIGAL - DIRECT BY MS. SHEALY

1 to.

2 Q. Okay. First, let's talk about what is meant by
3 the term dumping the phone.

4 A. Dump -- there's several terms for it. We call it
5 dumps or extractions. Basically, we connect the phone to
6 forensic hardware, and that hardware extracts all the
7 data from the phone and then presents it to us in a
8 readable fashion. Because it extracts all the data at
9 once, we call it a dump.

10 Q. Regarding the phone you were just telling us about
11 that was found on Mr. Chambers at MUSC, what type of
12 phone was that?

13 A. It was an LG slider known as a TracFone. We
14 aren't able to do extractions on TracFones because of
15 limitations with the software and the hardware.

16 Q. So you weren't able to pull anything off of that?

17 A. No, ma'am.

18 Q. Regarding the T-Mobile black HTC phone found on
19 the passenger side of the Mercedes, were you able to dump
20 the contents of that phone?

21 A. Yes, ma'am. I was able to extract all of the
22 information from that phone.

23 Q. Could you tell the jury, what telephone number was
24 assigned to that phone?

25 A. If you could bear with me just a minute. The

PAUL McMANIGAL - DIRECT BY MS. SHEALY

1 telephone number associated with that phone is area code
2 843-694-29[REDACTED].

3 MS. SHEALY: Beg the Court's indulgence just
4 a moment. Your Honor, at this time -- let me show this
5 to the sergeant.

6 BY MS. SHEALY:

7 Q. Very quickly, could you tell the jury, is this a
8 copy of the materials from May 16th that were dumped
9 relating to the phone in the Mercedes?

10 A. Yes, ma'am.

11 MS. SHEALY: Your Honor, I think without
12 objection I'll offer this into evidence at this time.

13 THE COURT: It's admitted.

14 (State's Exhibit No. 169 was marked for
15 identification and admitted into evidence.)

16 BY MS. SHEALY:

17 Q. And you have a copy of those pages?

18 A. Yes, ma'am.

19 Q. If you would, please, indicate to the jury whether
20 there was any type of telephone call exchange or text
21 message exchange between the number of the phone that you
22 dumped, 654-29[REDACTED], and the number 469-74[REDACTED] on May 17th,
23 2012.

24 A. Yes. There was a sequence of text messages
25 starting at around 8:10 p.m.

PAUL McMANIGAL - DIRECT BY MS. SHEALY

1 Q. And could you indicate to the jury who placed the
2 text message and what it read?

3 A. The first text message was sent to this phone from
4 the number 469-74[REDACTED] at 8:10 p.m. 20 seconds. The message
5 reads, [REDACTED] 55 Cynthia Avenue, spelled C-y-n-t-h-i-a, Johns
6 Island, 29455.

7 Q. And, again, you said that was sent to the phone
8 that was in the Mercedes?

9 A. Correct. A short time after that, another message
10 from the same phone number at 8:13 p.m. and 28 seconds
11 reads, That's a seven, with the number seven spelled out,
12 [REDACTED] 75.

13 Q. Okay. What was the next exchange?

14 A. After that, the message sent from this phone to
15 469-74[REDACTED] occurred at 8:14 p.m. and 30 seconds. It says,
16 Send me exactly address bra.

17 Q. And that was sent by that phone to that 469
18 number?

19 A. That's correct.

20 Q. Okay. Then what happened?

21 A. After that, a message received by this phone from
22 467-97[REDACTED] took place at 8:16 p.m. and 49 seconds. It has
23 [REDACTED] 75 Cynthia Ave. Again, Cynthia is spelled
24 C-y-n-t-h-i-a, Johns Island, 29455.

25 Q. Now, in looking at the previous one, the text

—PAUL McMANIGAL - DIRECT BY MS. SHEALY—

1 message that had an address, was there a difference in
2 those two addresses?

3 A. Yes. The very first text message was ■55 Cynthia
4 Avenue. The next text message said that's a 7, ■75
5 Cynthia Avenue, and then the last text message repeated
6 the ■75 Cynthia Avenue.

7 Q. Okay. What was the next text message between
8 those two numbers?

9 A. After that, this phone sent a message to the
10 number 469-74■. It took place at 8:15 p.m. and 51
11 seconds, and the message was, Charleston SC, question
12 mark.

13 Q. Okay. And was there another one?

14 A. There was an outgoing message from this phone to
15 469-74■. This one occurred at 8:24 p.m. and 54 seconds,
16 and it says, ■77 Cynthia Avenue, spelled C-y-n-t-h-i-a,
17 Johns Island, South Carolina, 29455.

18 Q. Could you describe to the jury how different many
19 address changes there were at that point?

20 A. That would be the third address, the first one
21 being ■55 Cynthia, the second being ■75 Cynthia, and
22 the last one being ■77 Cynthia.

23 Q. Okay. And what was the next text message?

24 A. Bear with me just one moment.

25 The next message was outgoing from this phone to

—PAUL McMANIGAL - DIRECT BY MS. SHEALY—

1 469-74 [REDACTED], and it has an address listed as [REDACTED] Hobson
2 Drive, Johns Island, 29455.

3 Q. So that was yet another address change?

4 A. It was.

5 Q. And that last one was at what time?

6 A. That was at 8:53 p.m. and 6 seconds.

7 Q. Now, were there any phone calls between the two
8 parties that surfaced in the dumping? Focus your
9 attention to 8:07 p.m. Is there a phone call that's
10 reflected?

11 A. 5/16?

12 Q. Yes.

13 A. I apologize. There is a lot of information to go
14 through.

15 Q. While you're looking, could we approach just for a
16 second?

17 (Discussion held at sidebar.)

18 BY MS. SHEALY:

19 Q. Were you able to find a phone call?

20 A. Yes, ma'am. There were two phone calls, the first
21 one was from this phone to the number 469-74 [REDACTED]. That
22 occurred at 8:07 p.m. and 1 second and lasted for
23 approximately 6 minutes, and a short time later, a phone
24 call was received by this phone from 469-74 [REDACTED], and that
25 phone call lasted approximately 19.

—PAUL McMANIGAL - DIRECT BY MS. SHEALY—

1 Q. What time was that second phone call?

2 A. That second phone call, that was received -- the
3 phone call that was received was at 8:14 p.m. and 56
4 seconds.

5 Q. And then after that, the text messages there were
6 some text messages in between the phone calls and then
7 some text messages after the two phone calls.

8 A. That is correct. The first phone call dialed from
9 this phone was at 8:07, and then the first text message
10 was received at 8:10.

11 Q. From the 469 number?

12 A. That's correct.

13 MS. SHEALY: Very good. Answer any questions
14 that the defense attorneys might have. Thank you.

15 MR. APOSTOLOU: Good luck with the Secret
16 Service. We appreciate what you do.

17 THE COURT: Mr. McCoy, anything?

18 MR. McCOY: No, sir. I have nothing.

19 THE COURT: All right. You may step down.
20 Thank you.

21 MS. SHEALY: Your Honor, we would call Willis
22 Walker.

23 THE COURT: All right.

24 You're free to go. Thank you.

25 WILLIS WALKER,

WILLIS WALKER - DIRECT BY MS. SHEALY

1 having been first duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 THE WITNESS: Willis Walker, W-a-l-k-e-r.

5 BY MS. SHEALY:

6 Q. Would you please tell the jury what you do for a
7 living.

8 A. Yes. I'm an intelligence analyst for the
9 Charleston County sheriff's office.

10 Q. And what does that mean?

11 A. It means a lot of things. Essentially, I have a
12 lot of different jobs, but I'm assigned to the SeaHawk.
13 Essentially, what it is, is it's a group of individuals,
14 and we all work together. We're somewhat like
15 detectives. We take information. We look at crime
16 trends, social media; we scour the Internet for stuff,
17 social networking sites, and we share information, stuff
18 like that. We analyze phone stuff.

19 We look at a bunch of different things. Our role
20 is similar to a detective, where we go out on the street
21 and do enforcement action and stuff like that. We kind
22 of assist them in their day-to-day duties.

23 Q. And when you said you do stuff with cellphones,
24 what do you mean by that?

25 A. Typically a detective will get a search warrant,

—WILLIS WALKER - DIRECT BY MS. SHEALY—

1 or a cellphone, and when they get the return from the
2 warrant from the cellphone company, they'll provide me
3 with that. They'll also look at it, but I'll look at it,
4 break it down and look at the -- what we call the cell
5 tower information, and by looking at that, I'm able to
6 map it on a map and show where the cellphone was at a
7 certain time.

8 Q. Okay. We'll go over that in just a second, but
9 showing you what's been previously marked as State's
10 Exhibit 150, in this case did you get the cell tower
11 information for Lorenzo Mehcziz?

12 A. What was the number for that one?

13 Q. 843-297-06 [REDACTED]?

14 A. I did.

15 Q. And did you also get the cell tower information
16 from Denzel Heyward? The telephone number is 469-74 [REDACTED].

17 A. Yes, ma'am.

18 Q. And that's State's Exhibit 162. Tell us a little
19 bit about cell tower information and how a cellphone
20 works.

21 A. Sure. Cellphone is essentially like a fancy
22 radio, or walkie-talkie. When a phone call is placed, a
23 radio signal goes from the phone to a cell tower, which
24 is essentially a big antenna, and from there it's sent to
25 whatever phone that the phone is calling goes to. It

WILLIS WALKER - DIRECT BY MS. SHEALY

1 will go to the tower closest to the phone receiving the
2 call, and it bounces back and forth.

3 Q. And when you receive cell tower information, the
4 records themselves, what kind of information do the
5 records include?

6 A. Typically, we'll have -- among other things,
7 they'll have the date and time of the call, whether the
8 call was incoming or outgoing. So whether you are
9 receiving a call or making a call, the phone number that
10 it's coming from or going to, the duration of the time of
11 the call, the first cell tower that the phone hits and
12 sectors to the cell tower -- could I draw that out for
13 you?

14 MS. SHEALY: Yes. Your Honor, with your
15 permission, may we approach the dry erase board?

16 BY MS. SHEALY:

17 Q. We have to be careful about not hitting that
18 screen.

19 A. Yes, ma'am.

20 Q. If you could, explain that to us.

21 A. Typically a cell tower is like a big antennae, but
22 not always. The Francis Marion -- or what is the hotel
23 at King and Calhoun? Francis Marion? There is -- at the
24 top of that big hotel is an antenna there, but you can't
25 really see it, cell cite, cell tower -- different

—WILLIS WALKER - DIRECT BY MS. SHEALY—

1 companies refer to differently, but it's essentially a
2 big antennae.

3 So when a phone call hits that antennae, usually
4 it's going to have a sector so that antenna is going to
5 cover -- this is a 360 degree thing. There's going to be
6 a plate or a sector on the tower, and it's going to be
7 split up into three different areas, so -- let's see on
8 the back drawing, but these are going to be 120 degrees
9 in each sector.

10 So, typically, what that would mean is that a
11 cellphone hitting sector one, two, or three, which is
12 just going to show you what side of that tower that phone
13 is on.

14 Q. Where do you get that information as to whether it
15 would be one, two, or three?

16 A. That's going to be in the cellphone records.

17 Q. Is that what you were telling us about longitude
18 and latitude?

19 A. Yes, ma'am. So it will have a longitude and
20 latitude, which is where the actual tower itself is, and
21 then on that it's going to have which plate, so which
22 side, essentially, of the tower the cellphone call was
23 from.

24 Q. Okay. Did you prepare some data for me as it
25 related to those two telephone numbers?

—WILLIS WALKER - DIRECT BY MS. SHEALY—

1 A. Yes, ma'am, I did.

2 Q. And showing you what has been marked as State's
3 Exhibit 107 -- and it will appear behind you, could you
4 tell the jury what that reflects.

5 A. Yes, ma'am. So this is based off the cellphone
6 records for this number here. This is showing the tower
7 and then the sector, so the circle that I referred to
8 earlier would be here. So it's hitting off of this --
9 here is the tower itself, so it's hitting off this side
10 of the tower.

11 This is mapped on a three-mile radius from the
12 tower, so it's not like GPS where you can tell me exactly
13 where the phone is, when you get a longitude latitude of
14 the phones, so you have an actual physical address of
15 where the phone is, so it's different than that.

16 It's just going to be able tell you that somewhere
17 in this vicinity, so it could really be anywhere in here.
18 What this is showing -- this is from the records. It's
19 showing these were all calls that were either made or
20 received on May 16th, 2012.

21 This is in military time, and I typically keep it
22 in whatever format the cellphone company sends it back
23 in, so this would -- let's do some math. That would be
24 9:40 p.m. and 21 seconds, and it keeps going down. It
25 goes all the way until the next morning of May 17th at

—WILLIS WALKER - DIRECT BY MS. SHEALY—

1 2:05 in the morning. This is seconds in this column
2 here.

3 Q. So what that depiction reflects is that between
4 the hours of -- what did you say, 9 what, 9:40?

5 A. Yes, ma'am.

6 Q. Until 2:00 in the morning --

7 A. The next morning, yes, ma'am.

8 Q. Lorenzo Mechiz's phone was in that location?

9 A. Yes, ma'am.

10 Q. Okay. Now, orient us to that location, because
11 you can't see the names of the streets, so could you give
12 the jury some idea --

13 A. Yes, ma'am. This is Main Road here.

14 Q. Leading where? What area of town is that?

15 A. This would be headed towards James Island, on
16 James Island. This would be headed towards the city.
17 Here's Maybank, which is going to head out to Riverland
18 Drive -- I'm sorry, Maybank is going to head toward the
19 city. Here's Riverland Drive. Main turns into Bohicket
20 going this way.

21 Q. I think you may have told us incorrectly at first.

22 A. I did.

23 Q. So reorient us. Main Road is actually where in
24 Charleston?

25 A. Right here.

WILLIS WALKER - DIRECT BY MS. SHEALY

1 Q. Is that on Johns Island?

2 A. Yes, ma'am. Sorry.

3 Q. Okay. And pursuant to my request, did you make a
4 notation as to where [REDACTED] Cynthia Drive is?

5 A. Yes, ma'am. That is right here.

6 Q. So no change in direction from that phone number?

7 A. No, ma'am. So --

8 Q. Let me show you what --

9 A. All these calls were made hitting this tower, off
10 this side of the tower.

11 Q. Okay. Showing you State's Exhibit 108, is that a
12 closer up shot?

13 A. Yes, ma'am.

14 Q. And could you show the jury then where Cynthia
15 Avenue is.

16 A. Certainly. Cynthia Avenue is right here. This
17 box refers to the last slide that we had up there. This
18 shaded box is what we're looking at on this picture, so
19 we're just zooming in a little bit so you can see the
20 streets. Here's the cell tower.

21 Q. And showing you State's Exhibit 109 --

22 A. Yes, ma'am.

23 Q. This is the telephone number for Denzel Heyward;
24 is that correct?

25 A. Yes, ma'am.

—WILLIS WALKER - DIRECT BY MS. SHEALY—

1 Q. And if you could orient us on this slide --

2 A. Sure. So this is a different phone company, so
3 it's going to be -- so you see the tower is a little bit
4 different. Each phone company has their own number for
5 each tower, and this one has got the sector in the tower,
6 so they give you one number which is going to have the
7 sector in it.

8 These calls were placed on May 16, 2012 at 11 --
9 and they have a regular time, not military, so I just
10 keep it in format; 11:18 p.m., 11:23 p.m., and 11:26
11 p.m., and it's hitting off this tower. So on that tower,
12 you could have -- you could have plates for Verizon,
13 T-Mobile, Nextel, Sprint. They could all be on that
14 tower, so it's essentially the same tower, but each
15 company has different plates on the tower.

16 And it's -- here's Cynthia Drive, and all these
17 three calls were made hitting off that tower on this side
18 of the tower.

19 Q. And the last time -- that last phone call from
20 that area was at 11:26 p.m.?

21 A. Yes, ma'am, that's correct.

22 Q. On May 16th?

23 A. Correct.

24 Q. And showing you the closer up view on the next
25 slide, which is 110?

WILLIS WALKER - DIRECT BY MS. SHEALY

1 A. Once again, this is the last slide. This shaded
2 area is what we're looking at now. It's just kind of a
3 zoomed up picture of Cynthia Drive, the tower and the
4 phone calls and May 16th.

5 Q. Okay. And then showing you slide 112, what does
6 this slide reflect?

7 A. This is a phone call either made or received with
8 this number on May 16th at 11:38 p.m. It's hitting off a
9 different -- I believe it's the same tower, yes. It's
10 the same tower, but it's a different sector, so now it's
11 hitting off this side of the tower.

12 Q. And is that suggestive of movement of that phone?

13 A. It is, but prior to that, the cellphone was on
14 this side of the tower. Now it's hitting off this side.

15 Q. And what time was there a phone call placed or
16 received in that slide?

17 A. 11:38 p.m.

18 Q. You can take a seat.

19 Do you know what time the last phone call made
20 from 469-74 [REDACTED] was that night?

21 A. I'm going to refer to the records that you gave me
22 here. Made from -- 74 [REDACTED] you said is the last four of the
23 numbers.

24 Q. 469-74 [REDACTED], the last phone call made from that
25 number.

—WILLIS WALKER - DIRECT BY MS. SHEALY—

1 A. That number on the 16th.

2 Q. At what time?

3 A. Looks like 11:38 p.m.

4 Q. So the slide that we have behind you which shows
5 movement into a different sector, heading in a different
6 direction, the last phone call made on that phone that
7 evening was at 11:38?

8 A. Yes, ma'am.

9 Q. Now, in addition to mapping those items for me,
10 did you also take a look at the exchange of phone calls
11 between 742-87[REDACTED] which 469-74[REDACTED]?

12 A. I did.

13 Q. And showing you State's Exhibit 105, could you
14 describe the interaction between those two numbers
15 742-87[REDACTED] and 469-74[REDACTED]?

16 A. Okay. This is showing the date and time that the
17 call was made. This column here designates the number
18 that placed the call. This column reflects the time, the
19 duration or elapsed time of the call, so essentially how
20 long they talked. This is how long the phone rings
21 before this phone picks up.

22 Q. Okay. So it's difficult for us to see the times.
23 If you could just go through the times in chronological
24 order and indicate -- I'm not interested in the elapsed
25 time, and they're in evidence. They can look at that

WILLIS WALKER - DIRECT BY MS. SHEALY

1 later, but if you'll could just tell us who called whom,
2 which number called the other, and at what time on May
3 16th.

4 A. Sure. So we start at 1:20 p.m. on the 16th, and
5 I'm going to refer to it, if it's okay, with the last
6 four. So 74[REDACTED] is contacting 87[REDACTED]. Come down here to
7 1:41, 74[REDACTED] is contacting 87[REDACTED]; 3:40, same thing. Then at
8 5:02 p.m., we have 87[REDACTED] contacting 74[REDACTED].

9 Once again, at 6:26, 74[REDACTED] is contacting 87[REDACTED];
10 again, at 6:27 and 7:33 p.m., 87[REDACTED] is contacting 74[REDACTED];
11 again at 8:19, 8:39, 74[REDACTED] contacted 87[REDACTED], and
12 interchanges keep going; 87[REDACTED] contacts 74[REDACTED] at 8:46 p.m.
13 It continues all the way down until 11:26 p.m. on the
14 16th.

15 Q. Okay. So that document reflects the exchange of
16 phone calls between those two numbers, and could you tell
17 the jury, please, when was the last phone call placed by
18 742-87[REDACTED]?

19 A. Do you have the phone records for that one I could
20 refer to? I want to make sure.

21 Q. Let me ask you this way: When you were preparing
22 the chart, were you looking to see when last the phone
23 call placed by that number was?

24 A. Yes, ma'am.

25 Q. And do you recall what that time was?

WILLIS WALKER - DIRECT BY MS. SHEALY

1 A. I don't, off the top of my head. I don't want to
2 tell you incorrectly.

3 Q. Okay. Well, while we're looking for those
4 records, let me ask you, when looking at the phone
5 records of Lorenzo Mehciz, the 06 [REDACTED] number --

6 A. Yes, ma'am.

7 Q. Could you tell the jury when the last phone call
8 from 469-74 [REDACTED] took place between Denzel Heyward and
9 Lorenzo Mehciz.

10 A. So between -- and I typically just look at the
11 numbers. I don't worry too much about the names, so
12 between the 06 [REDACTED] number --

13 Q. And the 469-74 [REDACTED]. You want me to direct you a
14 little bit?

15 A. Please.

16 Q. So if you were looking at Lorenzo Mehciz, which is
17 the 06 [REDACTED] --

18 A. Yes, ma'am.

19 Q. -- look around the time of 11:23, 5/16 of 2012,
20 around 11:23. Would it be helpful -- you have the 469
21 number; is that correct?

22 A. Let's see. 74 [REDACTED], I do have that one.

23 Q. If you will look at the last time, directing your
24 attention to 11 --

25 A. Okay. I see that. I see the call you're

WILLIS WALKER - DIRECT BY MS. SHEALY

1 referring to.

2 Q. What time was that?

3 A. That was 11:23 p.m.

4 Q. And looking at 469-74[REDACTED] -- you said that was
5 11:23?

6 A. Yes, ma'am.

7 Q. So that was the last phone called placed -- using
8 the names Denzel Heyward and Lorenzo Mehciz?

9 A. Yes, ma'am.

10 Q. Now, in looking at Lorenzo Mehciz's phone calls,
11 could you tell the jury whether or not an exchange of
12 phone calls begins after that time with 619-58[REDACTED]? And
13 looking at your 06[REDACTED] number.

14 A. Got you. It does.

15 Q. And what time does that begin?

16 A. May 16th at 11:39 p.m.

17 Q. So we go from 11:23 with Denzel calling Lorenzo,
18 and then the number that starts calling is the 649 number
19 to Lorenzo; is that correct?

20 A. It is.

21 Q. And did you also chart the number of phone calls
22 between Denzel Heyward and Lorenzo Mehciz, that being
23 469-74[REDACTED] and 297-06[REDACTED]?

24 A. Yes, ma'am.

25 Q. Okay. And showing you State's Exhibit 106 -- and

—WILLIS WALKER - CROSS BY MR. McCOY—

1 we don't need to go over each of those, but if you would
2 just tell us the beginning time that day that those two
3 numbers begin speaking to each other, or calling each
4 other.

5 A. Yes, ma'am. This here at 1:23 p.m. is when they
6 start, and the last one being on May 16th at 11:23 p.m.

7 MS. SHEALY: Beg the Court's indulgence just
8 a moment.

9 I have no further questions. Please answer
10 any that the defense may have.

11 MR. McCOY: Thank you, Judge. May it please
12 the Court:

13 CROSS-EXAMINATION

14 BY MR. McCOY:

15 Q. Mr. Walker, good morning.

16 A. Good morning.

17 Q. My name is Peter McCoy. I represent one of the
18 defendants in this particular case.

19 We've heard a lot of fascinating information about
20 cellphone towers and cellphone information, and I think
21 it's very valuable and pertinent when it comes to serious
22 crimes, would you agree?

23 A. I would.

24 Q. And we've looked at and we've examined a cellphone
25 for a Kadeem Chambers which was -- I'm sorry, a Denzel

WILLIS WALKER - CROSS BY MR. MCCOY

1 Heyward, which was a 469-74 [REDACTED] is that correct?

2 A. Yeah.

3 Q. And when you did your mapping of the cellphone
4 towers, you did it for a particular time. Could you have
5 done it for every time that was basically listed in the
6 cellphone records?

7 A. I could have. It kind of depends on what the
8 detective subpoenas, you know, to get the search warrant
9 for. There's a time frame typically they would ask for.

10 Q. That information is possible?

11 A. It is; yes, sir.

12 Q. It all depends on what, I guess, either, I guess,
13 the prosecutor or the officer asks you for?

14 A. Correct.

15 Q. Okay. And, obviously, there are a lot of phone
16 calls, a lot of information to dissect, and I'm looking
17 at the cellphone records for 469-74 [REDACTED], and let me know if
18 you don't have that in front of you.

19 A. I do.

20 Q. And the way I'm looking at this -- and tell me if
21 I'm wrong. There is a connection time -- a connection
22 date, the originating and terminating number, a lapse
23 time, number dialled, and what does IMEI and IMSI mean?

24 A. Typically, each phone company, when you submit a
25 search warrant, they'll sent you back a legend or a key

—WILLIS WALKER - CROSS BY MR. McCOY—

1 to kind of how to read that, you know, and they're all
2 different. I can't tell you off the top of my head
3 exactly what that is. I would have to refer to the
4 legend. I wouldn't want to tell you incorrectly.

5 Q. I understand. And when I'm looking over here at
6 the far right column, it says cell location, and it gives
7 a number first, and then it gives what looks to me to be
8 GPS coordinates; is that correct?

9 A. That's correct.

10 Q. And if you were to put these particular GPS
11 numbers that are listed in each individual column, does
12 that give you -- is that what that means, it gives you
13 the cell location?

14 A. No. It gives you the tower.

15 Q. Okay.

16 A. The tower information. Those numbers to the left
17 of that are going to be the tower number and information
18 that is going to have the sector. Like I said, each
19 phone company is a little different, but I believe
20 AT&T would have a sector within that number there.

21 Q. Okay. It's not going to give you the exact
22 location at that moment when that is call made. It won't
23 say that we're in this courthouse right now?

24 A. No. All it tells you is when the call is placed
25 for that phone to hit off this tower, off this side of

WILLIS WALKER - CROSS BY MR. McCOY

1 the tower.

2 Q. Okay.

3 A. So it's not like GPS where it can pinpoint the
4 location, exact location.

5 Q. Is that kind of technology available?

6 A. It is. Cellphone companies don't retain that
7 information. If you need realtime, you know, with the
8 right search warrant or the right circumstances, you can
9 get that, but after the fact you're not going to be able
10 to get that.

11 Q. Okay. And you testified and you've mapped out, I
12 guess, some locations for Denzel Heyward's cellphone,
13 which is the 469 number, and you only did that for a
14 limited, I guess, time frame, citing the list of calls we
15 had here?

16 A. Yes, sir. From what was requested, yes.

17 Q. Did you do the same thing for a 619-58[REDACTED], a number
18 we heard on direct examination as well?

19 A. I did not map that. I referred to the records and
20 looked at some of the call frequency, or how many times
21 calls were made, but I did not map that.

22 Q. Okay. And did you have an opportunity to match a
23 926-86[REDACTED], which is Dashaun Simmons's cellphone?

24 A. I'm unfamiliar with that.

25 Q. And, obviously, the two that we have here now are

—WILLIS WALKER - CROSS BY MR. APOSTOLOU—

1 only the Denzel Heyward 469 number and the Lorenzo Mehcz
2 number, which is the 297 number; is that correct?

3 A. Those are the only ones mapped, yes..

4 Q. Did your investigation lead you in the direction
5 of Dorchester County at all, near Ridgeville?

6 A. Not to my knowledge.

7 MR. McCOY: Okay. Thank you.

8 THE COURT: Mr. Apostolou?

9 MR. APOSTOLOU: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. APOSTOLOU:

12 Q. Briefly: As I understand it, is it accurate to
13 call this sort of a triangulation because we're kind of
14 taking these angles and sort of --

15 A. Define triangulation.

16 Q. You put a map together, basically, that little --
17 I'll withdraw the question. Okay.

18 As I understand your testimony, you prepared this
19 report at the behest of the solicitor's office, or law
20 enforcement, anyway?

21 A. Yes.

22 Q. And they sort of gave you the numbers and the
23 parameters with which to search?

24 A. That being the date and times, yes, sir.

25 Q. Right, the date and times?

WILLIS WALKER - CROSS BY MR. APOSTOLOU

1 A. Yes.

2 Q. And if they had given you other dates and times,
3 you would have been willing to do that search as well,
4 right?

5 A. Sure. If they had provided me with the records to
6 do that, yes.

7 Q. They only asked you to do this one, right.

8 A. One number?

9 Q. The report you just testified to.

10 A. Yes.

11 Q. That's the only one --

12 A. I mean, yes. They asked me for the 469-74 [REDACTED] and
13 the 297-06 [REDACTED].

14 Q. I guess I'm calling one report, It's the
15 interaction between those two phones.

16 A. I did the mapping for those two, and then I looked
17 at the number of times there was communications between
18 others.

19 Q. Right. I understand. Okay. If they had asked
20 you to do more than that, you would have done it?

21 A. Sure.

22 Q. Okay.

23 MR. APOSTOLOU: Nothing further. Thank you,
24 Judge.

25 THE COURT: Redirect?

WILLIS WALKER - CROSS BY MR. APOSTOLOU

1 MS. SHEALY: Just a couple follow-up
2 questions.

3 REDIRECT EXAMINATION

4 BY MS. SHEALY:

5 Q. Mr. Walker, are you familiar with how long
6 cellphone companies maintain the cellphone information or
7 do they vary?

8 A. It varies by carrier, so by Verizon, AT&T, they
9 each have a different retention period.

10 Q. As to how long they'll keep it?

11 A. Yes, ma'am.

12 Q. And when you were telling us about the last phone
13 call placed by the 469 number --

14 A. Yes, ma'am.

15 Q. -- there would have been no cell tower information
16 after that because it had been no longer used; is that
17 correct?

18 A. Correct.

19 Q. You only can map when phone calls are being
20 placed?

21 A. Correct, or received, to the number, and it's
22 picked up, yes.

23 Q. So if a phone had been thrown out and not used
24 again that evening, you wouldn't be able to map where it
25 was?

WILLIS WALKER - CROSS BY MR. APOSTOLOU

1 A. That's correct.

2 MS. SHEALY: I have no further questions.

3 MR. McCOY: Nothing further, Judge.

4 MR. APOSTOLOU: Nothing further.

5 THE COURT: You can step down. Thank you.

6 All right. You're free to go.

7 Folks, let's take a mid-morning break here
8 and go to the rest room. Don't begin deliberations or
9 discussions about the case, and we'll see you in about
10 ten minutes.

11 (In open court, jury not present.)

12 MS. SHEALY: While we're looking for
13 something, we do have one issue.

14 MR. McCOY: Judge, could we approach?

15 THE COURT: Yes.

16 (Recess taken.)

17 THE COURT: All right. You got your witness?

18 MS. SHEALY: Just one second, Judge.

19 THE COURT: You got your witness?

20 MS. SHEALY: We do. Thank you.

21 THE COURT: Bring the jury in.

22 (In open court, jury present.)

23 THE COURT: All right, folks. We're going to
24 have the State call the next witness.

25 MS. SHEALY: Officer Sherbine.

—KEVIN SHERBINE - DIRECT BY MS. SHEALY—

1 KEVIN SHERBINE,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 THE WITNESS: Kevin Sherbine,
6 S-h-e-r-b-i-n-e.

7 BY MS. SHEALY:

8 Q. Would you please tell the jury where you're
9 employed.

10 A. I'm employed in the Sheriff Al Cannon Detention
11 Center.

12 Q. How long have you been employed there?

13 A. About four years.

14 Q. And what is your role at the detention center?

15 A. The professional visitation officer.

16 Q. And do you have other duties including records and
17 jail recordings at the jail?

18 A. I do. I'm the main point of contact between
19 inmates and their public defenders, attorneys, law
20 enforcement agencies, other non-law enforcement agencies.
21 I do about 90 percent of the subpoenas that are served on
22 the jail, as well as I assist the other regular lobby
23 officers in their day-to-day duties.

24 Q. It sounds like you've got a number of duties
25 there.

KEVIN SHERBINE - DIRECT BY MS. SHEALY

1 A. I do, yes.

2 Q. When you're talking about subpoenas, are you
3 talking about when someone is asking for recordings from
4 an individual inmate?

5 A. Yes, ma'am.

6 Q. And explain that to the jury. Are all phone calls
7 made from inmates recorded at the jail?

8 A. They are, yes, ma'am.

9 Q. Pursuant to our request, did you pull jail phone
10 recordings for Denzel Heyward?

11 A. I did, yes.

12 Q. And did you also pull jail recordings for Dashaun
13 Simmons?

14 A. I did.

15 Q. I'm going to show you three disks and ask if you
16 can identify those.

17 A. I can, yes.

18 Q. All right. Hold those for a second.

19 MS. SHEALY: At this time, I believe without
20 objection, the State would move into evidence State's
21 Exhibits 170, 171, and 172.

22 THE COURT: Admitted. You may publish.

23 (State's Exhibit Nos. 170, 171, and 172 were
24 marked for identification and admitted into evidence.)

25 BY MS. SHEALY:

—KEVIN SHERBINE - DIRECT BY MS. SHEALY—

1 Q. Let me ask you a few questions before we play
2 these proceedings.

3 Pursuant to my request, did you check and see what
4 date Denzel Heyward was arrested on these charges?

5 A. I did, yes.

6 Q. And what was that date?

7 A. May 30th, 2012.

8 Q. And regarding Dashaun Simmons what date was he
9 arrested?

10 A. May 22 of 2012.

11 Q. At this time, we would ask to play a phone call
12 from 6/01/2012 of Denzel Heyward starting at 5:15, and
13 that's not the time, that's just the minutes of -- length
14 of the phone call; is that correct?

15 A. I would imagine. I don't have anything --

16 Q. Well, when the recordings are made, they don't
17 reflect what time -- I guess there's a beginning time for
18 the phone call, but during the phone call itself, it's
19 monitoring how lengthy the phone call is; is that
20 correct?

21 A. Yes.

22 Q. Okay. And, if you would, now play for 6/1/2012,
23 beginning at 6:35.

24 THE COURT: Who is this from?

25 MS. SHEALY: This is from Denzel Heyward.

KEVIN SHERBINE - DIRECT BY MS. SHEALY

1 (Whereupon, the recording was played for the
2 jury.)

3 BY MS. SHEALY:

4 Q. And if we could turn to CD 170, being the phone
5 calls from Dashaun Simmons, if you would please pull up
6 May 22, 2012 at 6:48 and May 22nd at :45.

7 (Whereupon, the recording was played for the
8 jury.)

9 And beginning on 5/23/2012, 9:29. We're going to
10 play 5/23, beginning at 7:03.

11 THE COURT: Who is this?

12 MS. SHEALY: This is still Dashaun.

13 (Whereupon, the recording was played for the
14 jury.)

15 Okay. December 30th, 2012 at 13:37:03,
16 beginning at 12:07. This is on CD 171. It's still
17 Dashaun Simmons.

18 (Whereupon, the recording was played for the
19 jury.)

20 Beg the Court's indulgence just a moment. We
21 have no further questions of Officer Sherbine, Your
22 Honor.

23 THE COURT: Cross?

24 MR. McCOY: No, Judge.

25 MR. APOSTOLOU: No questions.

1 THE COURT: Thanks. You may step down.

2 Thank you.

3 Does the State have any other witnesses?

4 MS. SHEALY: No, Your Honor. We do not. The
5 State rests.

6 THE COURT: All right, folks. You've heard
7 the State's case now, and this is a point in the trial
8 where we need to take up some legal matters so we can get
9 it ready for the defense's case.

10 So let me send you back to the jury room.
11 Well, let me go ahead and send you back there. We'll
12 take a few minutes here. We may have you back here, get
13 a witness in or two, depending on what the next few
14 minutes decide, but although you've heard all the State's
15 case now, it's still improper for you to begin your
16 deliberations or discussions, so don't talk about the
17 case with anyone including each other or discuss witness
18 demeanor, and we'll see you back in just a few minutes.

19 (In open court, jury not present.)

20 THE COURT: All right. Any motions?

21 MR. APOSTOLOU: Yes, Judge. On behalf of
22 Denzel Heyward, the defense would ask that we have a
23 directed verdict at this time. I don't believe that the
24 evidence the State has put out there in any way amounts
25 to enough evidence in this matter.

1 I think there is some speculation out there,
2 but I don't think there is any concrete evidence that
3 Mr. Heyward was guilty of the crimes for which he's
4 charged.

5 THE COURT: Mr. McCoy?

6 MR. MCCOY: May it please the Court: At this
7 point I would renew all objections that I made throughout
8 the trial, and also add, Judge, that we would move for a
9 directed verdict of acquittal based on the fact that if
10 you take each one of the crimes we're looking at here,
11 the armed robbery, there's been no firm testimony of what
12 has been taken, if anything has been taken. In fact,
13 there has been testimony by somebody talking on a
14 telephone call that nothing was taken.

15 We're taking a look at an attempted murder
16 charge. There's been no direction, no names called as to
17 who actually made a shot, or took a shot, and that the
18 attempt was there to actually murder somebody.

19 When you look at a murder charge, Judge, I
20 don't think the element of malice has been established
21 when it comes down to establishing what a murder case
22 should be and having to go forward to a jury.

23 THE COURT: You want to respond?

24 MS. SHEALY: Your Honor, I certainly think
25 that their directed verdict motions should fail. We have

1 two eyewitnesses, one of whom identifies both of them by
2 name, admits their own role in what occurred earlier in
3 the day and later, at the scene itself and then also
4 hiding out with Denzel Heyward.

5 She identified Denzel Heyward. She
6 identified Dashaun Simmons. She indicated that Simmons
7 is the one who had the weapon and who shot Kadeem
8 Chambers. She comes in and turns herself in, a day and a
9 half after the event in Charleston. In Longs, almost
10 simultaneously, Jujuain Hemingway -- who didn't know her
11 or these guys, she didn't know Jujuain Hemingway or
12 Kadeem -- parallels her story. They got attacked by two
13 guys. One in the red shirt is Denzel Heyward. The other
14 guy who was brown skinned, slim, had the AK47, and shot
15 his brother to death and shot at him while at the scene.

16 Regarding armed robbery, while -- and I was
17 using their vernacular yesterday, Your Honor. I think
18 when you noted that my question what purportedly Jujuain
19 Hemingway says to Thurston Hardiman is they didn't get
20 s-h-i-t.

21 He didn't say they didn't take the suitcase
22 and the bag of eaten food. They took both things, hoping
23 for a stash of some sort. Both Jujuain Hemingway and
24 Quansantrina Rivers indicate that a suitcase was removed
25 from the car, and a bag of food was removed from the car.

1 It may not have been what they were looking for, but they
2 certainly removed items. They absolutely robbed them.
3 They absolutely killed him.

4 THE COURT: All right. Well, do you want to
5 respond?

6 MR. APOSTOLOU: As to the murder charge on my
7 client, Judge, I think the -- obviously, the testimony
8 has been that he was not the shooter here today. The
9 only way they can get it is under the legal theory the
10 hand of one, hand of all or accomplice liability, and I
11 don't think any evidence has been presented to that, that
12 there is a conspiracy, that this is the natural fault or
13 the consequences thereof.

14 THE COURT: Did you want to respond to
15 anything?

16 MR. McCOY: No, sir.

17 THE COURT: All right. Well, there is both
18 direct and circumstantial evidence of sufficient evidence
19 to deny all of the motions on all of the charges. There
20 is evidence of malice, which could be inferred. There is
21 accomplice liability under hand of one, hand of all that
22 would make both of them guilty of murder. There's also
23 evidence of the attempted murder, as well as armed
24 robbery.

25 This is not a case of grand larceny versus

1 larceny, and the value of the amount of the goods is
2 irrelevant. The fact that the suitcase was taken was
3 sufficient. A bag of food was sufficient. Doesn't
4 matter whether or not there was anything in the suitcase.
5 The suitcase itself would support a charge of robbery,
6 and since there is evidence that was accompanied by --
7 the robbery was accompanied by a deadly weapon, that
8 would support convictions for armed robbery, so all of
9 the motions are denied.

10 So what is the plan for the defense?

11 MR. McCOY: Judge, Mr. Simmons has one
12 witness to put up. I think there is an issue we may have
13 to address with you ahead of time before this witness
14 would come in and take the stand.

15 It deals with -- again, a person who works in
16 my office has taken the documents for that. The
17 cellphone man testified to a little bit earlier,
18 Mr. Walker, and takes it back when you're looking at the
19 GPS coordinates that are listed on these cellphone
20 records and goes back throughout the entire day, and she
21 pulled it on Google maps. What she did was she found,
22 according to what is on these cellphone records, and that
23 coordinates as to what tower pinged off of, based on the
24 testimony we heard today from Mr. Walker. And I know
25 that Ms. Shealy indicated that she may have an issue with

1 her testifying as to what she has done.

2 MS. SHEALY: I'm just not sure that she
3 has -- and I don't know yet because I haven't been able
4 to query her, but I'm not sure that she has the requisite
5 knowledge to be able to do that type of configuration.

6 THE COURT: Well, we'll put her up on the
7 stand and find out. I don't think it takes an expert to
8 be able to state this is what the records state, this is
9 what the records show. He's not offering an opinion.

10 MR. McCOY: And, Judge, you're correct. I'm
11 not offering an opinion, and she absolutely has no
12 diagrams or how that gentleman broke down the sector of
13 the sphere and one, two, three quadrants. It's not
14 there. She's just testifying as to -- she Google mapped
15 these particular GPS coordinates, and she can tell you
16 where a cellphone tower is located, according to what
17 Google map says, and that's it.

18 THE COURT: All right. Well, if you feel
19 like you want to have a proffer as to what she has to
20 say, you can put her up so I can make a determination.

21 I'm not really 100 percent sure what the
22 relevance would be for these records, what you are trying
23 to show, but we can discuss that.

24 MR. McCOY: I'll tell you right now, there
25 has been testimony earlier -- this is by Quansantrina

1 Rivers on her fourth statement, which is an oral
2 statement, not a written statement, that the threesome of
3 Dashaun Simmons, Denzel Heyward, and Trina Rivers got in
4 her car and drove to Dorchester County to Ridgeville,
5 South Carolina to pick up a bag, that she says she saw, I
6 guess, a barrel of some kind, and that was loaded back
7 into her car on the afternoon of the murder, was her
8 testimony, afternoon, and then drove back to Charleston.

9 And, frankly, Your Honor the only way I'm
10 offering this particular testimony is because if you look
11 at the GPS coordinates coming straight from Denzel
12 Heyward's cellphone, they don't come into Dorchester
13 County at all.

14 THE COURT: So it's for impeachment?

15 MR. McCOY: It is, Your Honor.

16 THE COURT: All right. Is that the only
17 witness right now you're planning on calling?

18 MR. McCOY: It is. I'm going to have a
19 discussion on the break with my client and let you know
20 what we plan to do.

21 THE COURT: Okay. Mr. Apostolou, what's
22 your --

23 MR. APOSTOLOU: I have two witnesses, Judge.
24 I anticipate possibly a third being my client. We could
25 discuss what the records -- we had made pretrial motions

1 to exclude his juvenile record, so I would like to
2 clarify what the State could or perhaps even intends to
3 impeach him with record-wise, but other than that, I'm --
4 he hasn't told me officially, and this is when I take the
5 time to give him the spiel, so I wouldn't know if he
6 would testify or not, but we're going to have that
7 serious discussion in very short order, but we're going
8 to have two witnesses for sure.

9 THE COURT: Okay. And what were these --
10 what's the nature of these witnesses?

11 MR. APOSTOLOU: Well, during his direct
12 testimony, or I guess subject to cross-examination,
13 Jujuaian Hemingway stated he had never been to South
14 Carolina State, had never been to Johns Island.

15 These are just two people who were in each of
16 those rooms that can verify he was here and impeach his
17 testimony. They would be short witnesses.

18 THE COURT: All right. Well, let's revisit
19 the 609 conviction, two juvenile convictions for armed
20 robbery. Is that what you wanted?

21 MS. SHEALY: Let me pull his rap sheet,
22 Judge.

23 His juvenile record has a sale to persons --
24 certain persons stolen pistol charge that he was
25 adjudicated for, and then he has two armed robberies as a

1 juvenile.

2 THE COURT: And those were how long ago?

3 MS. SHEALY: Within the ten-year period.

4 THE COURT: How long ago were they?

5 MS. SHEALY: 2007.

6 THE WITNESS: Like, seven years ago?

7 THE DEFENDANT: Right, also has a receiving
8 stolen goods in 2012.

9 THE COURT: That's as an adult?

10 MS. SHEALY: Yes, sir. It looks like he got
11 30 days in jail. The question is, does it go to honesty
12 or dishonesty. Receiving stolen goods --

13 THE COURT: It's one thing to steal them,
14 it's another thing to receive stolen goods. I don't know
15 that a 30-day misdemeanor is going to rise to the level
16 of the crime of dishonesty.

17 MS. SHEALY: I would like, if I could, Your
18 Honor, to have the opportunity over lunch to look at
19 that, because I thought receiving stolen goods was a
20 crime of dishonesty. I need to double-check that.

21 THE COURT: Well, you can do that. As far as
22 the armed robbery goes, he was a minor, and it was seven
23 years ago. Our Courts have not found that armed robbery
24 is a crime involving dishonesty, and I'm inclined to say
25 that since he is charged with armed robbery here the

1 probative value of that would be outweighed by the
2 prejudicial effect.

3 I know we talked about, well, wouldn't he be
4 able to without a felony conviction --

5 MS. SHEALY: I would certainly like, if
6 you're not going to allow me to ask about the crime
7 itself, for the jury to know he has two felony
8 convictions.

9 THE COURT: And what's the purpose of that?

10 MS. SHEALY: Because it goes to his
11 credibility. It gives the jury the false sense that --
12 in the absence of it, it gives them the false sense that
13 he could be credible, but, I mean, frankly, I think
14 there's a heightened concern when you're that young and
15 you have a weapon and you rob someone, not less of a
16 concern. The minor age is alarming.

17 THE COURT: Well, I think the law says that
18 people are more inclined to do foolish things when
19 they're younger than when they're older.

20 I'll tell you what: At lunch you find me
21 some law on this, saying you can talk to him about it,
22 ask him about a felony. I know that's been done before
23 in the past, and I don't think it's done with favor.
24 Courts are kind of moving away from that against the
25 accused, but you can look at it and find me something at

1 lunchtime that would support your position you could ask
2 him about a felony.

3 All right. Let me bring them in. Why don't
4 we reconvene at 1:15. You guys take a look at the jury
5 charges too. Based on what I've heard so far, the proper
6 charges, I haven't heard anything about it that would
7 suggest to me a lesser included is available, but maybe
8 some further testimony might. We'll see.

9 MS. SHEALY: Your Honor, I was going to ask
10 if you would consider giving us until 1:30, only because
11 we have some things we need to clear up with our evidence,
12 if you're contemplating if -- is that okay?

13 THE COURT: Okay.

14 MS. SHEALY: Thank you.

15 (In open court, jury present.)

16 THE COURT: All right, folks. We are going
17 to break for lunch right now. I understand your lunches
18 are here. It's 10 after 12:00 right now. We're going to
19 break until 1:30.

20 Again, you can have your lunch, eat it here,
21 go outside and eat it or eat it here and walk outside,
22 whatever you want to do, but we're going to try to crank
23 back up and get to the final phase of the trial starting
24 at 1:30. So, again, don't begin your deliberations or
25 discussions. You can go to lunch with each other if you

1 want to, walk around, but don't discuss the case, witness
2 demeanor, anything like that, and avoid doing any kind of
3 searching on the Internet or posting on social media, et
4 cetera, as I've been charging you all along.

5 So we'll see you at 1:30. Enjoy your lunch.

6 (In open court, jury not present.)

7 THE COURT: All right. Before we break,
8 Mr. Heyward and Mr. Simmons, I talked to you earlier in
9 the week about whether or not you wanted to testify. We
10 are to that point where we're getting real close and you
11 have to make that final decision.

12 The State has presented all of the evidence
13 that they're going to present now, and you will have the
14 opportunity, starting at 1:30, to call witnesses, testify
15 if you want to. If you don't want to testify, again, I
16 will instruct the jury they're not to hold that against
17 you.

18 Each of you has that right. The fact that
19 one of you may testify does not mean the other has to
20 testify; the fact that one of you doesn't, doesn't mean
21 you both have to. It's an independent decision. Each of
22 you can decide what you want to do, and it does not have
23 to be the same thing as the other person does. But in
24 about another hour and a half or so when we start back
25 up, you will need to be to the point where you make a

1 final decision about that.

2 Again, please consult with your lawyers about
3 that decision over lunch, and we'll see y'all back at
4 1:30.

5 (Recess taken.)

6 A F T E R N O O N S E S S I O N

7 (In open court, jury not present.)

8 THE COURT: All right. Both defendants in
9 the courtroom; both lawyers are here. Do we need to take
10 up anything before --

11 MR. MCCOY: I didn't know if Ms. Shealy
12 wanted to do a 30 second in camera direct examination of
13 the witness that I have.

14 THE COURT: Do you?

15 MS. SHEALY: Yes, unless Your Honor ruled
16 that -- I didn't know whether you had actually already
17 ruled or not.

18 THE COURT: Well, it sounds to me like he can
19 put somebody up to say -- your documents that you have
20 show where these dots are. You put in what you want out
21 of them, he's entitled to put in what he wants out of
22 them, but it's the same evidence. They're entitled to
23 put somebody in on the basis they say the same thing.

24 MS. SHEALY: I think I can handle mine in
25 cross.

ALLISON SWARTZ - DIRECT BY MR. McCOY

1 THE COURT: Okay. All right.

2 Here is the way I intend to do this.

3 Mr. McCoy, you go first. Call your witness, and then,
4 Mr. Apostolou, you said you have two, and then we'll take
5 a break and decide if the defendants want to testify,
6 and, if they do, they can testify. If they don't, we'll
7 get ready to do the charge. All right? Are you ready
8 then?

9 MR. McCOY: Yes.

10 THE COURT: All right. Bring the jury in.

11 (In open court, jury present.)

12 THE COURT: Welcome back. As I said, we
13 heard all of the State's evidence. Now we will proceed
14 with the defense calling their first witness, and,
15 Mr. McCoy, call your witness first.

16 MR. McCOY: Thank you, Judge. May it please
17 the Court: Mr. Simmons' first witness will be Allison
18 Swartz.

19 ALLISON SWARTZ,

20 having been first duly sworn,

21 was examined and testified as follows:

22 THE WITNESS: Allison Swartz, S-w-a-r-t-z.

23 MR. McCOY: May it please the Court:

24 DIRECT EXAMINATION

25 BY MR. McCOY:

ALLISON SWARTZ - DIRECT BY MR. McCOY

1 Q. Allison, thank you for being here. Will you tell
2 me where you work?

3 A. For McCoy & Stokes.

4 Q. And what do you do for them?

5 A. I'm a paralegal.

6 Q. And whose law firm is that?

7 A. Yours.

8 Q. Okay. And did you have an opportunity to do a
9 little bit of work on the particular case at hand here
10 today?

11 A. I did.

12 Q. Could you tell the jury how you use to -- or what
13 you use to pull up things and enter them into Google
14 Maps?

15 A. GPS coordinates?

16 Q. Yes.

17 A. Yes.

18 Q. And did you have an opportunity to observe and
19 take a look at some GPS coordinates and plug them into
20 Google Maps?

21 A. I did.

22 Q. And the number that you did, was that a 469-74 [REDACTED]?

23 A. That's correct.

24 Q. And is that number related to Denzel Heyward?

25 A. It is.

ALLISON SWARTZ - DIRECT BY MR. McCOY

1 Q. And I want to draw your attention -- we've heard a
2 lot of testimony after some later hours of what that
3 particular phone number was doing, but I want to draw you
4 to an earlier time, and did you have an opportunity to
5 review the GPS coordinates on Google Maps for the
6 particular number that I've read out to you, that's
7 Denzel Heyward's, for the entire day of May 16, 2012?

8 A. I did.

9 Q. Can you start by telling us the first phone call
10 that was made that day.

11 A. 11:54 a.m.

12 Q. And when you entered in those particular
13 coordinates from the 11:54 phone call on Google Maps,
14 where do they pull up?

15 A. Charleston. General location or street?

16 Q. Just in general.

17 A. Charleston, South Carolina.

18 Q. Was there ever a change in GPS coordinates
19 throughout the day?

20 A. Yes.

21 Q. Could you read to the jury and tell the jury your
22 findings of what you found when you plugged in the
23 different GPS coordinates from around 11:54 in the
24 morning to around 7:30 p.m. that day? And this is again
25 for Denzel Heyward's number, 469-74[REDACTED].

ALLISON SWARTZ - CROSS BY MS. SHEALY

1 A. They stay in the general location of Charleston.

2 Q. Did they ever leave the Charleston area?

3 A. They go to Goose Creek at one point for about 30
4 minutes.

5 Q. Okay. And did you ever have an opportunity in
6 your findings of plugging in phone numbers for Denzel
7 Heyward's phone number, did they ever have an opportunity
8 to go to Dorchester County?

9 A. No, sir.

10 Q. And do you know if Ridgeville, South Carolina is
11 located in Dorchester County?

12 A. It is.

13 Q. And are the phone calls that you observed and you
14 witnessed from 11:54 in the morning till 7:00 in the
15 afternoon, are they continuous throughout the entire day?
16 Are there any pauses?

17 A. They're pretty continuous.

18 MR. MCCOY: Judge, I don't have any other
19 questions.

20 THE COURT: Cross?

21 MS. SHEALY: May it please the Court:

22 CROSS-EXAMINATION

23 BY MS. SHEALY:

24 Q. Ms. Swartz, looking at the records that you have
25 in front of you, would you look at the time of 2:00?

ALLISON SWARTZ - CROSS BY MS. SHEALY

1 A. Yes.

2 Q. And can you tell the jury how long the gap between
3 the 2:00 call and the next call is?

4 A. 50 minutes, 58 minutes.

5 Q. 50, or 58?

6 A. 58.

7 Q. So just about an hour?

8 A. Yes.

9 Q. And then there is also a gap at 3:40 in the
10 afternoon till 4:53 in the afternoon; is that correct?

11 A. That's correct.

12 Q. Okay. And so there are two times during those
13 afternoon hours when the phone is not being used; is that
14 correct?

15 A. Well, not as far as a telephone call, correct.

16 Q. Okay. And are you familiar with where Ridgeville
17 is?

18 A. Yes, ma'am.

19 Q. And do you realize that you can get to Goose Creek
20 down 78 or down 26 in about 25 minutes? Does that sound
21 fair?

22 A. According to traffic, probably, yeah.

23 Q. Okay. So we've got two gaps of -- one just shy of
24 an hour and another one over an hour; is that fair to
25 say, from 3:40 to 4:53?

ALLISON SWARTZ - CROSS BY MR. APOSTOLOU

1 A. Yes, ma'am.

2 MS. SHEALY: Thank you very much.

3 THE COURT: Mr. Apostolou, do you want to ask
4 her any questions?

5 MR. APOSTOLOU: I do, briefly.

6 CROSS-EXAMINATION

7 BY MR. APOSTOLOU:

8 Q. As I understand this, this is dealing with May 16,
9 the day in question?

10 A. That's correct.

11 Q. And, specifically, it's dealing with the testimony
12 Quansantrina Rivers had earlier in the trial --

13 MS. SHEALY: Objection, Your Honor. He can't
14 educate a witness about testimony.

15 THE COURT: She's not being offered for that
16 purpose.

17 MR. APOSTOLOU: I understand.

18 BY MR. APOSTOLOU:

19 Q. Okay. So you went further back than 5:00 in the
20 day; is that correct?

21 A. Yes.

22 Q. So you started at the first call of the day.

23 A. Yes.

24 Q. And going through that, you were able to sort of
25 plan and track out, as we heard from the cellphone

ALLISON SWARTZ - CROSS BY MR. APOSTOLOU

1 towers, Denzel Heyward's movements throughout the day?

2 A. That's correct.

3 Q. And you have him in Charleston County, and then
4 you have him up in Goose Creek for a period of time?

5 A. That's correct.

6 Q. And then there's a break of 50 minutes, 58
7 minutes, somewhere?

8 A. On the phone calls, yes.

9 Q. Did you have access to Quansantrina's phone
10 records?

11 A. Phone records? Yes. Not GPS coordinates.

12 Q. But not her GPS coordinates. Did you have GPS
13 coordinates for Dashaun Simmons?

14 A. No.

15 MR. APOSTOLOU: Nothing further.

16 THE COURT: Any redirect?

17 MR. McCOY: No, sir.

18 THE COURT: Okay. You can step down. Thank
19 you. All right.

20 Mr. Apostolou, do you have a witness you want
21 to call?

22 MR. APOSTOLOU: I do, Judge. I have Travis
23 Seabrook.

24

25 TRAVIS SEABROOK,

—TRAVIS SEABROOK - DIRECT BY MR. APOSTOLOU—

1 having been first duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 THE WITNESS: Travis Seabrook,
5 S-e-a-b-r-o-o-k.

6 BY MR. APOSTOLOU:

7 Q. Travis, do you know Denzel Heyward?

8 A. Yes, sir.

9 Q. Where do you go to school?

10 A. Voorhees College.

11 Q. Where is Voorhees College located?

12 A. Denmark, South Carolina.

13 Q. And how far is Denmark, South Carolina from South
14 Carolina State in Orangeburg, South Carolina?

15 A. About 15 minutes away.

16 Q. And you know Denzel from being in Charleston,
17 right?

18 A. Yes.

19 Q. And you go visit him in college fairly often?

20 A. Yes, sir.

21 Q. Is it safe to say that Orangeburg is a little more
22 festive than Denmark?

23 A. I'll say.

24 Q. Do you know who Jujuaain Hemingway is?

25 A. Yes, sir.

TRAVIS SEABROOK - DIRECT BY MR. APOSTOLOU

1 Q. Have you seen him in the courthouse, walking
2 around here today?

3 A. Yes, sir.

4 Q. Have you seen him any time prior to that?

5 A. At State.

6 Q. You saw him at South Carolina State?

7 A. Yes, sir.

8 Q. Well, Mr. Hemingway testified he's never been to
9 South Carolina State.

10 MS. SHEALY: Objection, Your Honor.

11 MR. APOSTOLOU: I apologize. I withdraw the
12 question, Judge.

13 BY MR. APOSTOLOU:

14 Q. Can you tell us the circumstances of seeing
15 Jujuaain Hemingway at South Carolina State?

16 A. I believe it was like sometime during the fall. I
17 want to say, like, the first week in November. I went
18 over to visit him up at State, and in his dorm room,
19 there was, like, different people's, like, suites.

20 And I asked him, Who that?

21 He been like, Some boy from up the road, from
22 Myrtle Beach area. And after that, they went in the
23 room.

24 Q. And then Mr. Hemingway and Denzel went into the
25 room?

—TRAVIS SEABROOK - CROSS BY MS. SHEALY—

1 A. Uh-huh.

2 Q. Was there anybody else with them?

3 A. I guess that was his brother.

4 Q. The brother was with him?

5 A. Yeah.

6 Q. Okay.

7 MR. APOSTOLOU: No further questions.

8 THE COURT: Cross?

9 CROSS-EXAMINATION

10 BY MS. SHEALY:

11 Q. Mr. Seabrook, did you know Denzel from Military
12 Magnet High School as well?

13 A. Yes, ma'am.

14 Q. Where did you grow up, what area of town?

15 A. North Charleston.

16 Q. So you've known Denzel for how long?

17 A. Since middle cool.

18 Q. Are y'all pretty tight?

19 A. Yeah.

20 Q. Do you know Lorenzo Mehciz?

21 A. From school.

22 Q. Which school?

23 A. Military Magnet.

24 Q. Has he contacted you recently?

25 A. We talk now and then.

—TRAVIS SEABROOK - CROSS BY MS. SHEALY—

1 Q. Y'all talk here and there. And when you spoke
2 with Lorenzo, did he want to you come and help a brother
3 out?

4 A. No. Every time I talk to Lorenzo, he just be
5 about school or whatever I'm doing.

6 Q. Whatever you're doing?

7 A. Yeah, whenever we talk.

8 Q. What about Kadeem Woods? Is that one of Denzel's
9 brothers?

10 A. Uh-huh.

11 Q. Did he talk to you about coming in and testifying
12 for Denzel?

13 A. I only talk to Kadeem when I come down from
14 school.

15 Q. So you haven't had any contact with him?

16 A. Huh-uh.

17 Q. Do you know Vanessa Hudgins?

18 A. Huh-uh.

19 Q. Do you have a cousin named Vanessa?

20 A. Vanessa Gardner.

21 Q. And she is the mother of Denzel's child --

22 A. Uh-huh.

23 Q. -- isn't she? The mother of one of his children?

24 A. Uh-huh.

25 Q. Do you know how many children Denzel has?

DEVRON COHEN - DIRECT BY MR. APOSTOLOU

1 A. I think two.

2 Q. And so Vanessa Gardner is your cousin?

3 A. Uh-huh.

4 MS. SHEALY: I have nothing further. Thank
5 you.

6 MR. MCCOY: I don't have anything, Judge.

7 THE COURT: Do you have any redirect?

8 MR. APOSTOLOU: No, Your Honor.

9 THE COURT: You may step down. Call your
10 next witness.

11 DEVRON COHEN,
12 having been first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 THE WITNESS: Devron Cohen, C-o-h-e-n.

16 BY MR. APOSTOLOU:

17 Q. Devron, do you know Denzel Heyward?

18 A. Yes, sir.

19 Q. Where in Charleston County do you live?

20 A. North Charleston.

21 Q. North Charleston. Okay. Do you know a guy named
22 Jujuaain Hemingway?

23 A. Yes, sir.

24 Q. Have you seen him in the courtroom this week? Not
25 now, I'm saying in the courtroom this week.

DEVRON COHEN - DIRECT BY MR. APOSTOLOU

1 A. Yes, sir.

2 MS. SHEALY: May we approach, Your Honor?

3 THE COURT: Uh-huh.

4 (Discussion held at sidebar.)

5 BY MR. APOSTOLOU:

6 Q. Devron, do you have any information as to whether
7 Jujuaain Hemingway has been in Charleston County court
8 before?

9 A. He was down here, like, the week of Christmas of
10 2011.

11 Q. And tell us what -- what do you know about the
12 week of Christmas 2011?

13 A. The day prior, before I went to court visit my
14 friend, tell him I was coming to chill with him, or
15 whatever. When I got off of work and when I got over
16 there to his house, he had company, and I was sitting in
17 the living room area, smoking or whatever, sitting around
18 for, like, 15, 20 minutes.

19 And after then, I believe I talked to my friend.
20 I was, like, Who them? I ain't never seen them before.

21 He was, like, Well, they was people from up --

22 MS. SHEALY: Objection to the hearsay.

23 BY MR. APOSTOLOU:

24 Q. Whose house were you at?

25 A. Denzel.

DEVRON COHEN - CROSS BY MS. SHEALY

1 Q. And who was the person that came to visit you, or
2 was there when you came later that day?

3 A. Well, he only told me the guy from up the road. I
4 didn't know at the time who they was.

5 Q. Do you know who it is now?

6 A. Yes, sir.

7 Q. Who is it?

8 A. It was Jujuain.

9 Q. Okay. And was he with anybody else?

10 A. I think his brother or something.

11 MR. APOSTOLOU: Nothing further, Your Honor.

12 THE COURT: Cross?

13 CROSS-EXAMINATION

14 BY MS. SHEALY:

15 Q. Mr. Cohen, you have had some trouble with the law,
16 haven't you?

17 A. Yes, sir -- I mean, ma'am.

18 Q. And you were convicted on possession of marijuana;
19 is that correct?

20 A. Yes, ma'am.

21 Q. Now, you're telling this jury that you can recall
22 the events from Christmastime 2011?

23 A. I wouldn't say Christmastime. I said the week of
24 Christmas.

25 Q. Okay. Excuse me. The week of Christmas?

DEVRON COHEN - CROSS BY MS. SHEALY

1 A. Yeah, the week of Christmas.

2 Q. You have a really good memory?

3 A. Just only on what I saw from that day.

4 Q. You been hanging out with Travis Seabrook all week
5 in the hall?

6 A. No, not all week, just yesterday.

7 Q. Yesterday and today?

8 A. Yeah.

9 Q. Y'all been sitting together and talking?

10 A. No, not really. They were keeping us separated.

11 Q. They were keeping y'all separated?

12 A. I mean, not like that, as far as separated from
13 other side -- don't say anything to anybody, don't say
14 anything to anybody.

15 Q. Somebody told you it wouldn't be a good idea for
16 you to be near the victim's family?

17 A. I guess it don't be really -- you know?

18 Q. But when it comes to whether or not you and Travis
19 were together, y'all have been sitting out there together
20 since yesterday; is that correct?

21 A. Yeah, waiting.

22 Q. And how long have you known Denzel Heyward?

23 A. Two years from school.

24 Q. How many years?

25 A. Since he's been in school. I can't recall.

DEVRON COHEN - CROSS BY MS. SHEALY

1 Q. Which school?

2 A. Military Magnet.

3 Q. So you also went to Military Magnet?

4 A. Yes.

5 Q. And where did you grow up, what street?

6 A. What street?

7 Q. What was the name of the street that you grew up
8 on?

9 A. Budds Avenue.

10 Q. Where is that?

11 A. In North Charleston.

12 Q. Okay. Are you Denzel's cousin?

13 A. I'm a friend of Denzel's.

14 Q. Are you Denzel's cousin?

15 A. No.

16 Q. There is no family relation?

17 A. No.

18 Q. Y'all tight?

19 A. No.

20 Q. You're not tight with Denzel?

21 A. I thought you said we tied. Yeah, we cool.

22 Q. You're cool?

23 A. Yeah.

24 Q. And you just happened to remember what happened
25 the week of Christmas --

DEVRON COHEN - CROSS BY MS. SHEALY

1 A. Yeah.

2 Q. -- 2011?

3 A. Cause he came down on break from school, so --

4 Q. That was significant to you, Christmas break?

5 A. Yeah.

6 MS. SHEALY: Okay. Thank you.

7 THE COURT: Mr. McCoy?

8 MR. MCCOY: No, sir. Thank you.

9 THE COURT: You may step down.

10 Let me get you to go back to the jury room,
11 and don't begin deliberations or discussions about the
12 case.

13 (In open court, jury present.)

14 THE COURT: Did you find any law on the 609
15 issue?

16 MS. SHEALY: Your Honor, it's interesting.
17 Originally the Court had held that armed robbery was a
18 crime of dishonesty. Then it looks like later the Court
19 of Appeals shied away from that because of a balancing
20 test, but we did not find anything about whether or not
21 you could refer to it as two felonies. We weren't able
22 to find that.

23 THE COURT: Okay.

24 MS. SHEALY: And I did want to point out one
25 thing regarding the timing of it. It occurred in 2007.

1 This occurred in 2012, so there was really only a
2 four-year gap on the part of the behavior by Mr. Heyward.

3 THE COURT: All right. Well, you know, the
4 reason that we let these prior convictions in is because
5 it shows solely on the issue of character, not
6 propensity, and the arguments you gave me before lunch
7 all seem to go toward propensity toward committing
8 another crime, not necessarily character; in other words,
9 is he telling the truth.

10 He's charged with the armed robbery, among
11 other things, but that's what he got convicted of, and
12 the problem that I have is; one, he was 15 years old or
13 thereabouts when he committed the offenses. It's now
14 seven years later. You know, I think on the balance,
15 there is very little probative evidence to be gained from
16 it.

17 As far as character or propensity to tell the
18 truth goes more toward, I think, the prejudicial side of
19 propensity to commit the offense, which, you know, the
20 cynical part of me says, well, that's what the State
21 really wants you to think, well, if you did it once,
22 you'll do it again. That's the danger a jury has in
23 hearing that kind of evidence, so I find that in this
24 case, because he was a juvenile when he committed those
25 offenses, the same thing that he's charged with, and it's

1 been seven years and he's now, presumably, older and
2 wiser than he was when he was 15, that the prejudicial
3 effect substantially outweighs any probative value, so I
4 won't let those convictions come in, nor will I allow you
5 to refer to them as felonies.

6 All right?

7 MS. SHEALY: Yes, sir.

8 THE COURT: So, gentlemen: Mr. Simmons,
9 Mr. Heyward, we talked the other day about your rights to
10 put up a defense and to testify. Your lawyers have
11 called witnesses on your behalf. We're now at the end of
12 the trial, and you have to make a decision as to whether
13 or not you want to testify.

14 This is a right that you have. You have been
15 able to discuss it with your lawyer, but because it is a
16 constitutional right that belongs to you, only you can
17 make that decision. I will tell you again that if you
18 want to testify, you can. Your lawyer will ask you
19 questions on direct, which you will then have an
20 obligation to answer truthfully.

21 You will also be subject to cross-examination
22 from both the State and from opposing counsel's lawyer.
23 So, on the other hand, if you decide you do not want to
24 testify, I will instruct the jury that they are not to
25 hold that against you in any way while they are

1 deliberating their verdict.

2 Mr. Simmons, what did you decide? Do you
3 want to testify or not?

4 DEFENDANT SIMMONS: No, sir.

5 THE COURT: Mr. Heyward, what did you decide?
6 Do you want to testify or not?

7 DEFENDANT HEYWARD: No, sir.

8 THE COURT: All right, gentlemen. Have a
9 seat then. Then, folks, we need to get ready to charge
10 the jury.

11 Did y'all have a chance to look at the jury
12 charges yet?

13 MS. SHEALY: I did not, Your Honor.

14 THE COURT: All right. Well, how about take
15 about 15 minutes to look at them. I charge straight up
16 murder, attempted murder, armed robbery, and possession
17 of a weapon during the commission of a violent crime.

18 I didn't see any evidence of anything else
19 that might be the lesser included, but if you want to try
20 to convince me otherwise -- for the record, though,
21 Mr. McCoy and Mr. Apostolou, do you want to renew your
22 directed verdict motions at this point?

23 MR. MCCOY: I do, Your Honor, and all
24 previous objections as well.

25 MR. APOSTOLOU: I do as well, Judge, and all

1 previous objections.

2 THE COURT: Well, for the same reasons I
3 stated earlier, the motions are denied. Okay?

4 I'll be back in about 15 minutes. Let me
5 know what you want, if there are any.

6 (Recess taken.)

7 (In open court, jury not present.)

8 THE COURT: All right. Ms. Shealy, anything
9 on the charges?

10 MS. SHEALY: No, Your Honor.

11 THE COURT: Mr. McCoy?

12 MR. MCCOY: Your Honor, I reviewed the charge
13 with my client. We have nothing further to add.

14 THE COURT: Mr. Apostolou?

15 MR. APOSTOLOU: That's the same for us,
16 Judge.

17 THE COURT: Well, there is a first time for
18 everything.

19 All right. Well, do you want to open and
20 close, Ms. Shealy, or just close?

21 MS. SHEALY: I'm just going to close.

22 THE COURT: Okay. Thirty minutes for
23 everybody enough?

24 MS. SHEALY: I'm not sure of that, because
25 I'm going to play some of the recordings again, not all

1 of them.

2 THE COURT: All right.

3 MS. SHEALY: And I'd rather not be limited.
4 I don't intend to go on and on, but --

5 THE COURT: Well, I won't start buzzing you,
6 but how about we aim for 30 minutes, and at that point if
7 you hear me making loud noises in the back, you'll know
8 you've hit the 30 minutes and should think about winding
9 it up.

10 All right. Anybody need anything? All
11 right. Let's bring the jury in. Do you want to rest on
12 the record?

13 MR. MCCOY: I'm okay if you tell them we've
14 rested.

15 THE COURT: You want to rest on the record?

16 MR. APOSTOLOU: I don't need to rest on the
17 record.

18 (In open court, jury present.)

19 THE COURT: Well, folks, the defense has now
20 rested and so that means you have heard all of the
21 evidence you're going to hear in the case, so we will now
22 move to the final part of the trial, which is the closing
23 arguments, and then I will charge you on the law that
24 applies to the facts as you find them. After I charge
25 you on the law, then you will retire to consider your

1 verdict.

2 Now, because the State has the burden of
3 proof, the State gets to close, or go last, and so you
4 will hear first from the defendants and then you will
5 hear from the State. After that, again, I will charge
6 you on the law.

7 So, Mr. McCoy, you want to go first?

8 MR. MCCOY: Yes, sir, Judge. May it please
9 the Court: Ladies and gentlemen of the jury: It's been
10 a long week, but it's been an even longer two-and-a-half
11 years for my client Dashaun Simmons who I'm proud and
12 honored to represent here today.

13 You heard a lot of testimony this week, heard
14 from a lot of folks who were either on the scene, or a
15 lot of police officers. We'll take a look at who we
16 heard from this week.

17 The first person we heard from, let's get
18 right into it, was Trina Rivers, and what did she do?
19 She came in here. She testified about what happened that
20 night. She was there. There's no denying that. But is
21 she telling the truth? That's the one question that I
22 need each and every one of you to keep in mind when you
23 go back to the jury room and deliberate.

24 Was she telling the truth? How many
25 opportunities did she have to tell the truth? Let's talk

1 about the first statement. She goes in. She talks to
2 the police officer. She's Mirandized. She's given the
3 warning. She signs at the bottom, everything I'm saying
4 is truthful, everything, and does she tell everything?
5 No, she doesn't. She doesn't. Is there a problem with
6 that? There absolutely is.

7 She gets on the stand here this week, and she
8 tells you, I didn't say everything. I didn't do
9 everything because I was scared. I was scared of these
10 two individuals right here.

11 Why does that not make sense? I'll tell you
12 why it doesn't make sense, is what I asked her when she
13 was on the stand.

14 I said to her, What are you scared of?
15 You've already thrown both their names out. The cat is
16 out of the bag. They're labelled as witnesses. They're
17 labelled as suspects in this case now. What are you
18 afraid of, and why did you not follow through and tell
19 the truth the first time?

20 Time passes, and what happens? She gives
21 another written statement. This time it's longer, okay?
22 It's 12 pages, and what does she do in that statement?
23 She doesn't even tell the truth.

24 Where's the problem in that? What's going on
25 there? What is the major piece of evidence that she

1 doesn't tell us? Okay, that she doesn't tell us in the
2 first statement, the second statement? She doesn't say a
3 single think about a gun being there beforehand. She
4 doesn't say a single think about going to Ridgeville,
5 South Carolina, where she sees Dashaun and Denzel pick up
6 a black bag that she could see a barrel of a gun on.

7 She doesn't mention that at all, all right?
8 More time passes, and what does she do? She goes in to
9 the solicitor's office, Jennifer Shealy's office, who is
10 also prosecuting her, all these accessory crimes that are
11 here today, and what does she do there? She signs what's
12 called a proffer or promise agreement with the State,
13 okay?

14 And she signs on the bottom, I'm being
15 truthful. Everything I'm saying is 100 percent accurate,
16 and what I'm telling you is true. I'm not leaving any,
17 zero, details out.

18 Is that true? No, it's not. You heard her
19 again. She got on the stand, and she changed her story
20 one more time. What is important about when she changed
21 it? What is important about when she changed it? Please
22 think about this: It was two days before this trial was
23 set to go, beginning of this year in February, that she
24 comes back into the solicitor's office, and she says,
25 Wait a minute. I remember now. It's all becoming clear.

1 Everything is 100 percent clear. These two guys went to
2 Ridgeville. I drove them there, and when they went
3 inside -- they went inside somebody's house, and they
4 walked out with a black bag. They walked out with it. I
5 couldn't really see a gun, but I could see a barrel. I
6 think it's a gun.

7 Then she put this statement into writing?
8 Absolutely no and not. She did not do that. Is that
9 problematic? Does that raise suspicions to each and
10 every one of you here? I'm arguing to you that it
11 should.

12 Now, let's go to what she says when she's on
13 the stand this week. She gets on the stand. She starts
14 telling her story, and she does a mighty bang-up job when
15 Jennifer Shealy direct examines her; I mean, bang up,
16 boom, answering questions, left, right, getting
17 everything right, right? Y'all heard it when she was up
18 there.

19 What does she talk about? She talks about
20 how she gets down there, she pulls into Lorenzo's house.
21 She doesn't know where they're going. They just say,
22 We're going for a ride. We're going to go ride around at
23 night. We're going to go to this house, Lorenzo's house.

24 They pull into the driveway. They're hanging
25 out when they get there early, okay? Cellphone records

1 are going to show you that. They get there early. She
2 testifies that she has to move the car multiple times.
3 She backs up and moves it one direction, she backs up and
4 moves it in another direction. Then she just tells you
5 she parks the car and she's sitting in the car. And what
6 does she tell you she's doing while she's in there? She
7 tells you on the witness stand that she falls asleep.
8 She goes to sleep. All right?

9 What happens next? She tells you that the
10 car rides down the block. I guess so that she's woken
11 up. I guess that's what happened. The car rides down a
12 block, turns around, and parks behind them, okay? And
13 what does she tell you, tells the jury, and tells this
14 courtroom, under oath, happens next, that we've never
15 heard before in the first three statements, but we heard
16 in the fourth statement, okay, the one that has been
17 orally given and not written down?

18 She says that Dashaun Simmons runs out of the
19 woods with a gun, running out of the woods, just running
20 up to a car, running right out of the woods. What does
21 she tell you about this? Is she sitting around watching
22 the whole thing happen, live and in person, with
23 Hurricane Cynthia well on the way and, basically, a
24 street that is not lit at all? How does she tell you she
25 sees this?

1 She tells you in an open court and wants each
2 and every one of you believe that she sees this through a
3 rear-view mirror in her car. She's sitting in her car.
4 She's sitting in her seat. I don't think if I had a
5 rear-view mirror right now that I could see each and
6 every one of you in the rear-view mirror. I don't think
7 it's possible. What else does she tell you? She says,
8 no, no, no, no, no. I didn't just see it in the
9 rear-view mirror, I saw it on the side-view mirrors. I
10 saw it in the side-view mirrors.

11 We saw the picture of her car. You're going
12 to have it back there with you. I'm going to argue to
13 you, if you look at the back picture of that Seabreeze
14 and look at the back picture of that car, you're not
15 going to see one on the driver's side either. You're not
16 going to see a side-view mirror on the driver's side
17 either, okay? You're not going to see it.

18 It's obviously not on the passenger side, so
19 does she tell us that while she's looking in the
20 rear-view mirror and all of this is going on behind her
21 that she's moving the mirror and watching? Does she tell
22 us that? No, she doesn't tell us that.

23 Does that make sense? What are her motives?
24 That's something that each and every one of you has to
25 consider. What does she tell you? She tells you that

1 Dashaun is wearing a black shirt, and at no time does he
2 take his shirt off and have a white shirt, at no time.
3 Okay? She tells you Fat is wearing red, okay, and she
4 said when those boys pull up, they start to talk.

5 She tells you that Fat goes over and starts
6 to talk to the guy in the passenger-side window, okay,
7 and all of a sudden, after Dashaun runs out of the woods
8 and she sees, off to the side, Hurricane Cynthia on the
9 way, runs out, okay, with this big AK47 and orders
10 everybody out of the car, all right?

11 Then get on the ground. You heard her
12 testify. They get face down on the ground. All right?
13 She says, again, that she's watching this through her
14 side-view mirror and her rear-view mirror and that she
15 sees, from that vantage point, both of those guys on the
16 ground from Myrtle Beach. All right?

17 And what does she say happens next? She says
18 there is a little bit of a fight between Jujua in
19 Hemingway and Fat, okay? But then he gets right back
20 down on the ground, and then she says that Dashaun gets
21 on top of -- okay? You saw me get on the ground earlier.
22 I hope I can get back up after this happens.

23 She saw him get on the ground. She said that
24 Dashaun got on top of the victim in this case, Kadeem,
25 okay? And he's got a gun pointed at the back of his

1 head, just like this. And she says, again, that he fires
2 a shot off to the side and directly towards Jujua
3 Hemingway, who's lying right next to his brother, Kadeem.

4 Does that make sense? Ask yourself. I know
5 I keep repeating myself, but does that make sense? Does
6 it add up? Why is she not saying that in the first
7 statement, in the second statement, or the third
8 statement? Why is she not doing that? What is she
9 trying to hide?

10 I don't know. That's something for y'all to
11 decide, okay, but she says all of a sudden she gets out
12 of the car because she's ordered to go get something out
13 of the hood, okay, of the Mercedes, and I asked her about
14 this.

15 I said, Do you own a car?

16 She said, Obviously, yes, I do.

17 I said, Have you ever looked under the hood?

18 She said, No.

19 And I said, Well, what do you expect to find
20 in the hood of a car? What was hidden in the hood of a
21 car? She goes over and tries to use keys to open the
22 hood of her car. Does that make sense to you? No, it
23 doesn't make any sense to you.

24 What else does she say when she's up there?

25 She says, I don't know what I did with the

1 keys after I got up there. I don't know what happened.
2 I really don't know what happened.

3 She also says, while she's on the stand,
4 under oath, that when that happens, Fat calls Jujuain and
5 says, Get over there and open the back trunk of the car.
6 Go open the back trunk.

7 Jujuain goes over, opens the back trunk of
8 the car, and she says that Fat went over there, okay, and
9 got out a big suitcase, three feet long and maybe two
10 feet wide, okay? And it's blue, like each one of the
11 juror buttons that y'all have on your shirts right now.

12 And what does she tell you? Oh, we just
13 carried them real light like this and just walked back to
14 the car and just decided to put it in the back and let's
15 go?

16 She tells you, okay, that he has to hold it
17 up in both hands like this and walk it back to the car,
18 walk it back, put it in. Does that make sense? It makes
19 zero sense. What else does she tell you? She tells you
20 that not only do they get in there and get a suitcase, a
21 proposed suitcase, out of that trunk, they grab a bag of
22 fast food out of the back seat and put it in the car too.

23 How does that make sense? The stories don't
24 want to add up. I keep repeating myself, but it's for a
25 reason. Please consider that when you go back in the

1 jury room.

2 What happens next? She's out of the car, so
3 she says she sees two shots go off, and she sees Dashaun
4 do it, okay? First, she says one shot went off towards
5 the ground. Then, when she was on the stand, she said,
6 No, two shots went off on the ground, and two shots went
7 off and hit Kadeem.

8 And she said, After that happened, Jujua in
9 hit the ground, running. He was gone.

10 And what does she say happens after that?
11 They all load up and get in the car. Well, what's in the
12 car at this point? Let's think about it. You've got a
13 three foot suitcase that is two feet wide, in the back
14 seat. You got your stolen fast foot in the back seat,
15 and you got Dashaun loading up an assault rifle in the
16 back seat as well, not even to mention that he's getting
17 in there. He's the smaller guy, so he's jumping in the
18 back seat too. There's a lot going on.

19 They hit the gas and they go, all right? And
20 they're moving.

21 And she says, Hey, I almost hit Jujua in
22 Hemingway, while I was driving the car down the road.

23 I mean, did it happen? I don't know. I
24 don't think that she's very believable. And what does
25 she say also happens? She says Dashaun Simmons rolls

1 down the window and starts shooting out of the car with
2 the assault rifle. Again, these are stories that are not
3 being told on the first statement, the second statement,
4 the third statement, but they're told on a fourth
5 statement, again, that's oral and not written.

6 What's important about what happens next?
7 What does she tell you what happens next? She tells you,
8 okay, that they go to a hideout, and they go to
9 Ridgeville, South Carolina, all right? She tells you
10 they drive up to Ridgeville, same place where they
11 supposedly got the gun, okay, in the fourth statement.
12 They drive up there, they park the car, and they get out,
13 and they hear talking.

14 And they hear -- they call their friend
15 Skrill to come over there, and they're talking about what
16 happened. They're discussing the suitcase and saying
17 nothing's in the suitcase. They got nothing in the
18 suitcase.

19 And they tell you that Dashaun said, Hey,
20 let's burn our clothes while we're up here.

21 Okay? How does that make sense? They're in
22 a hideout, in Ridgeville. There's nothing but a bedroom
23 there, okay? They don't really know where they are, or
24 at least Trina says she doesn't know where they are, so
25 they're going to burn their clothes and hang out up there

1 naked? Let's just hang out. Does that make sense? It
2 makes zero sense.

3 What does she say happens next? She said she
4 hangs out there for a couple days. She hangs out. She's
5 just witnessed a murder, an armed robbery, and attempted
6 murder, and she hasn't even thought one time about
7 calling the police, not one time. Why not?

8 Why, when you saw something like that and the
9 events went down like you said they did, why would you
10 not call the police? To me, that makes zero sense. I
11 can't wrap my head around that, okay?

12 So after that happens, they leave. They go
13 back and forth, and, finally, she talks to her mom, calls
14 her mom on the telephone. Her mom says, You better turn
15 yourself in, and she does, turns herself in, and that's
16 when the saga begins in terms of her changing her stories
17 each and every time she spoke to law enforcement and the
18 solicitor's office.

19 Her mom was on the stand, and she was great.
20 I really enjoyed talking to her. She was feisty. She
21 even said, Hey, there's some hearsay issues in what
22 you're asking me. I don't know if y'all remember that or
23 not, but she did. She said that when she was up there.

24 What else did she say? She said there's no
25 mention of a gun. She didn't mention one gun to me. She

1 didn't mention an armed robbery to me. She didn't
2 mention those things to me when we were there. She just
3 said somebody got shot. She said nothing about these
4 guys bringing a gun to the situation. Her mom said that.
5 Okay? That's what she testified to.

6 To me, you have to think about what's going
7 on behind the scenes, okay? You've got to think about
8 what she's thinking about and why is she not telling the
9 truth? Why is she not doing that? That's part of the
10 problem here. The judge is going to you charge you when
11 we're all finished with your closing arguments that she's
12 going to have to prove -- the State has to prove each and
13 every element of these crimes beyond a reasonable doubt.

14 If you doubt Trina and what she says, even
15 this much, any kind of doubt, you have to find in favor
16 of the defense.

17 MS. SHEALY: I object, Your Honor. May we
18 approach?

19 (Discussion held at sidebar.)

20 THE COURT: I think in the heat of the
21 moment, Mr. McCoy misstated the law, and I will charge
22 you in depth on the law and reasonable doubt, but the law
23 is not -- or is -- as I said at the first of the trial,
24 it has to be sufficient to leave you firmly convinced.
25 It's not a complete absence of any doubt whatsoever, but

1 it just has to be sufficient to leave you firmly
2 convinced of guilt. All right? Go ahead.

3 MR. MCCOY: Thank you, Judge. Again,
4 anything I say law related, whether I'm talking about
5 reasonable doubt or elements of the crime, as the judge
6 told you, he's the man up there that is going to read you
7 the law. He's going to tell you exactly what it means
8 and exactly how you should approach it, so defer to him
9 on all charges of the law.

10 And where we left off was talking about
11 Trina, okay, and how her story does not add up and how
12 she has not told the truth; not the first time, the
13 second time, not the third time, even after she signed
14 her promise agreement, but the fourth time, the final
15 time is the truth. All right.

16 Who else was there? Who else did you hear
17 from that was on the scene that night that can tell us
18 what happened in terms of this alleged incident? Jujuain
19 Hemingway, and you heard him take the stand. He did a
20 bang-up job when the prosecutor was asking him his
21 questions. He was right on. He said everything he said,
22 right on cue, just like she wants him to do, okay?

23 What happens when cross-examine starts? What
24 happens when that happens? You saw his demeanor change
25 entirely. He didn't want to answer questions; he doesn't

1 want to be cooperative, and, frankly, he came across as
2 not telling the truthful entirely. Anything he said did
3 not sound truthful to me one bit.

4 Let's talk about what I mean by that, okay?
5 She says up there, I've never been to Charleston. I've
6 never been out of Longs, South Carolina. I've never
7 ridden down to Charleston. I don't even know where it
8 is. I've never been to Johns Island. My brother and I,
9 we don't deal in drugs, we don't talk about drugs, but
10 their text message has pictures of drugs.

11 They get in a car to come down to from
12 Charleston. What do they tell you when they get here?
13 He tells you, This was totally coincidental. I don't
14 even know where we have. I don't know how we ended up
15 here. It just happened. We just drove up. We didn't
16 know anybody actually was going to be there.

17 Is that truthful? Did y'all pay attention to
18 the telephone conversation that he had with her while he
19 was in jail? He said in that phone conversation, Yeah,
20 I'm going to Charleston. I'm going to meet up with Fat.

21 He tells me, I am going down there because
22 they owe us money. Not only do they owe me money, they
23 owe my brother money, and that's all our money. We're
24 going down there to collect. We're going down there to
25 collect some money.

1 He doesn't say that in any of his statements.
2 He ain't been truthful. When he signed on the dotted
3 line and said everything I'm saying to the police officer
4 is truthful, is the truth and the entire truth, he
5 doesn't say that in his statements. So they come down.
6 They come down to Charleston. They're going now to
7 collect the bread. He calls it bread. He calls it his
8 money.

9 Why would you come down to Charleston for any
10 other reason than to collect some money? They knew
11 exactly what they're doing. They knew exactly where
12 they're going because they know both of these guys
13 sitting right here. Okay? They pull onto the street.
14 They pull up to Cynthia Avenue. They park their car.
15 They sit there, and they have a conversation with Fat.

16 I'm going to argue too that the conversation
17 didn't go well, and I'm going to argue to you that Fat
18 didn't bring them up money, the 700 --

19 MS. SHEALY: Objection, Your Honor.

20 Objection. May we approach?

21 (Discussion held at sidebar.)

22 MR. McCOY: All right, folks. Let's get
23 started back again.

24 Where did I leave off? I left off with
25 Jujuain Hemingway driving down and getting to the

1 destination on Cynthia Avenue, and I left off with him
2 talking in the car, and you heard the recorded
3 conversation that they were coming down to collect their
4 money, the two of their money, from these two guys on
5 Cynthia Avenue.

6 They get down to Charleston. They park their
7 car. There was an argument that was heard. There was an
8 argument that was heard by neighbors also. They had
9 their windows open. You heard them. They were smoking
10 in the house, and they could hear some people outside
11 arguing. You heard that testimony on the stand.

12 I'm asking and I'm telling you that it was an
13 argument about money. That's what was going on. Those
14 two guys, Kadeem and Jujuaïn, were not happy. They
15 weren't happy with the amount of money that was there.

16 MS. SHEALY: I object, Your Honor.

17 THE COURT: Overruled.

18 MR. McCOY: So what happens next, okay? What
19 happens next is the fight begins, and Jujuaïn Hemingway,
20 again, he's sitting here telling us what's going on, and
21 what does he tell us? He says Dashaun Simmons is wearing
22 a white shirt. He says that Fat is wearing a red shirt.
23 He's not being 100 percent truthful. I think you can
24 tell by him being on the stand that he's not being
25 truthful.

1 What does he tell us in his first statement?
2 He says the car is parked, keys were in the ignition.
3 It's running. It's running. He tells us in his first
4 statement that Fat just comes up out of nowhere, opens up
5 the car door, and slugs Kadeem in the head, punches him
6 in the head, okay?

7 He tells you he doesn't see the entire thing.
8 He just knows it happened because he is on his telephone,
9 okay? He's on his telephone. What is most surprising to
10 me, and, I think, was most surprising to the entire
11 courtroom, is what he says next. I asked him, I said,
12 why did you not hit the gas and just go and just leave?

13 And he said, Man, are you crazy? There are
14 30 rounds in that clip. There are 30 rounds in an AK47
15 clip. And he said, Everybody knows that.

16 I didn't know that. I didn't poll the jury
17 like I wanted to, and I didn't poll the people in the
18 audience, but I don't think everybody out there knew
19 that. Ask yourselves, how does he know that? Is it
20 because he packed the clip himself on the way down? I
21 don't know. I think it's for you all to consider, but is
22 he telling the truth? That's where we need to go with
23 this, and he's not. He hasn't been truthful from day
24 one, and he hasn't been truthful when he got on the stand
25 in front of y'all.

1 The reason this is so important, the reason
2 this means so much, is because his life is on the line.
3 I represent Dashaun Simmons. He's facing 30 to life for
4 murder, 10 to 30 for armed robbery, and zero to 20 for
5 attempted murder. His life is on the line. His liberty
6 is on the line.

7 I expect people to come on this witness stand
8 and tell the truth, tell the whole truth. Don't hold
9 back. What's the point of holding back? It's because
10 you're hiding something.

11 So what does Jujuaïn do next, after the shots
12 ring out? He says the fight was going on. There is a
13 tussle. There is a tussle over the gun. There is a
14 tussle. There's a tussle over the gun. He tells you
15 that he's lying face down on the ground, palms on the
16 ground, okay? That's what he tells us.

17 He says that Kadeem and Dashaun originally
18 start out with Kadeem face down on the ground, Kadeem on
19 top of him, but he turns around, and they're arguing.
20 They're tussling over the gun, and he tells you during
21 that time that Fat is taking the black suitcase, not the
22 blue suitcase, out of the car and putting it in the
23 trunk.

24 What does he do each time he passes? He's
25 kicking him in the head. He's kicking Jujuaïn in the

1 head? How did he not say that happened? He said it
2 happened six times on the stand. He says he goes back
3 and forth and makes six trips to the car, kicking him in
4 the head each time he goes. If he's making six trips to
5 the car and he's still in the back seat of this
6 Seabreeze, where was Dashaun sitting when they leave?
7 Where was he sitting?

8 Again, it doesn't make sense. It doesn't add
9 up. Does he tell us when he's on the stand Dashaun is on
10 the back seat of the car, AK47 blazing down the street?
11 He doesn't mention it one time.

12 What does he do next? He goes and hides in a
13 porta-potty that's next door, next street over. He calls
14 police. He doesn't call them first, but he calls the
15 police. When the police arrive, he doesn't even give
16 them his real name. He doesn't even give them his real
17 date of birth. Why would you not give the authorities,
18 somebody who's there to help you, your real name and your
19 date of birth? What are you hiding? What's going on?

20 That's something that each and every one of
21 you has to think about, must think about, when you're
22 back in this jury room.

23 There's another piece of this puzzle that is
24 very troubling to me, okay, and you heard it when the
25 gunshot residue expert came up here. She's a fantastic

1 witness, and she does a great job at her job, what she
2 does. What does she tell you? She tells you that
3 Kadeem and she tells you that Jujuain each have on the
4 front and backs of their hands metal parts.

5 What does she tell you about that? She tells
6 you it doesn't reach the threshold to move up next to
7 gunshot residue. But wait a minute: There was some
8 gunshot residue, and where was it? It was on the right
9 inside palm of Jujuain Hemingway. Where does she tell
10 you that comes from? She tells you that comes from
11 handling a firearm. She told you that on the stand. She
12 told you that you can get it on the inside of your hand
13 from firing a gun and you can get it on the outside of
14 your hand from firing a gun, but you can also get it from
15 touching and handling a firearm.

16 He's already told us the 30 rounds in a clip.
17 He's already told us that. Did he load that clip on the
18 way down? Did he handle that firearm and load it up in
19 the car while they're on the way down? That's a question
20 for y'all to think about.

21 Finally, he goes home. He goes home to
22 Longs, okay? He's going back home. Once he gets there,
23 he says he has no idea who Fat is. He hasn't mentioned
24 anything about him. He doesn't know his name. He
25 doesn't know him. Never been to Charleston, but when he

1 gets up here on the stand, he says, Yeah, I did know Fat.
2 I did know him then, but he doesn't mention it in his
3 other statements, and he doesn't mention it on the first
4 photo line-up that he fails to identify anybody on.

5 Is he holding back something? Is he not
6 telling us the whole truth? Again, this goes to straight
7 to the elements that we're here to decide, and it goes
8 straight to reasonable doubt.

9 Please, I implore you to keep that in mind
10 when you're back in the jury room. That's an important
11 piece of evidence. That's an important piece of
12 evidence, the gunshot residue. I've already told you
13 this is a serious case. These are serious crimes that
14 are going on right now. You judge, and I want you to
15 examine each and every person that came on this witness
16 stand, specifically Trina, specifically Jujuaain.

17 Ask yourselves, are they hiding something?
18 Ask yourselves, have they told the truth? Ask
19 yourselves, are they holding something back? What are
20 they not telling us? Again, if there is reasonable
21 doubt, if you find any sort of reasonable doubt, then you
22 must let go of Dashaun Simmons. Again, his life is on
23 the line.

24 This case, in my opinion, comes down to two
25 witnesses. It comes down to Trina, and it comes down to

1 Jujuaain.

2 MS. SHEALY: Your Honor, may we approach,
3 please?

4 (Discussion held at sidebar.)

5 MR. McCOY: You're going to have a lot of
6 evidence to look at back here when you go back to the
7 jury room. Ask yourselves, if these guys right here,
8 specifically Dashaun Simmons, if he was there to rob
9 somebody, if he was there to take from somebody, why is
10 there \$700 in Kadeem's pocket? Does that make sense?
11 The scenarios that have been put in front of you don't
12 add up, and I ask you to keep each and every one of those
13 in mind.

14 And I'm going to ask that you go back in your
15 jury room, you take the evidence that's before you, and I
16 ask that you find a not guilty verdict for murder for
17 Dashaun Simmons and a not guilty for an attempted murder
18 and a not guilty for an armed robbery.

19 Let's talk about this for a second. The
20 State has to establish there was malice. Malice is evil
21 in the heart, okay? It's the intent to do wrong. It's
22 the intent to kill somebody. Did he have that that night
23 out on that street? There was obviously a struggle that
24 happens with a firearm. People were fighting and
25 tussling over a weapon, and I'm going to argue to you

1 that Kadeem and Jujuaain brought that gun there. They
2 brought the gun to the scene. They brought the trouble
3 on themselves. To have the weapon there, and then to
4 say, Wait a minute, these guys did it, is wrong.

5 But what is even more wrong is for Trina to
6 say that on her fourth statement. That's wrong. That's
7 not right. Let's talk about how we can find out whether
8 what Trina is saying is true about the earlier part of
9 the day.

10 You've seen the cellphone man get up here and
11 talk about different towers and how things ping off
12 different things and you can tell where a cellphone is,
13 okay? They can tell where they are. The State has the
14 ability to track these cellphones. They have the ability
15 to see where they've gone, to see where they're going,
16 and to see where they've been during the day.

17 Did they show you that information of where
18 the entire phone of Fat has been all day or where Trina's
19 cellphone has been all day or where Dashaun Simmons's
20 phone has been all day? No, they don't show you that.
21 Why don't they show you that? Do they not want to
22 indicate, not want to show you that they didn't go up to
23 Dorchester County in Ridgeville, South Carolina? Is that
24 what they want to show you?

25 Ask yourselves these questions while you're

1 back in the jury room. Again, this is an important day,
2 and I'm going to ask again to find my client not guilty
3 of attempted murder, murder, and armed robbery.

4 Let's look at attempted murder. You have to
5 have malice in your heart to commit a murder. It just
6 doesn't happen. If Dashaun Simmons is sitting point
7 blank to another man that's next to him and just fires a
8 round off, like they said that he does and it just
9 ricochets off his head, why did he just not fire off
10 another round up there and shoot him? It doesn't make
11 sense. Why would you fire off a warning round to
12 somebody who's lying on the ground less than a few feet
13 away from you? It doesn't add up. It doesn't make
14 sense, okay?

15 Let's talk about the armed robbery. You
16 heard on a phone conversation from Jujuain Hemingway --
17 and I don't want to say this in an open courtroom, but he
18 tells you on the phone conversation, No, they ain't get
19 shit from us. They ain't get anything from us, nothing.

20 Was anything taken from them? They're going
21 to tell you now that a bag of hibachi steak food was
22 taken that was over a day old in the car. Is that
23 believable, and a suitcase that had nothing in it?
24 Again, the scenarios do not add up, all right? How can
25 attempted murder and armed robbery happen when the facts

1 don't show it?

2 Now, I've told you, and I urge you to listen
3 to the judge when he's charging you on the law, and once
4 he's charged you on the law, pay attention to reasonable
5 doubt. Pay attention to the evidence of a crime that
6 Dashaun Simmons has been charged with, and, at the end of
7 the day, I'm going to ask you to find him not guilty.

8 Thank you.

9 THE COURT: All right. Mr. Apostolou?

10 MR. APOSTOLOU: Thank you, Your Honor. When
11 we first started in our opening statements, I came and I
12 talked to you. Ms. Shealy got up and she did her opening
13 statement. She did a nice job on her opening statement
14 she set the bar pretty high. She talked about a lot of
15 things.

16 The key to this case, ladies and gentlemen,
17 is the State's theory of this case is based on a lie,
18 start to finish. Kadeem Chambers is dead. That is a sad
19 thing, and truly it is, but the case -- when we started
20 this opening, I told you the case was based on -- the
21 star of the case, the person we need to find it from, is
22 Jujuaan Hemingway, but what information did Jujuaan
23 Hemingway tell us in his direct testimony?

24 First of all, you're going to hear a lot of
25 statements. Y'all are the jury. You are the finder of

1 facts. You make your decisions based off the information
2 that came from right here, based off of right there.
3 Listen to what they said there, and Jujuaain Hemingway got
4 up in his direct and he told a tale, a false tale. That
5 false tale is what the solicitor's office believed to the
6 be facts of the case. They predicated their whole case
7 based off of that.

8 Jujuaain Hemingway doesn't know why he's
9 coming to Charleston. His brother doesn't tell him. His
10 brother just says, Hey, let's go to Charleston, but we
11 know they got there at 11:30, so they would have left
12 Longs somewhere around 9:30, 10:00.

13 So his brother comes to him, 9:30, 10:00,
14 says, Let's drive to Charleston.

15 He doesn't know why. He goes with the
16 brother. They're going to come down here. They can stay
17 the night, or they're going to go all the way back up to
18 Longs? They're going to go back up to Longs. So his
19 statement is he doesn't have any idea whey they're coming
20 down here. They get lost once they're here. They don't
21 know where they're going. He doesn't know where they're
22 going, but they get lost while they're down here.

23 They pull over randomly to the side of the
24 road so he can use his apps, so he can find it on the
25 GPS. Suddenly the door comes flying open. They've had

1 the misfortune of pulling their car over to check their
2 apps, to find out where they are, next to two thugs that
3 happened to be standing in the street with an AK47, and
4 these guys just happened to pull up.

5 That's his testimony. That was his
6 testimony: I don't even know where I was. He's looking
7 at the apps. The door flies open. My brother gets hit a
8 couple times.

9 Well, the coroner was here, and they asked
10 about any facial trauma to Kadeem Chambers. No facial
11 trauma to Kadeem Chambers. If he got hit in the face
12 several times, there's going to be some marks now. We
13 asked the coroner about it. It didn't happen, and the
14 reason it's not in the coroner's report is because
15 everything in Jujuaain Hemingway's tale is a complete and
16 utter lie, and that is the information that the State
17 based their whole case upon, and when you base your case
18 on a lie, your whole case is wrong, and it's a whole lie.

19 Jujuaain Hemingway's was they opened the door,
20 they punched Kadeem Chambers in the face a couple times,
21 they put us on the ground. They order us to go into the
22 truck. He opens it up and -- and you heard his
23 testimony. Then the incident happens, and then he runs
24 to the outhouse. He didn't know where he was. He's
25 never been to Charleston before. He didn't know where

1 Johns Island was. But then he calls in on the 911 tape,
2 he says something, Johns Island.

3 When I asked him about it, what did he say?
4 He said after running from his brother's murder, he ran
5 to the outhouse, threw his marijuana into the outhouse,
6 and got on his phone and did a search to find out where
7 he was first, and that's how he found out he was on Johns
8 Island. Then he calls his brother in Longs, South
9 Carolina. Then he calls 911. Then the police come and
10 they take his statement. He gives the false name, and
11 then just the entire statement for it.

12 He doesn't know where he is. He doesn't know
13 these people, and that's what the whole theory the State
14 told you about, and they implicated that maybe Jujuain
15 Hemingway doesn't know him, but maybe Kadeem does. Well,
16 the problem with that is we know Jujuain knows Denzel
17 Hemingway. If Jujuain Hemingway came in here and told
18 you and told the police, the State came here and said,
19 "We came down from Longs to Johns Island to collect the
20 debt from Denzel Heyward, Denzel Heyward didn't want to
21 pay us the money for the marijuana, and he fired -- came
22 out with an AK47 and fired a shot at him. It was Denzel
23 Heyward. He lives right around the corner. He lives
24 right around the corner. We've been here before," we
25 would have had a completely different case, but that's

1 not what he said.

2 He made up this whole stranger robbery. He's
3 never been there before. He doesn't know anything about
4 it. Jujuaín Hemingway gets out of MUSC. He goes up to
5 Longs. He makes a statement to the police. He makes a
6 statement to the police. He makes another statement that
7 night too. He got out at -- I think his testimony was
8 2:00 or 3:00 from MUSC. Then he drove up to Longs.
9 There was some people there. He said he met with the
10 detectives for three hours, and then he has a
11 conversation with Thurston Hardiman, so he made one
12 statement to the detectives that night, and he made one
13 statement to Thurston Hardiman that night, and you heard
14 that tape.

15 This is an individual who he said he doesn't
16 know, has never heard of that, but you heard his
17 testimony, and let's be honest: There was not one thing
18 credible in his testimony, not one, and it was a complete
19 and utter lie, and that's what the State of South
20 Carolina based their whole theory on.

21 If Jujuaín Hemingway had been clear with them
22 and told them, "I met Denzel Heyward before. I've been
23 to his dorm room in South Carolina State. I've been to
24 SC State. I've been to Johns Island," would the State of
25 South Carolina have got up here and said all the things

1 that they said to you? Would they have got up here and
2 talked about this in this same light? The answer to that
3 is no, because their whole entire theory is based on a
4 lie, and we're going to listen to Jujuain's statement
5 here in a little while, but I want to talk about some of
6 the other things that we heard about in the opening, all
7 right?

8 Reasonable doubt. Reasonable doubt. Is
9 there reasonable doubt in this case? That's ultimately
10 your question. They have to convince you beyond a
11 reasonable doubt that my client, Denzel Heyward, is
12 guilty of every one of these crimes, every element and
13 every one of these crimes, every element to murder, every
14 element to armed robbery, to the firearm, and to the
15 attempted murder, for you to find him guilty.

16 You have to come back they -- they have to
17 check it off: Did that one happen? Did that one happen?
18 Did that one happen? Did that one happen? And they have
19 to do it to the highest standard in law: Beyond a
20 reasonable doubt. So at the end of the day, if they
21 haven't gotten you to the highest standard, beyond a
22 reasonable doubt, to even one of those elements in those
23 charges, you have to come back with a not guilty.

24 You have to because that's what you took a
25 pledge at the opening of this case to do. It has to be

1 unanimous. All 12 of you have to get up there, -- they
2 have to convince you beyond a reasonable doubt for every
3 element on this case for every charge, and it has to be
4 all 12 of you. If it's 11 to 1, it's not good evidence,
5 and I will tell you, and I will ask, you hold on to what
6 you believe. This is a super serious case, and that
7 might be the understatement of life.

8 This is -- you've heard a lot of testimony.
9 These are monster serious charges. Take your time. I
10 know we're all tired. I know we've been here all week.
11 I don't know if we had to be here all week, if Dashaun --
12 Jujuain Hemingway had told the truth, but we had listened
13 to his statement earlier. I don't know if that would
14 have been completely necessary, but we're here now, and
15 this is monster serious. I would ask you to please,
16 please take your time.

17 Look at all the evidence. Look at every one
18 of these elements, and every single one of you needs to
19 convinced beyond a reasonable doubt of it. The burden of
20 proof is on the State. We don't have to prove anything.
21 The defendant doesn't have to testify. We don't have to
22 get up and get on the stand. We don't have to prove
23 anything. We don't have to prove we didn't do it. The
24 State has to prove to you, from that chair right there,
25 that all of the elements of all of these things are here.

1 It's their burden of proof.

2 In the investigation -- you didn't hear much
3 about the investigation. They just kind of glossed over
4 that part of it and talked about some of the results from
5 it, but if there's something that they didn't present to
6 you and you've got a question about it and you're saying,
7 God, I wish we had that information and it's not there,
8 hold it against them. It's their job to come in here and
9 give you all the facts that are necessary to make that
10 decision.

11 And I'll tell you, specifically, I'm talking
12 about Quansantrina's testimony, a year-and-a-half after
13 her crime, that that might not bother some people, but
14 that bothers me. When somebody goes in and makes
15 statement number one that they're going to tell the truth
16 and doesn't and then signs the proffer -- the proffer
17 agreement is a whole different animal than a statement
18 that the police officers said she gave.

19 A proffer agreement is a legally binding
20 contract. When you say, I'm going to tell the truth,
21 fully, the complete truth, and you get up there, and it
22 is subject to penalty of perjury, a year-and-a-half after
23 that she says that she saw something that looks like a
24 barrel in Ridgeville, South Carolina -- well, they called
25 an expert here today, and that expert triangulated -- my

1 word; not his -- those cellphones, and he was able to say
2 Denzel Heyward was in that area. Nobody is denying that.
3 That was in evidence, and that's, again, something I
4 really want to tell you about.

5 They presented a case that wasn't what
6 actually the facts were. They presented a case under
7 their whole theory of the case. They can't proceed under
8 the same theory because that's not what the evidence
9 presented because Jujuan Hemingway has obviously known
10 Denzel Heyward. They presented a case based completely
11 off what their old theory was. They're going to have to
12 come up here and modify their theory, because that theory
13 is blown out of the water, but back to the triangulation.

14 They tapped this person, this expert, who
15 testified that, If they had asked me to do another one, I
16 would have done it. I could have done it.

17 Why didn't they go and have that person
18 triangulate Quansantrina's cellphone to show that she
19 went to Ridgeville, South Carolina, on May 16, 2012? And
20 that would have corroborated her story. They didn't do
21 it. They have him right here. They've already used him
22 in this case. Why not ask him to corroborate that super
23 critical fact? They didn't do it, and it's their burden,
24 their burden, to show every detail that you need to make
25 an informed decision in this case. That is a

1 fantastically important issue. They didn't do it.

2 But what did we do? We used the information
3 that we had, the information from Denzel Heyward's
4 cellphone that she said went with her, and we were able
5 to show it never did go to Ridgeville. It never went to
6 Dorchester County at all. The closest it got to is Goose
7 Creek, and there is a 58-minute window there.

8 So as I understand the State's theory, he got
9 up into Goose Creek and said, I've got a 58-minute window
10 to run over to Ridgeville and run back somewhere else so
11 that when my phone gets rung again I'm in a different
12 place. It is a monster, monster part of this case.

13 Did they have a gun before this incident
14 occurred? Easy to prove to you if they tried to
15 triangulate her cellphone, but if they didn't do it, hold
16 it against them.

17 My client's presumed innocent. They cannot
18 withdraw -- he's got a cloak of innocence. They can't
19 pull that off until they've convinced you firmly of all
20 of those details, and, also, it's two separate trials.
21 Mr. Simmons has a case. He's got a great lawyer, but my
22 client is Denzel Heyward, and I'm representing him.

23 So let's talk about the evidence that the
24 State did present to you. Well, they put up some
25 forensics, right? They put up the CSI guys that got up

1 there. They talked about all these great techniques that
2 they have to go in there and find fingerprints, microbes,
3 DNA, all these great things.

4 They got the Mercedes that day. They went
5 into the Mercedes. They did their analysis, and they
6 didn't find anything from Denzel Heyward in there. What
7 was -- Quansantrina's testimony was he was inside the
8 car. Jujuaín Hemingway said they was all inside the car,
9 looking around. There was never any evidence and never
10 any statements about masks. Never any evidence about
11 gloves or anything like that. Well, there is no forensic
12 evidence from Denzel Heyward.

13 Then they put the expert up there, or the
14 witness, and they talked about, well, there's not any up
15 here, but here's some reasons why they could have not
16 been in there.

17 I would suggest to you that the number one
18 reason it couldn't be in there is because he wasn't in
19 the car, because their entire story is a lie, and it's
20 based straight first and foremost on Jujuaín Hemingway
21 who hasn't told the truth one time in this case, start to
22 finish. So there's absolutely zero forensics, zero
23 forensics.

24 The next statement is Quansantrina, all
25 right? This is the evidence: The forensics don't exist.

1 There's only two things to put Denzel in the case at all:
2 It's the statement of Quansantrina and the statement of
3 Jujuaain Hemingway, so let's talk about Quansantrina for a
4 second.

5 First, what is her motive? Does she have any
6 reason to come up with a lie? Well, she's got 30 to life
7 on a murder charge. She's got 10 to 30 on an armed
8 robbery. She's got zero to 20 on an attempted murder, so
9 she's got a 40-year mandatory minimum on these charges
10 alone.

11 MS. SHEALY: Your Honor, objection. May we
12 approach?

13 (Discussion held at sidebar.)

14 MR. APOSTOLOU: Well, I'll qualify. I'm
15 talking about Quansantrina's motive. Those are the
16 potential penalties that she is avoiding:
17 30-year-mandatory minimum on the murder case; a ten-year
18 mandatory minimum on the armed robbery, which could be
19 sentenced consecutively; and that could be a 40-year
20 mandatory. That's what she's avoiding, so she's got
21 monster motivation to come up with a different story.

22 Ms. Shealy said something that struck me when
23 Jujuaain Hemingway was -- after I cross-examined Jujuaain
24 Hemingway, Mr. McCoy crossed him. Ms. Shealy got up
25 there and talked to him again and she said, Jujuaain, do

1 you know that Quansantrina Rivers gave a statement that
2 nearly identically resembles yours?

3 And he said, No, I didn't, but that's not the
4 truth.

5 Quansantrina gave statement number one, which
6 corroborated our version of the case. She said she never
7 saw Denzel with a gun. She said the trunk never opened,
8 and she said there was no suitcase whatsoever.

9 Then she made statement number two. She was
10 in jail. She said she didn't put all this information in
11 there because she was fearing for her life. She was
12 going to the jail, and she was going to stay in jail.
13 She said it was because they were out and about and she
14 was fearful of her life. She was not out and about.
15 That doesn't make sense.

16 If she's going to be in a detention center
17 facility, and she's fearful of them who are not in the
18 same detention center facility, so that didn't make any
19 sense at all.

20 What does she do to get out? She's got a
21 small child. She wants to get out. What does she do to
22 get out? She cooperates with the State. She writes this
23 proffer. After they do that, they reduce her bond, and
24 she's able to get out right after that, so what does the
25 second statement say?

1 The second statement is basically a lot of
2 the same points that she has in the suitcase. She says
3 that they were never in the trunk. She says that they
4 didn't -- that she never saw Denzel with a gun, but,
5 yeah, there was the suitcase. Then a year and a half
6 later, days before the schedule of this trial began, she
7 adds in the part about the gun, but the real key to
8 Quansantrina's story is she -- what she added in between
9 the first story and the second story, and, again, the
10 trunk never opened. They didn't have a gun, Denzel.
11 What she added in that statement was the suitcase.

12 The problem with the suitcase is we know it
13 doesn't exist because we have Jujuaain Hemingway's
14 statement that they didn't get anything else, and the
15 reason they didn't get anything from us is because we
16 didn't have anything because they were coming down here
17 to collect a debt, and the whole armed robbery theory
18 makes absolutely no sense if you're going to -- you're
19 going to rob somebody that you owe money to? That just
20 doesn't make any sense.

21 They weren't bringing any drugs to him.
22 There is no testimony like that. They're coming down
23 here to collect debt. How do we know that? It's from
24 Jujuaain Hemingway -- I'm going to call it his second
25 statement, his real statement, that he made to Thurston

1 Hardiman.

2 When Jujuaain Hemingway makes his first
3 statement in the presence of the police and then they
4 leave and he gets a phone call, which once is going to
5 more accurate? Which one is going to are less guarded
6 and more truthful, the one where he's in the room,
7 fearful of police, or the one where he feels like it's
8 all clear? He doesn't think anyone is going to be
9 pulling that jail tape. He's not calling anybody in
10 this. That's the one that is going to be most truthful
11 in this case.

12 So Quansantrina added this suitcase. Well,
13 where did they get the suitcase from? They got it from
14 Jujuaain Hemingway's statement. The police are talking to
15 him. They say, Hey, we know this isn't true. We know
16 there was a suitcase out there. You want to get out, you
17 want to cooperate, you got to tell us the truth, and we
18 know there is a suitcase on it, and she asked for the
19 suitcase, but the suitcase never existed. She added
20 something that we know wasn't there because there wasn't
21 any kind of armed robbery.

22 We'll talk about Jujuaain's statement, but
23 we're go ahead and play his tape. It's a nine-minute
24 tape, and I apologize for it, but there's a lot of
25 information on there, and this is a monster serious

1 matter.

2 The testimony was he hit Kadeem in the mouth,
3 pulled him out of the car. No facial trauma whatsoever.
4 The triangulation, what we were able to do is show they
5 never went to Dorchester County. They didn't do their
6 own to verify that for you, and the robbery story.

7 Jujuaïn testified that they were in his
8 pockets, yet the \$648 was in Kadeem's pockets when he
9 gets to the hospital. That doesn't make any sense
10 because the whole robbery thing just never happened.

11 Court's indulgence.

12 (Whereupon, the jail recordings were played
13 for the jury.)

14 All right. This is Jujuaïn Hemingway. These
15 are hard things to listen to. I have a hard time
16 understanding, but it's very important to understand what
17 he's saying. He's called -- Hardiman is calling him.
18 Hardiman has already heard. This is less than 24 hours
19 after this incident occurred, less than 24 hours after
20 being out here in Charleston County, on Johns Island.

21 His cousin is calling him, and his cousin is
22 in the jail and has already heard that Kadeem is dead.
23 So he calls and he says, What's going on?

24 And Jujuaïn says, They took my damn dog,
25 which is basically saying this his brother is dead. And

1 then he says -- go ahead.

2 (Whereupon, the jail recordings were played
3 for the jury.)

4 And he says what happened? It happened to be
5 30 minutes after I talked to him the previous night. In
6 his cross-examination, we played the testimony from that
7 16th call, where Jujuan Hemingway tells Hardiman, I'm
8 driving down to Charleston to collect some money,
9 contrary to what he testified that's what he was doing.

10 (Whereupon, the jail recordings were played
11 for the jury.)

12 Okay. This is a person who's testified he's
13 never of Fat, didn't know the him. Never heard his name,
14 even -- just doesn't know him at all, and he's saying,
15 The nigger Fat? I apologize for using these words.
16 These are not my words. I'm sorry.

17 Yeah, bro, I think he was locked up with that
18 nigger or something, man.

19 What, he mentioned my name?

20 No, I remembered you saying you was locked up
21 with that nigger or bra said you was locked up with that
22 nigger.

23 His testimony was he didn't know him. His
24 testimony was he had never had any conversation with
25 anybody about him or nobody had a conversation with him,

1 but his words are, Man, you know that nigger.

2 And he had talked about him with Hardiman
3 before, and he had talked about it with Kadeem, and why
4 is that important?

5 Because his statement wasn't, Fat did it. We
6 came down to collect the debt from him, and he shot us,
7 and he's the guy that did it. His statement was we got
8 lost, they pulled us out, and a stranger assaulted us.

9 (Whereupon, the jail recordings were played
10 for the jury.)

11 All right. He didn't pull the trigger.
12 Another one pulled the trigger. That's what we were
13 talking about in our opening, is Denzel Heyward did not
14 pull this trigger. There are no allegations that he
15 pulled the trigger. He is charged with murder. Well,
16 the only way you can convict him of murder is if you
17 believe the legal theory that the State talked to you
18 about in it's opening, which is the hand of one is the
19 hand of all.

20 The judge is going to charge you on that, and
21 it's a really important law. It's going to be in the
22 charges the judge gives you, but what it says, basically,
23 is if two people are engaged in a conspiracy to violate
24 the law and something happens as a natural consequence of
25 that conspiracy, then you could hold everybody liable for

1 it, just like the person that actually did it.

2 Let's think about that in our case. To find
3 Denzel Heyward guilty of murder, you have to believe that
4 they were in a criminal conspiracy to rob these guys.
5 That's what you have to believe, that you have to believe
6 that they were in a conspiracy to rob these guys.

7 If you do not believe that, after all the
8 evidence that you've heard today, that you cannot --
9 that's the gatekeeping function -- you cannot find him
10 guilty of murder, unless you believe they were actively
11 in a conspiracy to pull a robbery on Jujuaïn and Kadeem,
12 and after you decide that as the gatekeeping function,
13 then you need to decide whether it's a logical
14 consequence of that action.

15 I would suggest to you that there is no --
16 the evidence does not support that they were in a robbery
17 at all. You are not going to rob somebody that you're
18 going to meet. Why were they meeting in that area?
19 Because they had been there before. That's the area that
20 Denzel lived in. There's testimony about Denzel seeing a
21 neighbor who recognized him in that area.

22 If you were going to commit an armed robbery,
23 you are not going to do it in a neighborhood area that
24 people can recognize you in. You are going to go
25 somewhere else. Why did they go in that area? Because

1 Jujuaain and Kadeem had been there before. They had
2 traveled from Longs to come down there.

3 You heard the testimony. They were there in
4 December of 2011, and they had been there before, so if
5 you cannot believe beyond a reasonable doubt that they
6 were in a conspiracy to commit an armed robbery, you
7 cannot convict him of murder. If you cannot believe
8 they're in a conspiracy to commit an armed robbery, you
9 cannot convict him of armed robbery. If you do not
10 convict him of murder and armed robbery, you cannot
11 convict him of attempted murder.

12 The evidence isn't going to be to support
13 that. If you cannot convict him of any of those three
14 charges, then you cannot convict him of possession of a
15 firearm and a crime of violence.

16 (Whereupon, the jail recordings were played
17 for the jury.)

18 The damn detectives and shit questioned the
19 fuck out of my ass. The damn detectives and shit
20 questioned the fuck out of my ass.

21 This is right after they left. This is less
22 than 24 hours after this incident. This is after he's
23 denied knowing Fat, or anybody by that name. He's never
24 talked to him. Doesn't know anything about him, and he's
25 complaining about the detectives who were there

1 investigating.

2 (Whereupon, the jail recordings were played
3 for the jury.)

4 You don't have to take my words for it. You
5 don't have to listen to the unreasonableness of it. You
6 can talk Jujuaain Hemingway's words for it. Did they take
7 anything from him?

8 No, we didn't have shit, because they were
9 going down there to collect the debt. There is nothing
10 to arm rob. It doesn't make any sense. No, they didn't
11 have shit.

12 Well, let's spin that in the possible way the
13 State of South Carolina can spin that, in their argument,
14 because they get to talk to you last. I know I have been
15 talking a long time, but this is the last time I get to
16 talk to you in this case.

17 The State gets to come up here and gets to
18 talk to you, and they are going to be convinced and
19 they're going to be convincing, but it's not going to
20 support what this is: No, man, they didn't get shit.

21 Well, let's say, hypothetically, they're
22 going to argue that what he meant by that was that they
23 got an empty suitcase, and the suitcase didn't have
24 anything in it. And that argument makes a little bit of
25 sense if and only if he knew what the contents of the

1 suitcase were before the robbery.

2 But what is his testimony? He didn't know
3 there was even a suitcase in the car. This is less than
4 24 hours after the incident. He cannot tell Thurston
5 Hardiman they didn't get shit because the suitcase was
6 empty unless he knows what the contents of the suitcase
7 are, and he doesn't know. His testimony was he has no
8 idea. He never saw it.

9 For all he knows, there's \$50,000 cash in
10 there, and he hit the mother lode. The reason he said
11 they never found shit is because there never was an armed
12 robbery, and they didn't take anything.

13 MS. SHEALY: Your Honor, may we approach for
14 a moment?

15 (Discussion held at sidebar.)

16 MR. APOSTOLOU: When I was talking to
17 Quansantrina, when she was taking her testimony, and then
18 I asked her about the suitcase, and I know I went on and
19 on about it, but what did she say when I asked her about
20 the suitcase?

21 She said, I don't want to talk about that. I
22 don't want to answer that question.

23 Well, why doesn't she want to answer that
24 question? Because there never was a suitcase, and she
25 knew she was making that up, and that's verified by them.

1 The last part that we just heard said, Yeah,
2 the nigger owed us some bread and shit. He owed us some
3 bread. He owed us some money.

4 And, again, this is somebody who has
5 testified earlier he's never even met on direct
6 testimony.

7 (Whereupon, the jail recordings were played
8 for the jury.)

9 Mercifully, that's the last part of the tape
10 I'm going to play. You're going to have this tape in
11 evidence. Take it in there. I went through it with you
12 on purpose because it is impossible to understand unless
13 you have an ear for it and you spent about 700 hours
14 trying to transcribe it.

15 But what he says there is both our bread.
16 I'm riding down there with you. So the State of South
17 Carolina is going to ask you to convict these boys of
18 these monster serious charges, and they're going to have
19 to do it beyond a reasonable doubt, and they're going to
20 do it off of the only evidence in the case, which is
21 Jujuan Hemingway's statement and Quansantrina's
22 statement. That's the only evidence in the case. There
23 is nothing else.

24 Well, you know, the State sort of takes the
25 sting away. I want you to remember thinking about

1 Jujuaain Hemingway's testimony yesterday. Was there
2 anything credible about that? Was it perjury? Did he
3 actually lie on the stand in a court proceeding? And if
4 there's nothing credible about it, you cannot base any of
5 your deliberations and convincing off of that.

6 Quansantrina establishes a suitcase that
7 doesn't exist, and we already talked about her problems
8 in this case. The last thing I want to talk to you about
9 is another jury charge that's going to be included in
10 there called mere presence.

11 And what mere presence says is if I'm on a
12 crime scene and a crime happens, just because I'm out
13 there doesn't mean I'm guilty of a crime. Denzel Heyward
14 and Dashaun Simmons are having two separate trials. Even
15 if you find Dashaun Simmons killed a guy in cold blood,
16 and I don't think you will, but even if you did, that
17 doesn't mean anything to Denzel Heyward.

18 Unless they're the hand of one, hand of all
19 and they're engaged in the conspiracy to commit an armed
20 robbery, then mere presence would say that he is not
21 guilty of the crime if he didn't aid or abet. The judge
22 is going to give you that charge, and it's going to be in
23 there.

24 I appreciate everything that y'all have done.
25 I know it's been a long week. I want you to remember how

1 terrible Jujuaain Hemingway's testimony was, how terrible
2 his truthfulness was, how terrible his body posture was
3 and his demeanor and how terrible his truthfulness was.
4 That's what their case is based off of. That's their
5 theory of the case that they got in here and told you to
6 start this case off with. That is where they got the
7 whole idea about it.

8 I told you when we started that sometimes the
9 evidence dictates the investigation, and sometimes the
10 investigation dictates the evidence, and I don't know if
11 there is a case more exemplary of that than this one.
12 They got their story from Jujuaain Hemingway, and they got
13 all the stuff that they can to fit it in there and to
14 make it -- to believe in what they had.

15 Did they listen to Jujuaain Hemingway's tape
16 that they produced to us? Would they have believed all
17 of the things that they told you in the opening statement
18 if they had listened to that nine-minute tape that they
19 produced to us? I would suggest to you that there is no
20 possible way, I hope, that you would convict Denzel
21 Heyward on the charges that he's on. He's been waiting
22 for two-and-a-half years for this day.

23 Please, take your time, all 12 of you. Go
24 through the evidence. Look at it. Realize that there is
25 just no way the credibility issues in this case get over

1 a reasonable doubt. I told you that at the beginning of
2 the case I thought that at the end of the case you would
3 believe my theory more: These guys came down here to
4 collect a drug debt. They brought the firearm in their
5 car. They're the ones that started getting into an
6 argument about it. They brought out the firearm, it got
7 wrestled away from them, and that's when the shooting
8 occurred to them.

9 I told you that I thought at the end of the
10 day you would believe my case more than theirs. That's
11 not the burden for me. The burden for me is, is it
12 possible? Is it possible? When you go in there at the
13 end of the day, are you just able to say it's not even
14 possible to believe Jujuan Hemingway and Quansantrina
15 over all of the other evidence that we see, I suggest to
16 you that there's no possible way that you can convict him
17 on what occurred here, and that's all I've got to say.

18 Thank you very much.

19 THE COURT: Ms. Shealy?

20 MS. SHEALY: May it please the Court: Good
21 afternoon. We would be able to know why Kadeem Chambers
22 came to Charleston, but he's voiceless. We can tell from
23 the text messages that he was getting directions to
24 Cynthia Drive or to Hobson Avenue, and the numbers kept
25 changing.

1 And we know Jujuaain was the driver, and his
2 brother didn't indicate exactly what they were going
3 there for. What I would invite you to think about when
4 you start out is Sidearis Singleton, Trina's mother.
5 Isn't it refreshing to hear someone, especially a mother,
6 who put before everything the right thing: Trina, a
7 boy's mother has lost her son. You got to do the right
8 thing. You got to turn yourself in.

9 And that family respected human life enough
10 to talk amongst themselves and say, Is this the right
11 thing to do? Should we do it? Should we make her turn
12 herself in?

13 Nobody was looking for Quansantrina Rivers.
14 Nobody was looking for Denzel Heyward or Dashaun Simmons.
15 She walked into that police station, and she gave the
16 police the name of Dashaun Simmons, the rifleman, and the
17 name of Denzel Heyward, her lover, the father of her
18 child. Mr. McCoy, Mr. Apostolou don't like Jujuaain
19 Hemingway, and, to be kind of candid with you, that
20 probably wasn't the best example of Jujuaain Hemingway in
21 this courtroom, but I don't know what it feels like to be
22 17 years old and to have your brother shot beside you.

23 And Mr. Apostolou is a nice man, but he does
24 have a manner of speaking where he chuckles a little at
25 the end of his sentence. I don't think he means anything

1 by it, but if you were Jujuaain Hemingway, sitting on the
2 stand, knowing that Mr. McCoy represents the gunman and
3 Mr. Apostolou represents the stomper and a man chuckles
4 when he asks questions, it probably doesn't put your
5 disposition in the best place.

6 The courtroom is an intimidating atmosphere,
7 and Jujuaain Hemingway had to walk up here, sit down, and
8 look at the killers of his brother, dressed up for court,
9 sitting there represented. They want to criticize
10 Quansantrina and they want to destroy Jujuaain? Guess
11 what? They can't. They can't explain how, when Jujuaain
12 Hemingway, in Longs -- I've never been to Longs. I've
13 lived in South Carolina my entire life -- east of North
14 Myrtle Beach, in a house where they were setting up to
15 mourn the death of a family member, when two officers
16 come and ask you two-and-a-half hours' worth of questions
17 on the worst day of your life.

18 He didn't want to give information. He told
19 you he was angry. Hours before he had been put on the
20 ground, had the road rash to prove it. Had his teeth
21 knocked back in his head to prove it. And, frankly,
22 frankly, had a dead brother to prove it, and he runs for
23 his life, and the police are outside the porta-potty with
24 guns drawn at him. They handcuff him, and he's taken to
25 the hospital, after calling 911 where he pleaded with the

1 dispatcher: Hurry. Hurry.

2 And what did he want to know at the hospital?
3 How is my brother? Is my brother okay? When he came out
4 of that porta-potty, he explained there was two guys.
5 One in the red shirt, one in a white shirt. Fresh out of
6 the porta-potty he told them, and then he went to the
7 hospital. And his mother, his cousins, his brother shows
8 up, and they find out from his family, Kadeem's gone.

9 And then he drives back to Longs with his
10 family, never having slept, mouth a mess, having bled
11 profusely, sore, and he walks up to a home where he hopes
12 he can get some tranquility to think about, to have a
13 moment by yourself, and instead people are gathered, as
14 people do, but that's not what Jujuaain wanted.

15 But on May 17th, he started a statement and
16 was reluctant to cooperate. He was frustrated. He was
17 mad. I don't think he liked talking to the police.
18 Nothing about Jujuaain would make you believe that he
19 would be excited about talking to the police, but he did.
20 Then he wrote three pages, and they knew he knew more.

21 And they said, You got to start all over
22 again.

23 And he wrote a six-page statement after his
24 mother, Loretta, and his brother said, You got to tell
25 them what you know. You got to tell them what you know.

1 And he told the details, the details of
2 pulling over and having a sensation that something is
3 wrong, the detail of Denzel Heyward approaching the
4 automobile, and at first it seemed casual, and then he
5 hits Kadeem.

6 Remember when Dr. Batalis testified? There
7 was laceration on his head and on his face, and remember
8 the exit wound, road rash. Those two guys were put on
9 that ground. He gave a description of the guy in the red
10 shirt, big fellow, facial hair. I believe he said
11 six-one, six-one, about 200 pounds, had a red shirt on,
12 facial hair, black man.

13 About the girl? 150 pounds, black female,
14 hairstyle, ponytail; had on jeans and a gray shirt. This
15 is May 17th that he gives these details.

16 What kind of weapon did Dashaun Simmons have?
17 A black long with a banana clip, skinny guy, brown skin,
18 had a Geechie accent. He gave them all that information
19 on May 17th. He talked about how every time Denzel
20 Heyward -- about sensing the power in his legs, to kick a
21 man who was down, and to kick him and to kick him and to
22 kick him, enough to cause that kind of damage.

23 He told us about the girl who picked up the
24 keys with something so that nothing of hers would be left
25 on the keys. He told them about the guys yelling at him

1 and wanting the stuff, wanting the money. He told all of
2 that on May 17th.

3 And what did he tell you? The same thing.
4 They put him on the ground. They're looking for stuff.
5 They think this is going to be big, so when you hear that
6 language, they didn't get shit, Mr. Apostolou is right:
7 I am going to attempt to silence you.

8 If you're looking for money and you're
9 looking for drugs and you get a suitcase full of clothes
10 and some half eaten food, in that world, you didn't
11 get -- can't you just see it? Frustration building,
12 getting a little harder. Point that gun down at the
13 head.

14 These guys were emboldened. They were
15 empowered, and then they got mad. All this for nothing?
16 Ask the girl to get out of the car and try to look and
17 see if it was in the engine. They wanted something
18 there. And then, in Charleston, Quansantrina,
19 Quansantrina, who didn't want to tell her mother
20 everything because, remember, her mother doesn't like
21 Denzel. Remember, her mother doesn't even know his
22 friends.

23 Denzel wasn't very kind to Trina. You've
24 heard the classic nature of their relationship, yet she's
25 still gone to see him as recently as October, and why?

1 She didn't want to punish that little girl, T[REDACTED], for
2 the acts that her boyfriend had committed. The little
3 girl wanted to see her dad. You cannot get around that
4 while one is in Charleston, describing the events, who --
5 they're her buds, and she gives those details and she
6 describes those acts, that it just so happens that the
7 victim, who she does not know, and he does not know her,
8 has told the police the same description.

9 But Quansantrina can one up Jujuain. She
10 knew who the other two guys were. Now, they may want to
11 minimize how that would affect Quansantrina, to go with
12 her family and give a statement and to be put in jail?
13 That's not an easy thing for a young girl, a young girl
14 who they have already taken T[REDACTED] out of state,
15 smartly, to get her out of a situation.

16 It was a bold move for Quansantrina, and it
17 came from one thing: I need to do right. And as she
18 talked to the solicitor's office, she gave more and more
19 and more details. Let's look at some of the things that
20 both she and Jujuain said: That he and his brother were
21 in the car, and these two ambushed them. Simmons running
22 out of the woods with an AK47.

23 Jujuain said, I don't know where he came
24 from.

25 They both said they got put on the ground,

1 Jujuaïn and Kadeem, and the road rash proves it. That
2 they were looking for something: Where is the money?
3 Where is the stuff? Increasingly frustrated. One shot
4 next to Jujuaïn's head. That's not a warning shot.
5 That's an attempt to shoot him, and they want to make a
6 big deal about Ila Simmons through SLED. If you want to
7 hear her testimony again, you can ask to.

8 They don't want you to remember that what she
9 said was, This wasn't the residue from a shooter. It was
10 the residue from someone defending themselves. He's on
11 the ground, his hands are on the ground.

12 MR. APOSTOLOU: Objection. Judge, may we
13 approach?

14 (Discussion held at sidebar.)

15 MS. SHEALY: That his hands were down and
16 what was left behind wasn't enough to say he was a
17 shooter. Defensive, down, hands down on the ground.

18 What else is suggestive of it? These two
19 guys, Jujuaïn and Kadeem, trying to defend themselves,
20 the way that gunshot goes in Kadeem's leg, as if he's on
21 the ground and the leg is up, to try to block it. No
22 mercy on the part of these two guys, no mercy, no regret.

23 So we were talking about the sameness of what
24 Quansantrina and Jujuaïn were saying. Two men, an AK47
25 with a banana clip. Quansantrina gets the keys without

1 touching them by using a rag. One shot, then rapid two
2 shots, a bag of food, the way the cars were parked:
3 Jujuain told you, I went down the road. I had to turn
4 around and come back and re-pull over.

5 Quansantrina told you, The car came down the
6 street. It turned around and came back and pulled over.

7 The details match. They corroborate each
8 other; the tussling over the gun -- Kadeem knew that they
9 weren't playing. They shot at his brother, and he's
10 trying to get the gun and they're tussling with him, and
11 Dashaun Simmons, Dashaun Simmons, gets that opportunity
12 to use it. Big day for Dashaun. There's not just one
13 shot, there are two. One to the chest, one to the leg.

14 What else do Jujuain and Trina also say about
15 the stomping? She's telling in Charleston that Denzel
16 Heyward, red shirt, is stomping the kid in his head. It
17 takes a high level of malice to take your foot and stomp
18 someone in the head, not once, not twice, but repeatedly.

19 Another thing they both said, she says that
20 when they go tearing out of there, tearing down Cynthia
21 Avenue, or Cynthia Drive, she almost hits Jujuain.
22 Jujuain tells you he hears a car coming up right behind
23 him. He's running as fast as he can and seeks shelter on
24 Thorpe Constantine Road. Let's talk about that recording
25 for a minute.

1 Probably the most important part of it, the
2 part that Alex played, Apostolou played, were the first
3 three words: His name's Fat.

4 Is that how you refer to someone that you
5 know, or is that how you refer to someone that the people
6 at your house have been telling you his name is Fat? The
7 other guy, Thurston, told him about being locked up
8 together before, but what else is said on that phone
9 call?

10 He didn't pull the trigger. The other one
11 pulled the trigger. Jujuaïn gave that detail to his
12 cousin as well: My brother died. My mind is on my
13 brother.

14 In whatever way Jujuaïn Hemingway's
15 personality might not have been the way we hoped for,
16 there was one thing clear: In every question he
17 answered, his mind is on his brother. Two-and-a-half
18 years later, his mind is on his brother.

19 Let's talk a little bit about what
20 Quansantrina said that has also been corroborated.
21 Remember she told us that when they got back in the car
22 Denzel got rid of the phone? Willis Walker, Willis
23 Walker today, told you, right after the shooting, That
24 phone's not used anymore. The words of a guilty man.
25 Get rid of that thing, and then he started using

1 Quansantrina's. She said it, and the records reflect it.
2 That's whose number starts calling Lorenzo.

3 Jujua in Hemingway told you that on May 19th,
4 when they brought him the line-up with Denzel's picture
5 in it, that he could have identified him. He knew it was
6 him, but he didn't know what he wanted to do. He hadn't
7 had time to think.

8 Next day, when Charles Lawrence brings the
9 line-up and he had a little more time to be contemplative
10 and to think, he identifies Denzel Heyward. Jujua in
11 Hemingway, 17 years old, two days after the death of his
12 brother, realizes, I got to tell them who did it.

13 He would have had absolutely no reason to
14 identify someone other than the one who stomped his head
15 and rode to Cynthia Drive with Dashaun Simmons and the
16 AK47, bent on mischief, malice in their heart. They
17 thought, It's going to be a payday, and it wasn't.

18 Let's focus now for a second on the hand of
19 one is the hand of all. His Honor will instruct you
20 about the hand of one and the hand of all, and let me
21 tell you about it factually, and then I'll address it
22 legally.

23 When two guys go to a house and get an
24 assault weapon and it's loaded and it has a banana clip
25 and they put it in the trunk of a car and they lie in

1 wait and they rob two people, it doesn't matter if Denzel
2 Heyward was holding the gun or if Dashaun Simmons was.
3 They acted together. They committed this crime together.

4 His Honor will instruct you, if a crime is
5 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 act
8 is criminally responsible for everything done by the
9 other person which happens as a probable or natural
10 consequence of the acts done to carry out the common
11 plan.

12 For example, two people can be guilty of
13 killing another person when only one of them had a gun,
14 there was only one bullet, and only one of the two fired
15 the shot that caused the death: Textbook hand of one,
16 hand of all. This case is textbook.

17 Let's reflect on the jail calls, and I do
18 know they were very hard to understand, but if you need
19 to listen to them again, we can; however, in looking at
20 the call that was made on June 1st, Denzel Heyward:
21 Trina done flip on me. Ain't shit. My mom and boys
22 don't listen. So go to her hard. Go to her hard.

23 Go hard, wanting Quansantrina to change her
24 story.

25 And Dashaun Simmons, classic words, not I

1 didn't do anything, but, None of this shit be happening
2 if I kept my dumb ass sitting in my house, man.

3 Talking about getting a lawyer: Miracle
4 stories, but he real, real expensive. If I get him on my
5 team, I ain't need to worry about shit. I want an N word
6 that he work on miracle stories. I know I'll be good.

7 If you're innocent, are you in need of a
8 miracle story? If we could listen to May 23rd, 12:58,
9 what you will hear is, That's what one of my charges say.
10 Hold on I'll read it to you.

11 This is Dashaun Simmons: One of them saying
12 murder, one saying attempted murder, but the interesting
13 one is armed robbery. The witness, Trina, snitching and
14 shit.

15 Snitching, not lying, not making things up,
16 snitching: She telling everything, and it's going to be
17 her word against mine because they ain't got no evidence
18 yet. They just holding me. They did not identify Fat at
19 the line-up because like the girl, Trina, she snitching.

20 The bitch telling on me is what's really got
21 me fucked up right now. Fat, they picked him out of a
22 line-up.

23 While he's pulling that up, let's go back to
24 Denzel Heyward's phone calls for that day, and Mr. McCoy
25 put up his assistant about the cell tower information.

1 When you're riding with your buddy and your girl is
2 driving you to go get an AK47, it's probably enough
3 entertainment for you. That's when you're not making
4 phone calls, and there were two hours, two hours, when he
5 wasn't making calls. They're getting jacked up for that
6 night.

7 And the phone call from Dashaun Simmons,
8 12/30/2012:

9 What's going on, fool?

10 What's up, boy.

11 Chilling, man.

12 Everything good with you?

13 Chilling man, just chilling. What's going
14 on, bro?

15 Man, there's so much mixing up, man. So much
16 coming from different sides. I hear a little bit of this
17 and a little bit of that and shit, but I ain't paying any
18 attention, Ns, keep trying to slimeball each other, but
19 at the same time I keep telling you, telling this N on
20 the other N, I could slime all this in. I could slime
21 all this in back in August if I wanted to snitch on this
22 man. Snitch.

23 Ain't nobody trying to slimeball nobody
24 because if I slimeball him and he slimeball me, we all
25 going down. Only thing I try to do is get you and the

1 other people to do what they got to do, so one of us gets
2 out there and we can make shit happen, because he ain't
3 going nowhere. That's why you really need to be keeping
4 up with this case. Dog ain't going nowhere. Too much
5 shit points towards him.

6 He's saying he ain't even been there and the
7 victim picked him out of a lineup, the victim. The
8 victim, the victim. That's going to make you look
9 stupid.

10 That's what that N'say? He say he ain't been
11 there?

12 From my understanding, y'all trying to tell
13 you and everybody else he ain't been there and he ain't
14 did this and he ain't did that, but everything is
15 pointing towards him, but the only thing -- excuse me,
16 pointing towards me is Trina's statement.

17 But at the same time, I ain't trying to
18 slimeball him, dog, because it's my homeboy and shit, but
19 let's keep this shit real.

20 He's trying to make it seem like he trying to
21 tell you to say that he ain't been there or change it to
22 say what he got to say, but if you do that and make it
23 say what he want to say, he's going to make you look
24 stupid, because how is he going to say he wasn't there
25 but the victim put him on the scene, bro? Victim.

1 Dude about to call his name and say he did
2 this and did that, and his brother picked him out of a
3 line-up. That's what I try to sit there and tell you.
4 Ain't nobody trying to slime on nobody. I try to get you
5 to change that so I can get out there and make it so all
6 of us be straight.

7 Only thing this N word give out is harassing
8 this girl and threaten this girl on the phone and trying
9 to get you to do this and make you look stupid.

10 That shit ain't going to work. You know what
11 I'm saying?

12 See what you're saying.

13 Ain't nobody trying to get out here and
14 slimeball nobody. Just do what I ask you to do so I can
15 get out of here and I can make this shit and try to make
16 this shit not even go to trial so all us don't go to
17 prison.

18 I got it. I'm going to try and get it done.

19 On May 16, 2012 Cynthia LaRoche, who thought
20 she'd moved to a quiet, safe area of town, heard the
21 blasts fired by Dashaun Simmons so loud that one street
22 behind and across the street she thought it had entered
23 her 18-year-old daughter's bedroom wall. Four of those
24 that night; one on the ground, two in Kadeem, and one on
25 the way out.

1 THE COURT: Ms. Shealy, it's time to start
2 winding it up.

3 MS. SHEALY: That evening, these two guys,
4 acting all bad, took an AK47 and took the life of Kadeem
5 Chambers. He didn't deserve to die that way. They don't
6 deserve to get away with it.

7 Thank you.

8 THE COURT: All right, folks. My jury
9 instructions will take about 15, 20 minutes, so why don't
10 we, because it's been an hour and a half, take a
11 ten-minute restroom break and come back fresh, and I'll
12 start you on the charge. It's still too early to begin
13 deliberations, but I'll have you back in about ten
14 minutes and we'll finish up.

15 All right.

16 (Recess taken.)

17 (In open court, jury present.)

18 THE COURT: All right. Be seated. All
19 right, folks. We are back to the final phase of the
20 trial before we turn it over to you to begin
21 deliberations for your verdicts, and I want to remind you
22 that during your trial, you and I have had certain duties
23 to perform. I told you about those at the beginning of
24 the trial.

25 As the trial judge, my duty is to preside

1 over the trial and admissibility of evidence and make
2 sure we follow rules of procedure. You, however, are to
3 consider only the evidence that was presented to you in
4 this courtroom. You are to consider testimony presented
5 from the witness stand, any exhibits that were made a
6 part of the record, and any stipulations that counsel
7 made during the course of the trial.

8 I also now have the additional duty of
9 charging you on the law that applies to this type of
10 case. It's your duty as jurors to accept the law and
11 apply the law only as I have now stated it to you, and if
12 you think you have any idea as to what the law is or what
13 you think it ought to be and it does not agree with what
14 I now tell you the law is, you must forget that idea
15 because you are sworn under the oath that you took at the
16 beginning of the trial to accept the law and apply the
17 law exactly as I state it to you.

18 Now, as judges of the facts, you are the sole
19 judges of the facts. You determine how much weight to
20 give the testimony and how much to judge the credibility,
21 or how to judge the credibility, of witnesses.
22 Credibility simply means believability, and you judge
23 with a witness has a bias, a prejudice, or an interest in
24 the outcome of this case. You can judge such things as
25 appearance or demeanor on the witness stand and the

1 reasonableness of a witness's statements.

2 You're not bound to decide this case based on
3 the number of witnesses that a side produces. You can
4 believe one witness over many or many against one. You
5 can accept all of a witness's statement, or you can
6 reject it entirely. You can accept part of a witness's
7 statement and reject part of it, and, if you reject part
8 of it, of course, you can still accept the remainder of a
9 witness's testimony.

10 I also talked to you about expert witnesses,
11 and I told you that ordinarily we don't let people come
12 in and testify and give their opinion about evidence in
13 the case, but we do make an exception for expert
14 witnesses, and these are people that are considered
15 experts because of their experience or education or
16 specialized training in some area, and they're allowed to
17 give their opinion and state the reasons for their
18 opinions.

19 You decide how much weight to give an
20 expert's testimony. You can give it as little or as much
21 weight as you think it deserves. If you don't think it's
22 based on sufficient education or experience or if you
23 conclude that an expert's opinions are not sound or that
24 they are outweighed by other evidence, you may disregard
25 that opinion entirely.

1 In other words, you're not compelled to
2 blindly accept an expert's opinion. You have the right
3 to consider the testimony in light of all these
4 circumstances and give it such weight, if any, that you
5 think it is entitled to.

6 Now, I want to remind you that the fact that
7 the defendants were arrested, charged, and indicted in
8 this case is not evidence in this case and cannot be
9 considered by you as evidence of guilt in this case, nor
10 does it create any presumption or inference of guilt. An
11 indictment is simply a formal written instrument which
12 puts a defendant on notice of the charge that he is to
13 stand trial for, and it is the formal document that gives
14 this Court jurisdiction to hear the case.

15 The defendants plead not guilty to those
16 indictments, and that places the burden on the State to
17 prove them guilty beyond a reasonable doubt. A person
18 charged with committing a crime in South Carolina is
19 never required to prove himself innocent. This is an
20 important rule of law in this country, that a defendant
21 in a criminal trial will always be presumed to be
22 innocent of the crime for which he is indicted unless and
23 until his guilt has been proven by evidence satisfying
24 you of that guilt beyond a reasonable doubt.

25 This presumption of innocence is not a mere

1 legal theory. This is not a legal phrase, or just a
2 legal phrase. This is a substantial constitutional right
3 which every defendant is entitled to. This presumption
4 of innocence accompanies the defendant from the time he
5 is charged throughout the trial and unless and until you
6 reach a verdict of guilt based upon evidence satisfying
7 you of that guilt beyond a reasonable doubt.

8 I also want to instruct you and emphasize
9 that the fact that the defendants did not testify is not
10 a factor to be considered by you in any way in your
11 deliberations, and in your consideration on the question
12 of the guilt or innocence of the defendants.

13 It must not be considered by you in any
14 manner whatsoever. A defendant has a right to remain
15 silent, and the assertion of this right must not be
16 considered by you in your deliberations. I repeat, under
17 your oath, you are to draw no conclusion whatsoever to
18 the fact that the defendants in this case did not
19 testify. The fact that the defendants did not testify
20 should not even be discussed in the jury room. The
21 burden of proof, as I stated to you, is on the State.

22 The defendant is not required to prove his
23 innocence. The burden of proof remains on the State to
24 prove guilt beyond a reasonable doubt. As I have stated,
25 the State has the burden of proving guilt beyond a

1 reasonable doubt. Some of you no doubt either heard
2 things like on TV or maybe you served as a juror in a
3 civil case where you were told it was only necessary to
4 prove that a fact is more likely true than not true, such
5 as by the greater weight or a preponderance of the
6 evidence.

7 In criminal cases, however, the State's proof
8 must be more powerful than that. It must be beyond a
9 reasonable doubt. Proof beyond a reasonable doubt is
10 proof that leaves you firmly convinced of the defendant's
11 guilt. There are very few things in this world that we
12 know with absolute certainty, and, in criminal cases, the
13 law does not require proof that overcomes every possible
14 doubt.

15 If, based on your consideration of the
16 evidence you are fairly convinced that the defendant is
17 guilty of the crime charged, then you must find the
18 defendant guilty. If, on the other hand, you think there
19 is a real possibility that the defendant is not guilty,
20 then you must give the defendants the benefit of the
21 doubt and find them not guilty.

22 Now, there are two types of evidence that are
23 generally presented during the trial: There is direct
24 evidence and there is circumstantial evidence. Direct
25 evidence directly proves the existence of a fact and

1 doesn't require deduction. Circumstantial evidence is
2 proof of a chain of facts and circumstances that indicate
3 the existence of a fact.

4 Crimes may be proven by circumstantial
5 evidence. The law makes no distinction between the
6 weight or value to be given to either direct or
7 circumstantial evidence; however, to the extent the State
8 relies on circumstantial evidence, all of the
9 circumstances must be consistent with each other, and,
10 when taken together, point conclusively to the guilt of
11 the accused beyond a reasonable doubt.

12 If these circumstances merely portray the
13 defendant's behavior as suspicious, then the proof has
14 failed. The State then has the burden of proving the
15 defendant is guilty beyond a reasonable doubt. This
16 burden rests with the State, regardless of whether the
17 State relies on direct evidence, circumstantial evidence,
18 or some combination of the two.

19 Now, this State -- or this Court admitted
20 evidence of statements allegedly made by the deceased
21 victims after the injuries. I have determined that these
22 statements should be admitted into evidence in this case;
23 however, it is for you to decide the believability of
24 these statements. In deciding this question, you may
25 consider whether the victim was dying and knew he was

1 dying and whether the victim had lost all hope of
2 recovery at the time the statements were made.

3 Another issue in this case is the
4 identification of the defendant as the persons who
5 committed the crime charged. Again, the State has the
6 burden of proving identity beyond a reasonable doubt.
7 You must be satisfied beyond a reasonable doubt of the
8 accuracy of the identification of the defendant before
9 you can convict the defendant. Identification testimony
10 is an expression of belief or impression by a witness.
11 You must determine the accuracy of the identification of
12 the defendant.

13 You must consider the believability of each
14 identification witness in the same way as any other
15 witness. You may consider whether the witness had an
16 adequate opportunity to observe the offender at the time
17 of the offense. This will be affected by things like how
18 long or how short a time is available, how far or how
19 close the witness was, the lighting conditions, and
20 whether the witness had a chance to see or know the
21 person in the past.

22 Once again, I instruct you, the burden of
23 proof is on the State, and it extends to every element of
24 the crime charged, and this specifically includes the
25 burden of proving beyond a reasonable doubt the identity

1 of the defendant as the person who committed the crime.
2 If, after examining the testimony, you have a reasonable
3 doubt as to the accuracy of the identification, you must
4 find the defendant not guilty.

5 Now, this case has alleged several different
6 offenses against the defendants. The charges against the
7 defendant Dashaun Livaughn Simmons are murder, attempted
8 murder, armed robbery, possession of a firearm during the
9 commission of a violent crime. Against the defendant
10 Denzel Marquis Heyward, the charges are murder, attempted
11 murder, armed robbery, possession of a firearm during the
12 commission of a violent crime.

13 Each indictment charges a separate and
14 distinct offense. You must decide each indictment
15 separately on the evidence and the law applicable to it
16 uninfluenced by your decision as to any other indictment.
17 The defendant may be convicted or acquitted on any or all
18 of the offenses charged, and you are asked to write a
19 separate verdict of guilty or not guilty for each
20 indictment.

21 I will also remind you that there are two
22 defendants in this case, each of whom is charged with
23 murder, attempted murder, armed robbery, and possession
24 of a firearm during the commission of a violent crime.
25 The case of each defendant and the evidence and the law

1 concerning that defendant should be considered separately
2 and individually. Your verdict does not have to be same
3 for both defendants.

4 The fact that you might find one defendant
5 guilty or not guilty should not control your verdict as
6 to the other defendant. Where more than one person is
7 charged with the crime, if the evidence warrants it, you
8 may convict one and acquit the other, or you may acquit
9 both or you may convict both. It will depend on your
10 view of the evidence and the testimony.

11 You must take each defendant and consider the
12 evidence as to that defendant and my instructions to you
13 on the law. You will then write a separate verdict of
14 guilty or not guilty for each individual defendant.

15 Now we're going to talk about hand of one,
16 hand of all. If a crime is committed by two or more
17 people acting together in committing a crime, the act of
18 one is the act of all. A person who joins with another
19 to commit an unlawful act is criminally responsible for
20 everything done by the other person which happens as a
21 probable or natural consequence of the acts done in
22 carrying out the common planning purpose.

23 For example: Two people can be guilty of
24 killing another person when only one of the two had a
25 gun, there was only one bullet, and only one of the two

1 fired the shot that caused the death. If two or more
2 people are acting together, acting together, assisting
3 each other in committing the offense, the act of one is
4 the act of all, or, as it is sometimes said, the hand of
5 one is the hand of all.

6 Prior knowledge that a crime is going to be
7 committed without more is not sufficient to make a person
8 guilty of that crime. Mere knowledge that another person
9 is going to commit a crime, even if the defendant is
10 present when the crime is committed, is not sufficient to
11 convict the defendant as a principal. Guilt as a
12 principal is shown by actual or constructive presence at
13 the scene as a result of a prior arrangement; therefore,
14 a finding of a prior arranged plan or a common scheme is
15 necessary for a finding of guilt as a principal.

16 The State must prove beyond a reasonable
17 doubt by competent evidence the theory of the hand of one
18 is the hand of all. A principal in a crime is one who
19 either actually commits the crime or who is present,
20 aiding, abetting, or assisting in committing the crime.
21 When a person doesn't act in the presence of and/or with
22 the assistance of another, the act is done by both.

23 Where two or more acting with a common plan
24 or intent are present at the commission of a crime, it
25 does not matter who actually commits the crime. All are

1 guilty. Again, the hand of one is the hand of all.

2 Present at the commission of a crime means to
3 be sufficiently near to aid and abet and assist in the
4 commission of a crime; however, mere presence at the
5 scene of crime is not sufficient to convict one as a
6 principal of the theory of aiding and abetting. An
7 intent is also a necessary element where there must have
8 been a common design or an intent to commit the crime,
9 and the crime must have been committed pursuant thereto
10 with the person aiding and abetting by some overt act.

11 Intent means intending the result which
12 actually occurs, not accidentally or involuntarily.
13 Intent may be shown by acts or conduct of the defendant
14 and other circumstances from which you may naturally and
15 reasonably infer intent. The State must prove these
16 elements beyond a reasonable doubt.

17 Mere presence at the scene is not sufficient
18 to prove somebody guilty of a crime. A defendant's
19 presence where a crime is committed or mere association
20 with the person who commits a crime does not make a
21 defendant an accomplice or an aider or abetter of the
22 person committing a crime.

23 The burden is on the State to prove every
24 element of the crime charged. If you find after
25 reviewing all of the evidence that the State has proved

1 that the defendant was only present at the scene of a
2 crime and that they have not proved beyond a reasonable
3 doubt any other participation in the crime, then you must
4 find the defendant not guilty. The law is that proof of
5 at the scene of a crime is not sufficient to find someone
6 guilty.

7 Now, I want to go over the elements of the
8 difference offenses that were indicted, and the first one
9 is murder. The defendants are charged with murder, and
10 therefore the State must prove beyond a reasonable doubt
11 that the defendant killed another person with malice
12 aforethought.

13 Malice is hatred, ill will, or hostility
14 towards another person. It is the intentional doing of a
15 wrongful act without just cause or excuse and with an
16 intent to inflict an injury or other circumstances that
17 the law will infer an evil intent. Malice aforethought
18 does not require that malice exists at any particular
19 time before the act is committed, but malice must exist
20 in the mind of the defendant just before and at the time
21 the act is committed. Therefore, there must be a
22 combination of the previous evil intent and the act.

23 Malice aforethought may be expressed or
24 inferred. These terms, expressed or inferred, do not
25 mean different kinds of malice, but merely the manner in

1 which malice may be shown to exist; that is, either by
2 direct -- or by direct evidence or by inference from the
3 facts and circumstances which are proved. Express malice
4 is shown when a person speaks words which express hatred
5 or ill will for another or when a person prepared
6 beforehand to do the act which was later accomplished.
7 For example, lying in wait for a person, or any other
8 acts of preparation going to show that the deed was
9 within the defendant's mind, would be express malice.

10 Malice may be inferred from conduct showing a
11 total disregard for human life. If the facts prove
12 beyond a reasonable doubt sufficient to raise an
13 inference of malice to your satisfaction, this inference
14 would simply be an evidentiary fact to be considered by
15 you, the jury, along with the other evidence in the case,
16 and you may give it the weight you decide it should
17 receive.

18 Now, the second charge is for attempted
19 murder, and to prove this crime, the State must prove
20 that the defendant, with the intent to kill, attempted to
21 kill another person with malice aforethought, either
22 express or implied. I previously defined malice for you,
23 and that same definition applies for attempted murder.

24 If the facts are proven beyond a reasonable
25 doubt sufficient to raise an inference of malice to your

1 satisfaction, this inference would simply be an
2 evidentiary fact to be considered by you, the jury, along
3 with the other evidence in this case, and you may give it
4 the weight you decide it should receive.

5 An intent to kill is an element of attempted
6 murder. In the context of an attempted crime, specific
7 intent means that the defendant intended to complete the
8 acts comprising the underlying offense. Intent means not
9 accidentally or involuntarily. Intent may be shown by
10 acts or conduct of the defendant and other circumstances
11 from which you may naturally and reasonably infer intent.

12 Evidence of the character of the act, the
13 character of the instrument used, the manner in which it
14 was used, the purpose to be accomplished, and the
15 resulting wounds or injuries may be considered in
16 determining the intent with which the act was committed.
17 Intent may also be inferred when it is demonstrated that
18 the defendant voluntarily and wilfully commits an act,
19 the natural tendency of which is to destroy another's
20 life.

21 The third charge is for armed robbery, and to
22 prove this offense, the State must prove first, beyond a
23 reasonable doubt, that the defendant took personal
24 property from the person or persons or presence of
25 another. Property is in presence of a person if it is

1 within the person's reach, inspection, observation, or
2 control so that the person could, if not overcome with
3 violence or prevented by fear, keep possession of the
4 property.

5 The State must also prove beyond a reasonable
6 doubt that the defendant carried the property away
7 intending to permanently deprive the owner of the
8 property and to keep the property for the defendant's own
9 use. The slightest removal of the property or the
10 complete possession of the property, even for an instant
11 by the defendant, is sufficient to show a taking and
12 carrying away of the property.

13 The taking and carrying away of the property
14 must be done with violence or by putting the owner of the
15 property in fear of violence. Finally, the State must
16 prove beyond a reasonable doubt the defendant was armed
17 with a deadly weapon during the robbery.

18 A deadly weapon is any instrument, article,
19 or substance which is likely to cause death or great
20 bodily harm. Whether an instrument has been used as a
21 deadly weapon depends on the facts and circumstances of
22 each case, and the following are examples of instruments
23 which may be considered deadly weapons: A pistol, a
24 shotgun, a rifle, a dirk, a dagger, a knife, slingshot,
25 metal knuckles, razor, gasoline, a firebomb or Molotov

1 cocktail and lighter fluid, and a gun may be a deadly
2 weapon even if it's not operating.

3 Then the fourth and final charge is for the
4 possession of a weapon during the commission of a violent
5 crime. The defendant is charged with possession of a
6 weapon during the commission of or an attempt to commit a
7 violent crime. The State must prove beyond a reasonable
8 doubt that the defendant was in possession of a firearm,
9 or visibly displayed what appeared to be a firearm, or
10 visibly displayed a knife during the commission of a
11 violent crime.

12 Firearm means any machine gun, automatic
13 rifle, revolver, pistol or any weapon which is designed
14 to or may be readily converted to expel a projectile. A
15 knife means an instrument or tool with a sharp cutting
16 edge or blade, whether or not fastened to a handle, which
17 can be used to inflict a cut, slash, or wound.

18 In order to find the defendant guilty of
19 possession of a weapon during the commission of a violent
20 crime, you must first find the defendant guilty of either
21 committing a violent crime or attempting to commit a
22 violent crime. I charge you that murder, attempted
23 murder, armed robbery, burglary in the second degree, and
24 kidnapping are violent crimes.

25 Of course, the defendant is not charged with

1 burglary. Neither defendant is charged with burglary or
2 kidnapping. They're charged with murder, attempted
3 murder, and armed robbery, so you must convict them of
4 one of those three in order to convict for possession of
5 a weapon during the commission of a violent crime.
6 Finally, the State must prove beyond a reasonable doubt
7 the weapon further advanced or helped in the commission
8 of the crime.

9 Then you must -- in determining your verdict
10 of guilty or not guilty, you cannot consider any possible
11 penalty for any particular crime. The punishment for the
12 crime is a matter for me to decide and should never be
13 considered by you in any way whatsoever in arriving at a
14 verdict of guilty or not guilty. Your verdict must be
15 unanimous; in other words, all 12 must agree on the
16 verdict.

17 Now, Madame Foreman, this is where you get to
18 do something a little different. I'm going to send these
19 out. These are the four indictments for each of the two
20 defendants, and you'll see -- I remind you that these are
21 not evidence. They are the indictments, the charging
22 instruments. They're not to be considered as evidence.

23 On the back of the indictment, you'll see
24 they have the front -- or they have the name, the charge,
25 and then you'll see this red stamp under here where it

1 says the action of the grand jury, and it's got a red
2 stamp that says true bill. Underneath that is a little
3 section where it says verdict.

4 For each charge, you write what the verdict
5 is; in other words, unanimous decision of the jury, and
6 there's only two possible verdicts for each charge,
7 guilty or not guilty. When the jury reaches a unanimous
8 verdict, you write either guilty or not guilty there,
9 sign it, and date it.

10 You go through that for each of the charges
11 for both of the defendants, and when you have reached a
12 verdict on all eight indictments, then you let the
13 bailiffs know that you have reached a verdict.

14 Now, I'm going to send you back to the jury
15 room. Don't begin your deliberations just yet because I
16 have to give the lawyers the opportunity to say if I
17 misspoke something. Sometimes that happens, and then we
18 get the evidence together, and I will send it back to you
19 along with a copy of the jury charges and the
20 indictments.

21 Remember, on the jury charges, you read them
22 as a whole. Don't get bogged down on any one particular
23 point, and if you need me to instruct you on something
24 further, if you don't understand it, let me know. You
25 also heard some audiotapes. If you need to hear those --

1 are they in a room with a laptop set up back there? No?

2 So if you want to listen to them, you let me
3 know, and we'll make arrangements for you to be able to
4 hear the audio portions that you got played. All right?

5 So, again, just go back. This is just a
6 formality. It will take about five minutes, and don't
7 begin your deliberations or discussions until I send the
8 evidence back along with the jury charges and the
9 indictments, and the bailiff will say, The judge said you
10 can begin deliberations.

11 Okay? Thank you for your patience.

12 (In open court, jury not present.)

13 THE COURT: All right. Anything from the
14 State?

15 MS. SHEALY: No, Your Honor.

16 MR. MCCOY: Nothing from us, Judge.

17 THE COURT: Mr. Apostolou?

18 MR. APOSTOLOU: No, Your Honor.

19 THE COURT: Okay. Y'all get all that
20 evidence together. Make sure we've got everything that's
21 in.

22 On the jury charges, I noticed -- and somehow
23 they keep popping back up, on page two where it says does
24 not create any presumption, or for some reason it should
25 be inference, which is what I said, I'll strike and do

1 that and initial, and then on that one part where we cut
2 and paste in, we added the burglary and kidnapping.

3 I struck through those, initialed it, and
4 wrote murder, attempted murder, armed robbery.

5 MS. SHEALY: Okay. Thank you.

6 THE COURT: All right. Thank you.
7 Everything is back. I've discharged the alternates, and
8 tell the jury they can begin deliberations.

9 (At 5:25 p.m., the jury retires to deliberate
10 their verdicts.)

11 (7:44 p.m., in open court, note received from
12 the jury.)

13 THE COURT: Everyone has agreed to this
14 reply: The statements were not admitted into evidence;
15 however, you can listen to the testimony where they were
16 discussed if you would like.

17 (Recess taken.)

18 (7:56 p.m., in open court, note received from
19 the jury.)

20 THE COURT: The jury wants to hear the
21 recording of Quansantrina Rivers.

22 It says, Please provide recording of
23 Jujuain's testimony, and they need a device to play the
24 CD's of the recorded phone calls, and then this is the
25 one that troubles me.

1 They want to hear the closing arguments
2 regarding the telephone conversation by the defense
3 attorney for Heyward, and then they want to hear the
4 closing argument regarding telephone conversations of the
5 State.

6 I'm not inclined to play back closing
7 arguments. They're not evidence, but I'll be glad to
8 hear anybody on that, if they want to make -- I've never
9 had a jury ask me, but my inclination is that's not
10 evidence. They're argument.

11 MS. SHEALY: I agree with that, Your Honor.

12 MR. MCCOY: I would tend to agree with that
13 too, Judge.

14 MR. APOSTOLOU: The only thing that gives me
15 pause on that, Judge, is some of our testimony regarding
16 those phone conversations -- those phone conversations
17 are difficult. Maybe -- I think both the State and I
18 have the transcript of it. Perhaps we just send the
19 transcript of it back with them.

20 THE COURT: Well, transcripts didn't come
21 back in. I'm not inclined to let them have it. They can
22 have the CDs and they can play them and listen to them
23 all they want.

24 MS. SHEALY: They're not going to be able to
25 do that back in their room just because the CDs have more

1 things on it than -- in other words, the disk doesn't
2 just reflect the calls that were played in court. Now, I
3 don't know whether the court reporter --

4 THE COURT: Well, what I was going to do is
5 have her go back and play back the testimony of
6 Quansantrina and Jujua in back there. She can play it for
7 them, they can hear it, and just instruct them that she
8 plays it through. If they -- if they've heard all
9 they've wanted and they all want to stop to stop, but not
10 to discuss the testimony in front of her. Then when
11 their food comes, they can eat while they're doing it,
12 and handle the two testimony requests that way.

13 And then if you're telling me that this is
14 the room where they don't have that, when they want to
15 hear the CDs, we'll just have to bring them in here and
16 play that.

17 MS. SHEALY: I don't know about that. What
18 I'm saying is, the CDs are on disks. The disks have
19 conversations from the jail, other than the ones that
20 were played. Remember how he was having to find them?

21 THE COURT: I'll guess we'll just have to
22 bring them back in. I know in the one jury room, they
23 had a laptop set up for them to be able to play it.

24 MS. SHEALY: But, again, what I'm saying is,
25 we were playing excerpts from phone calls, so there are

1 some things on the disks themselves that didn't get
2 played in front of the jury, so we wouldn't be able to
3 just give them a disk, even if they could hear it.

4 THE COURT: You don't have the ability to
5 turn a disk --

6 MS. SHEALY: We could do that if you wanted
7 us to take the time to do that.

8 THE COURT: Why don't you do that while she's
9 playing that, because Quansantrina is going to be a while
10 and Jujuaain is a while, so you could burn one that gets
11 just the edited portions, and then when they're done
12 listening to that, then we'll have that ready by then.

13 MR. MCCOY: The one at issue, the closing
14 arguments, what was said on the phone call that was done
15 by Mr. Apostolou and, then the phone calls, plural, that
16 were done by Ms. Shealy in her closing?

17 THE COURT: It says, also the closing
18 argument regarding the telephone conversation -- and I
19 can't make out -- I guess it's of defense attorney for
20 Heyward. So it's the closing argument regarding the
21 telephone conversation of defense attorney Heyward. That
22 would be Mr. Apostolou, and then the next one is the
23 closing argument regarding the telephone conversation
24 from the State.

25 So they want to hear the portions of the

1 closing arguments that they made on the telephone
2 conversations.

3 MS. SHEALY: But do we know from that note
4 which telephone conversations?

5 THE COURT: I just read it to you verbatim.

6 MS. SHEALY: We maybe could get that
7 clarified.

8 THE COURT: Well, why don't I bring them in
9 and tell them what the deal is, and I'll have them play
10 back -- I'll send her back in there to do that, and then
11 I'll write a note saying which telephone conversations
12 they want to hear, we'll burn it to a DVD or a CD while
13 they're listening to that, so they can listen to it back
14 there, but I'm not going to play back your closing
15 arguments.

16 All right?

17 MS. SHEALY: Yes, sir.

18 THE COURT: Bring them back in.

19 (At 8:04 p.m., in open court, jury present.)

20 THE COURT: All right. Let me go over your
21 request with you.

22 We can provide the audio of the testimony of
23 Trina and Jujuain. Each of those are a couple of hours
24 long. I don't know if there's particular parts that you
25 wanted to hear or not, but what I'll do is, I'm going to

1 send you back so you can listen to them there, and the
2 court reporter will go back there so she can play, and
3 then your pizza should be getting here. You can set and
4 eat and listen to them.

5 If you want the whole thing played back,
6 she'll play it from the beginning to the end. If you
7 want her to go to just portions of it, you just let her
8 know what portions you want. What's important is that
9 she can't be in there -- just like you couldn't come out
10 here and deliberate in front of everyone, she'll play the
11 portions you want. When you've heard everything that you
12 want to hear, then she'll leave, and then you can resume
13 your deliberations, but don't deliberate in front of her.
14 All right? So we can do that for Trina and Jujuaian.

15 Again, we'll play the whole thing if you
16 want, but if you want just portions of it, you need to
17 let her know which portions you want and she'll get that.

18 Now, as far as playing the CDs, while you're
19 doing that, if you want all of the different phone calls
20 that were made, we'll -- the thing is, right now they're
21 on a couple of different CDs, and there's other things on
22 the CDs that didn't come into evidence.

23 If there is a particular one or two that you
24 wanted to listen to, let us know; otherwise, I'm going to
25 have them prepare a CD where they take all of the ones

1 that you heard, burn it to one CD, and then we'll send it
2 back with a laptop for you to listen to.

3 As far as listening to the closing arguments
4 of the lawyers, that's not evidence, and so we don't play
5 those back for you. Okay? So that's the deal.

6 Go on back there, and she'll come back. When
7 the pizza comes, you can just write while you're
8 listening. Again, if you just want to listen to some of
9 it, let her know what parts they are or where they're at.
10 The problem is of course I've had three different court
11 reporters this week and she wasn't here either one of
12 those days, but she'll try to find around whatever it is
13 you're looking for.

14 Okay? Thank you.

15 (Jury resumes deliberations.)

16 (In open court, jury not present.)

17 MS. SHEALY: The only concern I would have,
18 if the jury would articulate what they're interested
19 in -- I don't mean any disrespect to the court reporter,
20 but if she's -- for her to be trying to find where it is
21 that they're interested --

22 THE COURT: How else would you have me do
23 this?

24 MS. SHEALY: I think that --

25 THE COURT: It's specialized software. I

1 can't just send her in and have her play it and then walk
2 out, so it's either that, or they all come out and listen
3 to it for however long, but she's got to be there one way
4 or the other.

5 MS. SHEALY: What I'm saying is, what you
6 told them is, if you tell the court reporter what you're
7 interested in, she'll try to find it, and what makes me a
8 little nervous is -- and I'm not familiar with it, but
9 maybe it's easy enough to do, but otherwise I would be
10 concerned if they said, I'm interested in the suitcase.

11 You know, I don't know what that means to her
12 to be looking through all the testimony to find
13 references to the suitcase.

14 THE COURT REPORTER: I can do that with my
15 software. I have an audio that the other reporter left,
16 and what she did on that was just note the time for
17 direct and cross and redirect. So if they said, We want,
18 you know, redirect of Trina, I'll just pull that part up,
19 but I don't know any way to search through her audio.
20 Mine actually has the text with the audio.

21 THE COURT: The first one, she was doing the
22 old-fashioned, with the mask. The second one, she didn't
23 have realtime like she does, but she can scroll through
24 and find a part, but the first two can't do that. She
25 would basically have to kind of hunt and peck around.

1 So it may be they just listen to the whole
2 thing. That's all we can do. Okay?

3 MS. SHEALY: Okay.

4 (Recess taken.)

5 (11:56 p.m., in open court, note received
6 from the jury.)

7 THE COURT: They sent a note saying they are
8 in agreement with four counts. Can you help, or what do
9 we do now?

10 So I was going to call them in and give them
11 an Allen charge and see if they want to continue tonight
12 or come back tomorrow. All right?

13 MR. McCOY: Maybe I misread it or
14 misunderstood it --

15 THE COURT: They are in -- we are not in
16 agreement on four counts, is what it says.

17 MR. McCOY: Okay.

18 THE COURT: Can you help, or what do we do
19 now?

20 MR. APOSTOLOU: On behalf of Mr. Heyward, we
21 would object to the giving of an Allen charge at this
22 point. They've obviously given it plenty of thought, and
23 we would just object to it.

24 MR. McCOY: For the record, we would ask that
25 we continue tonight.

1 THE COURT: Well, I'm going to give them the
2 option tonight and I'll encourage them to continue, but
3 if they do want to go home -- I mean, it's midnight, so
4 at some point, they'll either stay here all night or ask
5 to go home.

6 MR. MCCOY: My only fear is I know we've
7 released our alternates too, so that kind of scares me to
8 let the folks go home tonight.

9 THE COURT: I understand.

10 MS. SHEALY: You are going to give them the
11 Allen charge?

12 THE COURT: Uh-huh.

13 (In open court, jury present.)

14 THE COURT: Be seated.

15 All right, folks. You have sent in a note
16 that says you are not in agreement on four counts, and is
17 there anything, basically, I should do to help you out or
18 what you do now.

19 Well, here's what we do when I get a note in
20 like this and you haven't been able to reach a unanimous
21 verdict now, and I'll just kind of outline some thoughts
22 to you, all right?

23 You've heard all the evidence that you're
24 going to hear in this case. You've heard all the
25 arguments. It's obviously a very difficult case. You've

1 been at it for about seven hours now, and it is almost
2 midnight. We couldn't really ask you to do much more
3 than you've already, and that is to be conscientious and
4 try to reach a unanimous decision.

5 What I tell folks when they ask me what they
6 should do, I say, well, you know, when you have something
7 less than a unanimous decision -- and I don't want to
8 know what your vote breakdown is or what charges you
9 agreed upon and not agreed upon at this point. I would
10 just say there's usually -- you know, there's usually a
11 majority, there's usually a minority, sometimes it's
12 split evenly, but what I say is, you know, you've been
13 back at it a while.

14 I think it might be helpful if you go back
15 and listen to what the side says that's not in agreement
16 with what you believe. Listen to see if you think they
17 have some merit. I'm not suggesting that you change your
18 mind, I'm just saying perhaps it would be helpful if you
19 kept an open mind and considered whether or not -- what
20 the other side says and does it have merit. If you're in
21 the majority, listen to what the minor has to say; if
22 you're in the minority, listen to what the majority has
23 to say.

24 Essentially, what happens is if you can't
25 reach a decision, then I would have to declare a

1 mistrial, and we would have to retry the case some other
2 day. We would go through exactly the same process that
3 we went through to get you. We'll bring in a group of
4 jurors. We would go through asking the questions, and,
5 essentially, they would hear the same evidence that
6 you've heard.

7 I don't have any reason to believe they would
8 hear anything different than what you heard, and I have
9 absolutely no reason whatsoever to believe that I would
10 find or that we would find any 12 more fair and impartial
11 folks than you. It would be just as difficult for them
12 to reach a decision as you, and I don't think we would
13 find 12 people that were more conscientious than you
14 folks have been.

15 And so I would ask that you go back and try
16 again to see if you can reach a unanimous verdict. You
17 know, I hate to break a deliberation up over days, but
18 bottom line is, it's midnight, and if you folks can go
19 back and deliberate some more and see if you can, based
20 on what I've told you, listen to what the other side has
21 to say. Listen with an open mind, and if you can reach a
22 unanimous decision and reach it tonight, that would be
23 great. If you feel like, well, you've done all you can
24 do tonight and you want to come back tomorrow morning and
25 deliberate more, then we'll respect your wishes on that.

1 So, having said that, if you would, go back
2 to the jury room, work on this some more, and let me know
3 what your decision is.

4 (Jury resumes deliberations.)

5 (In open court, jury not present.)

6 MS. SHEALY: Your Honor, one thing that
7 occurred to me is if they have not reached a verdict on
8 four but have reached a verdict on four, do we need to
9 inquire whether they've made a decision as to one
10 defendant already --

11 THE COURT: I'm not going to make any
12 inquiries yet. I want to see just what they come up
13 with, and if they tell me they can't reach an agreement
14 on something, then we'll find out what they have reached
15 an agreement on. Okay?

16 (Recess taken.)

17 (1:08 a.m., in open court, note received from
18 the jury.)

19 THE COURT: The note says they still can't
20 seem to reach a unanimous decision, so bring them back
21 in. Is everybody in here?

22 MS. SHEALY: Your Honor, could we approach
23 really quickly?

24 THE COURT: Yeah.

25 (1:11 a.m., in open court, jury present.)

1 THE COURT: All right. Thank you. Be
2 seated.

3 Madame Foreman, your note says that you
4 weren't able to agree, and it doesn't seem like you can
5 reach a unanimous decision. Your earlier note said that
6 you couldn't agree on four, which could be read to mean
7 that you had reached it on four or some. Have -- were
8 you able to reach a verdict on any of the charges, or are
9 you not able to reach a verdict on any of them?

10 THE FOREMAN: We have been able to reach it
11 on some.

12 THE COURT: Did you write that down on the
13 verdict form? No? Well, I would like you to go back,
14 and the ones that you did reach a unanimous verdict on,
15 write what the verdict is, and then we'll come back in
16 here and I'll receive those verdicts. Okay? So y'all go
17 back there.

18 (Jury retires to the jury room.)

19 (Court's Exhibit No. 1-7 were marked for
20 identification.)

21 (1:20 a.m., in open court, jury present.)

22 THE COURT: All right. Madame foreman, the
23 verdicts that you have here, these are unanimous verdicts
24 that you're handing to the bailiff?

25 THE FOREMAN: Yes.

1 THE COURT: Go ahead. Hand them to him, and
2 the rest of the indictments, you have not been able to
3 reach a decision on, correct?

4 All right. Mr. Heyward, indictment
5 2014-GS-10-762 is for murder, and the jury was not able
6 to reach a verdict on that one. 2014-GS-10-763 is the
7 indictment for attempted murder, and the verdict is
8 guilty.

9 Indictment 2014-GS-10-765 is an indictment
10 for armed robbery. The jury found you guilty.
11 2014-GS-10-767, possession of a firearm during the
12 commission of a violent crime, the jury found you guilty.

13 Mr. Simmons, indictment 2014-GS-10-758 was
14 for murder. The jury was not able to reach a verdict on
15 that indictment. Indictment 2014-GS-10-759 is for
16 attempted murder. The jury found you guilty.

17 Indictment 2014-GS-10-760, armed robbery, the
18 verdict is guilty. Indictment 2014-GS-10-761, possession
19 of a firearm during the commission of a violent crime,
20 the verdict is guilty.

21 Ladies and gentlemen: If this, in fact, is
22 your jury would you please indicate that by raising your
23 right hand?

24 All right. Let the record reflect the jury
25 has raised their right hands. Y'all wish to have the

1 jury polled?

2 MR. McCOY: I do, Your Honor.

3 MR. APOSTOLOU: Yes.

4 THE COURT: All right. Y'all be seated. The
5 clerk will poll the jury.

6 (Whereupon, the jury was polled and all
7 jurors indicated their agreement with the verdicts.)

8 THE COURT: Now, folks I want to thank you
9 for your jury service this week. Jury service is never
10 easy, even on the simplest car wreck cases, the civil
11 side. The cases like this -- y'all had a difficult case.
12 This was a very difficult case, and that was obviously
13 reflected in the fact that you took so long to reach a
14 verdict, and it was very difficult for to you reach one.

15 We ask people to do a very challenging job
16 when they show up, and that is listen to what got said in
17 court here, don't talk to other people, don't listen to
18 what outside influences are, just listen to what you hear
19 in this courtroom, and then take the law that I tell you
20 applies and come up with a verdict.

21 And, you know it's been my experience that
22 people, when they get that jury notice, when they first
23 get it, most of them are, like, You know, I really would
24 like to do that, just some other time, but then they get
25 here, and they really do get invested in the process.

1 One of the things that I do as part of my
2 duties is I kind of keep an eye on what's going on around
3 and make sure nobody is nodding off and falling asleep,
4 and there wasn't one time throughout this entire trial
5 that I noticed anybody on the jury that was not giving
6 whatever was being done their absolute fullest attention.

7 That's actually kind of rare, but it goes to
8 show you that it was an interesting case, and, you know,
9 as I think I mentioned earlier in the week, when people
10 will -- I will sometimes run into them in the street, and
11 they'll tell me that they were glad that they got the
12 chance to serve on the jury because they learned a lot
13 about the system.

14 You learn a lot about making a group
15 decision, and you have your views, each of you
16 individually, which you had to see how it meshed with
17 everybody else's. And part of the duty of the system is
18 just a wide, diverse group of folks. You heard me say
19 that during the qualification on Monday. It's not an
20 easy thing, and so y'all have done a tremendous job this
21 week, and you've done what we asked.

22 People usually want to know if they did the
23 right thing. I tell them whatever you do is the right
24 thing. It's a process, that's what this is really about,
25 and, you know, 12 people, citizens of the county, not

1 government employees, people getting paid by the
2 government to make these decisions, but they're fellow
3 citizens, they come in, take time off from their work and
4 their regular life and make big decisions like this.

5 We can't ask more from citizens, so you have
6 truly earned our thanks. I would like to say you've
7 earned your pay, but it's really not much. It's a
8 pittance. I'm glad we were able to buy you lunch and
9 some doughnuts. I wish we could do a better job than
10 pizza in the evenings on the nights we do that, but y'all
11 have earned our thanks for that, and I won't keep you any
12 longer.

13 It's 1:30 in the morning. You broke the
14 record, my personal record, for having a jury out. I
15 know you're tired. Please drive home carefully. The
16 sheriff's deputies will escort you back to the parking
17 lot, and, please, again, accept my sincere thanks on
18 behalf of the citizens of State of South Carolina for
19 your jury service this week. All right? Thank you very
20 much.

21 (Jury dismissed.)

22 THE COURT: On the two indictments for
23 murder, that would be indictment 2014-GS-10-758 against
24 Mr. Simmons, and 2014-GS-10-762, the murder indictment
25 against, Mr. Heyward, I would declare mistrials on those.

1 As for the others, are there any motions that
2 you wish to make at this time before we move to
3 sentencing?

4 MR. McCOY: Judge, again, I would just renew
5 all previous objections.

6 THE COURT: All right. Mr. Apostolou,
7 anything?

8 MR. APOSTOLOU: We renew our motion for
9 directed verdict. We would also request that -- make a
10 motion for a new trial. There were some serious Bruton
11 issues involved with those jail tapes, the fullest extent
12 of which I don't believe was readily apparent when they
13 first played them, but, obviously, they're in the
14 closing. There are some serious Bruton issues there.
15 There was the confrontation clause --

16 THE COURT: I don't think any of those were
17 raised.

18 MR. APOSTOLOU: No, I understand that, Judge.
19 I understand. In addition to that, Judge, I request that
20 we defer sentencing due to the hour to the extent we've
21 all been here.

22 THE COURT: Well, I'll tell you what:

23 MS. SHEALY: May I be heard as to that issue,
24 to delay sentencing?

25 THE COURT: The motions are denied for the

1 record.

2 Go ahead.

3 MS. SHEALY: This family has been here from
4 Longs, South Carolina. Talia, Kadeem Chambers's sister,
5 has got to be at work tomorrow at 2:00. It would be a
6 great hardship for these folks to come back for
7 sentencing.

8 THE COURT: I agree. I was thinking about
9 that. One time I thought, well, I'll do it Monday
10 morning, but they are from out of town, and that would be
11 a hardship, so we will move to sentencing.

12 Is there anything the State would like to
13 bring to my attention?

14 MS. SHEALY: Yes, Your Honor. May I hand up
15 the sentencing sheets?

16 THE COURT: Uh-huh.

17 MS. SHEALY: And, Judge, could I hand up some
18 pictures of Kadeem Chambers that his family brought that
19 they'd like you to see?

20 THE COURT: Sure.

21 MS. SHEALY: Would I be interrupting you if I
22 also asked you something else right now?

23 THE COURT: Go ahead.

24 MS. SHEALY: Apparently the family has a
25 video they made contemplating this sentencing hearing. I

1 think he said it lasted just a few minutes, five minutes.
2 Would you entertain seeing that?

3 THE COURT: What kind of --

4 MS. SHEALY: I don't know, actually. They're
5 just pictures of Kadeem Chambers.

6 THE COURT: Is it something you can play up
7 here?

8 MS. SHEALY: Yes.

9 THE COURT: Go ahead.

10 MS. SAVAS: Your Honor, Kadeem Chambers and
11 Jujuain Hemingway's sister has a brief note that she
12 would like to have read, if it's all right with Your
13 Honor.

14 THE COURT: All right.

15 MS. SAVAS: Hello. My name is Talia
16 Chambers, and I'm the sister of the late Kadeem Ali
17 Chambers and also Jujuain Hemingway.

18 The past almost 30 months now my family chain
19 has been seriously and unforgettably broken. This has
20 hurt my family and I badly. On May 17, 2012, when my
21 brother Kadeem Ali Chambers was executed, it was the
22 worst day of our lives, a day we will never forget. No
23 one will never feel my family and I's pain. We will
24 never again get the chance to hug, kiss, laugh, or joke
25 or even see the crazy, ugly faces that Kadeem was to

1 make. All we have now is sweet memories, pictures, and
2 the thought of our loved one.

3 My family lost a son, a brother, a grandson,
4 uncle, and cousin, and, most of all, a dear friend above
5 all. My little brother was a very good, humble,
6 peaceful, well-mannered, loving, and most caring person.
7 To know Kadeem was to love him.

8 So now, today, on November 14th, 2014, I
9 stand here, two years later, for justice, peace, but,
10 most importantly, closure for our loved one, the late
11 Kadeem Ali Chambers, and to look into the eyes of the two
12 monsters and murderers that took our loved one from us.

13 So, with that said, I would like for you to
14 have no mercy upon Denzel Heyward or Dashaun Simmons
15 because they had no mercy on our child on the night of
16 May 17, 2012 when our lives was turned upside down. I
17 feel even to have life in jail is still too sweet for
18 them. At least they moms can see them, their brothers
19 and sisters can talk to them, and their grandmothers can
20 at least get the chance to hug and to hold them. My
21 family will never have that chance again.

22 So when you give judgment, please consider
23 that if you let them go they can do this again to
24 somebody else's child, maybe even one of yours, so I
25 think they should have to live their life in jail, to sit

1 and think about the wrong that they did, the life they
2 destroyed, the hearts they left empty.

3 Thank you.

4 THE COURT: Thank you.

5 MS. SHEALY: Regarding their prior records,
6 you had heard of Mr. Heyward's prior record for two armed
7 robberies when he was a juvenile, which was only four
8 years, I believe, before this incident occurred. He also
9 has a previous receiving stolen goods conviction.

10 You've heard the testimony of Quansantrina
11 about the violence at this man's hands towards her. He
12 literally hit her at the North Charleston municipal
13 court, which was videoed, when they were going down to
14 get bail money back on a pending drug charge that he,
15 Dashaun Simmons, and Quansantrina Rivers, still face.

16 Just for the Court's edification, on that
17 occasion, which was one month prior to this event, there
18 was a weapon in the car.

19 Dashaun Simmons has a prior weapons charge,
20 breach of trust, fraudulent intent, possession of
21 marijuana charge, forgery charge, driving under
22 suspension charge, and he made bail, Your Honor, for
23 approximately, I believe it was, a month, then picked up
24 new charges and then failed to come to court twice for a
25 bond revocation and was then picked up on a bench

1 warrant. He has obviously no regard for the law.

2 I understand that the murder charges, they
3 were not found not guilty, there was just no verdict
4 reached, and in a heinous crime like this, I'm asking for
5 consecutive time. It's not just an armed robbery that
6 would be deserving of 30. It's not just an attempted
7 murder that would be deserving of a 20 or the weapons
8 charge, it's the combination of the three, and one young
9 man lost his life that evening.

10 We are asking for consecutive time.

11 THE COURT: All right. Mr. McCoy?

12 MR. MCCOY: Thank you, Judge. May it please
13 the Court: Your Honor, it's obviously been a long week.
14 It's been a hard-fought battle, and I believe the
15 evidence is the fact that we had a jury that was out for
16 roughly eight hours. I think there were some issues that
17 were given to the jury to discuss to create or show some
18 sort of reasonable doubt. We obviously had our theory of
19 the case and how this case went down.

20 We absolutely respect the verdict of the
21 jury, Your Honor, and I would ask you, myself and Sarah,
22 my co-counsel, have obviously put our hearts and souls
23 into this case and the defense of Dashaun Simmons, and
24 while there was no verdict reached on the murder charge,
25 I know we have a guilty verdict on the other three

1 remaining charges.

2 He's been joined in court this week by family
3 members who have been here to support him. The
4 grandmother was actually here earlier. She had to leave,
5 so she's no longer here. Your Honor, I'd ask you to
6 please not sentence on the fact that the murder was --
7 basically, you know, there was decision made on that, so
8 I would ask you not to take that into consideration in
9 terms of the sentencing, and I ask that you please take
10 into account Mr. Simmons's prior record, which is
11 minimal, and please sentence accordingly.

12 THE COURT: Mr. Simmons want to say anything?

13 MR. MCCOY: No, sir, he does not.

14 THE COURT: All right. Mr. Apostolou?

15 MR. APOSTOLOU: Judge, Mr. Heyward has been
16 in jail for two-and-a-half years for this.

17 I echo a lot of the sentiments of Mr. McCoy.
18 It's obviously a hard-fought battle, Judge. I think that
19 a good theory was floated. We respect the judgment of
20 the jury.

21 I've known Denzel a long time. I've known
22 his family. I've been at their home. His brother is
23 here. He's not the monster that the State portrays him
24 as, Judge. I've known him on a personal level. I would
25 ask that you show him consideration, and I would ask that

1 you sentence him accordingly.

2 I don't know if he wants to speak? No,
3 Judge.

4 MR. MCCOY: Judge, the only other thing I
5 would add too is Mr. Simmons has served exactly 24
6 months.

7 THE COURT: All right. Mr. Heyward want to
8 say anything?

9 MR. APOSTOLOU: No, Your Honor.

10 THE COURT: All right. Gentlemen, stand.

11 You know, there seems to be something going
12 on in society which -- I don't know, young people don't
13 seem to have any regard for life. You know, things are
14 solved with violence, with guns, and there's just a total
15 disregard for the fact that we're talking about other
16 human beings, and I don't really know how to resolve that
17 problem from a societal standpoint.

18 It's clear to me from the evidence that the
19 jury had before them that, you know, there was lying in
20 weight for this robbery and attempted murder to take
21 place. That's highly disturbing to me, and it shows
22 premeditation, malice, and it shows just the total
23 disregard for other human beings. And I don't really
24 know of any way to solve that other than when the case
25 comes before me to put people like you away for as long

1 as you can.

2 I think you forfeited the right to walk
3 amongst people for as long as I can put you in jail, and
4 I'm going to give you each 30 years on the attempted
5 murder. After you finish that, you can do 30 years on
6 the armed robbery, and after you finish that, you can do
7 the five years on the weapons charge. You'll get credit
8 for time served.

9 Good luck. Thank y'all very much. It's been
10 a long week, and see you around. You did a great job.

11 - - -

12 (Whereupon, the proceedings were concluded.)

13 - - -

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JKS20120504085

838

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2012007855B

ARREST WARRANT NUMBER

M998132

DATE OF ARREST

May 23, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: *[Signature]* JAN 14 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1000759

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2014

THE STATE

vs.

DASHAUN LIVAUGHN SIMMONS

DOB: *[Redacted]*

B/M

Indictment for

Attempted Murder

FILED

1/28/2014 11:08:11 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

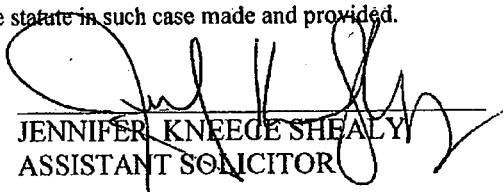
INDICTMENT

At a Court of General Sessions, convened on January 13, 2014 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about May 16, 2012, the Defendant, DASHAUN LIVAUGHN SIMMONS, did, with intent to kill and malice aforethought, attempt to kill Jujuan L. Hemingway. This is in violation of Section 16-3-29 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.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

840

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2012007855B

ARREST WARRANT NUMBER

M998133

DATE OF ARREST

May 22, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

JAN 14 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1000760

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2014

THE STATE

vs.

DASHAUN LIVAUGHN SIMMONS

DOB: [REDACTED]

B/M

Indictment for

Armed Robbery

FILED

1/28/2014 11:08:12 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

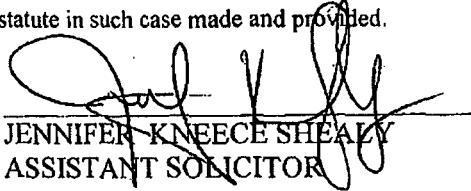
INDICTMENT

At a Court of General Sessions, convened on January 13, 2014 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about May 16, 2012, in Charleston County, South Carolina, the Defendant, Dashaun Livaughn Simmons, by use of force, threats or intimidation and 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 reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Kadeem Ali Chambers and Jujuain L. Hemingway with the intent to permanently deprive the victims of possession thereof, in violation of §16-11-330(A) 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.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

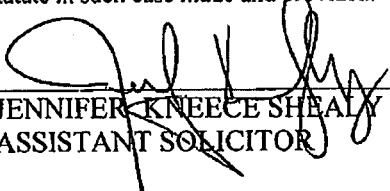
INDICTMENT

At a Court of General Sessions, convened on January 13, 2014 the Grand Jurors of Charleston County present upon their oath:

Possession Of A Firearm During The Commission Of A Violent Crime

That in Charleston County, South Carolina, on or about May 16, 2012, the Defendant, DASHAUN LIVAUGHN SIMMONS, did possess a rifle during the commission, or attempted commission, of Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

JKS20120504085

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2012007855B

ARREST WARRANT NUMBER

M998151

DATE OF ARREST

May 22, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JAN 14 2014

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1000761

843

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2014

THE STATE

vs.

DASHAUN LIVAUGHN SIMMONS

DOB: [REDACTED]

B/M

Indictment for

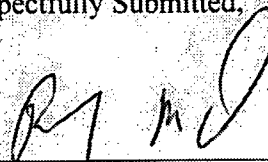
Possession Of A Firearm During The
Commission Of A Violent Crime

Martha Romero 11/15/14

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,



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

This 29th day of January, 2020.

RECEIVED

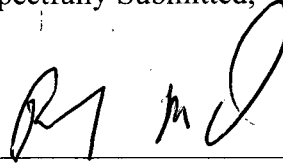
844

JAN 29 2020

SC Court of Appeals 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,



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

This 29th day of January, 2020.