

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LANCE ANTONIO BREWTON,

APPELLANT

APPELLATE CASE NO 2018-001572

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

The State,
-vs-
Lance Antonio Brewton,
Defendant.

TRANSCRIPT OF RECORD
2017-GS-42-5579-5582
August 13; 20 - 22, 2018
Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE; and a jury

A P P E A R A N C E S:

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Attorney for the State

CLAY T. ALLEN, ESQUIRE
MONIER MURID ABUSAFT, ESQUIRE
Attorneys for the Defendant

Linda D. Moffitt
Circuit Court Reporter

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay.

3 MR. ABUSAFT: Your Honor, and we have explained to
4 Mr. Brewton the difference between 30 years, even the top
5 end of voluntary manslaughter being 30 years, the
6 difference between that and the day for day for murder, and
7 that voluntary manslaughter is 85 percent with community
8 supervision. We've explained all of those details, and he
9 still tells us he would like to reject the offer.

10 THE COURT: Okay. All right. What other motions do
11 we have to address?

12 MR. BARNETTE: Your Honor, one thing I need to put on
13 the record before we get started.

14 I have Sergeant Burgess here from the sheriff's
15 department. We agreed to stipulation No. 1, Your Honor.
16 I'd like to make that part of the record, Your Honor. Do
17 you want to make that as a state's exhibit or as a court's
18 exhibit?

19 THE COURT: Court's exhibit.

20 MR. BARNETTE: Your Honor, it'll be Court's Exhibit
21 No. 3 that we made part of the record, and the stipulation
22 is basically SLED Item 4, 5 and 6.

23 Basically, the chain was properly maintained for those
24 items, Your Honor. And there was two pictures that's going
25 to be marked as State's Exhibit 47 and 48. Your Honor, it

1 was a white t-shirt, which is SLED Item 4, Your Honor. It
2 was taken by Sergeant Burgess, a fair and accurate
3 representation of what you saw, and be entered as evidence
4 so to speak if he can.

5 I'll go ahead and get that marked, Your Honor, and
6 hand it to the Court.

7 (Stipulation No. 1 marked Court's Exhibit No. 3.)

8 MR. BARNETTE: May I approach, Your Honor?

9 THE COURT: All right. I'm looking at Court's Exhibit
10 No. 3 entitled Stipulation No. 1 relating to the proposed
11 testimony of Deanna Burgess through the Spartanburg County
12 Sheriff's Department as a witness as to the chain of
13 evidence reflected in the stipulation.

14 It appears that the stipulation containing three pages
15 has been entered into and signed by Mr. Abusaft, Mr.
16 Barnette, Mr. Allen, Ms. Wells and Mr. Brewton.

17 And that's the stipulation, Mr. Abusaft?

18 MR. ABUSAFT: Yes, Your Honor.

19 THE COURT: Okay. What's next?

20 MR. BARNETTE: Your Honor, we'd ask for Sergeant
21 Burgess to be excused.

22 THE COURT: She may be.

23 MR. BARNETTE: Your Honor, she won't be here the week
24 of the trial. We had her brought here for this.

25 THE COURT: Okay. Good. Thank you.

1 (Whereupon, the witness was excused.)

2 MR. BARNETTE: Thank you, Your Honor.

3 THE COURT: Any other motions on behalf of the state?

4 MR. BARNETTE: The only motion we have, Your Honor, we
5 have a motion in limine.

6 We have not been given notice of any mental illness
7 defenses or insanity defenses, Your Honor.

8 Dick whelchel of the public defender's office, Your
9 Honor, was given this notice back on -- it was filed
10 December 7th of 2017 under Rule 5, reciprocal, Your Honor.
11 We have not received anything concerning that, Your Honor.

12 And we do have Court's Exhibit 1, Your Honor, I'd like
13 to enter at this time, which is an examination that was
14 done on federal charges that was done on the defendant nine
15 days prior to this incident.

16 (Letter dated December 21, 2017, to The Honorable Kevin
17 F. McDonald and forensic evaluation marked Court's Exhibit
18 No. 1; defendant's 10-year driver record marked Court's
19 Exhibit No. 2.)

20 MR. BARNETTE: The evaluation was actually done after
21 this incident, Your Honor. He was found competent to stand
22 trial, Your Honor, in those, in that case, Your Honor, and
23 I do have that.

24 And there's not been any expert testimony other than
25 this, Your Honor. Court's Exhibit 1, Your Honor, was done

1 here. It was actually, like I said, done in the federal
2 case and was handed up in that case, Your Honor, or handed
3 in this case also, Your Honor. And there's no other
4 evidence disputing that at this point, Your Honor.

5 So therefore I believe any testimony about any kind of
6 mental illness, voices or whatever would not be pertinent
7 to this case, Your Honor. It would not be relevant. If it
8 is relevant, it'd be highly prejudicial. And without any
9 supporting testimony, I don't think it should be allowed.

10 THE COURT: All right. Mr. Abusaft.

11 MR. ABUSAFT: Your Honor, we oppose the state's
12 motion.

13 Mr. Brewton has a due process right, Your Honor, to
14 present a defense.

15 We are not -- it is -- it is not our argument or not
16 our plan to present to the jury that anything regarding
17 voices took away his legal responsibility for any actions
18 that he had today or even that any voices caused him to
19 shoot, to have the accidental shooting, of his girlfriend,
20 Your Honor, but it is -- many of his actions that day are
21 explained by, are only explained by, the voices.

22 I mean, frankly, that has been his -- his position to
23 me since the beginning. He has been consistent with me
24 from the beginning.

25 Your Honor, under due process, under a res gestae

1 theory I think he has -- he has the right to tell the jury
2 what was going on in his mind that day, why he was doing
3 some of those things. Not as an excuse, not as a legal
4 excuse, but as -- or excuse me -- not as a justification or
5 an excuse but an explanation, Your Honor.

6 This is kind of being the hand -- but I think their
7 motion would have been better -- better handled after we
8 decided the issue of flight, Your Honor, because if the
9 state wants to present flight we -- they want -- they want
10 to make the jury take an inference from its flight, then we
11 get the ability to rebut that inference, to give an
12 explanation other than the guilty mind, Your Honor. And
13 that comes from what he was hearing in his head.

14 Your Honor, it's obviously relevant because under the
15 definition of the rule to -- to explain material facts,
16 what was going on in his head, why did he leave the scene,
17 why did he interact with law enforcement, many things, Your
18 Honor.

19 So it's relevant, and the question is is it -- is the
20 prejudice substantially outweighed, Your Honor. And I
21 don't think it does.

22 Your Honor, you can present a -- you can present a
23 charge to the jury telling them that insanity is not an
24 issue in this case, but they certainly -- so there are ways
25 to deal with that. But it is part and parcel to his

1 narrative of what happened that day. And he has right, a
2 right to testify, to do this.

3 To effectively limit his testimony in this way would
4 effectively take away his right to testify in his own
5 trial, Your Honor.

6 And so under due process -- under due process and
7 under his right to testify, which is an absolute right, we
8 think that the state's motion should be not granted.

9 THE COURT: All right. Let me be sure I understand.

10 The defense does not contend, and you have no evidence
11 to indicate, that the defendant is not competent to stand
12 trial.

13 MR. ABUSAFT: No, we don't contend that, Your Honor.

14 THE COURT: All right. The defendant does not
15 contend, and there is no evidence to indicate, that he was
16 not criminally responsible at the time of the event?

17 MR. ABUSAFT: He was responsible for his actions, yes,
18 Your Honor.

19 THE COURT: All right. And so under the standard of
20 criminal responsibility he passes the test. He was
21 criminally responsible?

22 MR. ABUSAFT: Yes, Your Honor.

23 THE COURT: All right. The defense does not contend,
24 do you, that the defendant suffers from any sort of mental
25 condition or defect that would preclude him from being able

1 to conform his conduct to the requirements of the law?

2 MR. ABUSAFT: No, Your Honor.

3 THE COURT: All right. So you're not contending that
4 he's guilty but mentally ill.

5 MR. ABUSAFT: No, Your Honor.

6 THE COURT: And you're not -- and as I understand it,
7 there's no evidence to indicate and you are not contending
8 that he was insane at the time of these events.

9 MR. ABUSAFT: No, Your Honor.

10 THE COURT: Okay.

11 MR. ABUSAFT: I will be clear.

12 The evidence presented to you by the state does --
13 does correspond with what he's saying the report itself
14 says, that they are not saying he was not hearing voices.

15 They said that he was potentially exaggerating his
16 condition. And the report says that it could have been the
17 result of some chronic, previous -- previous drug use --
18 Your Honor, but it does not contradict that he was hearing
19 voices that day.

20 There is also testimony from the state's witnesses
21 that Kevin Schuerman who will be only -- the third party,
22 the only other party that can actually talk about what
23 happened at the time of the killing, shooting, will say
24 that -- literally, he says he was acting paranoid the
25 entire day.

1 So, Your Honor, there is -- this is not something that
2 just was made up afterwards to be self-serving. There is
3 evidence to support it.

4 Again, it is not -- it is not a legal justification.
5 It's just an explanation and that that especially is
6 relevant when the state is trying to make the jury infer
7 guilt from flight.

8 THE COURT: Well, as I understand it, the exhibit the
9 state has provided, which is Court's Exhibit No. 1, which
10 is the mental health evaluation report conducted on the
11 defendant pursuant to some federal charge dated December of
12 2017, the purpose of the introduction of that report is to
13 refute any potential claim that the defendant is not
14 competent or he is not criminally responsible. But the
15 state does not intend to introduce the report into
16 evidence, do you?

17 MR. BARNETTE: No, sir.

18 THE COURT: So the report's not in evidence, so it's
19 not -- it's not supporting anything or refuting anything so
20 far as the actual content's concerned.

21 It's only been introduced to reflect to this Court to
22 establish that the defendant is competent and he's
23 criminally responsible so that we can proceed with the
24 trial. That's the -- that's the purpose of this report.
25 In other words, it's not going to be introduced as an

1 exhibit for the jury's consideration.

2 MR. ABUSAFT: I understand that, Your Honor.

3 THE COURT: Okay. All right. Well, then what do
4 you -- what do you contend that the value of the
5 defendant's mental state or mental condition is if it does
6 not give rise to a defense or does not excuse his conduct
7 on the date in question so far as criminal responsibility
8 is concerned?

9 MR. ABUSAFT: Your Honor, it's a completely different
10 issue. This is -- this has not relation.

11 THE COURT: That's what I'm trying to determine.

12 MR. ABUSAFT: This has no -- our -- his testimony
13 about what he was hearing, what he was hearing in his head,
14 has nothing to do with responsibility, insanity, anything.

15 It has everything to do with explaining his conduct,
16 explaining why -- again, there is no contention. He would
17 not testify to, if he chose to testify, that voices told
18 him to hurt Natalie. That has never been his contention.
19 That's not in qua.

20 Voices told him to leave the scene. Voices led him to
21 do other things that will need to be explained if the Court
22 allows that other testimony in.

23 THE COURT: What other testimony?

24 MR. ABUSAFT: Well, about, mainly about, flight, Your
25 Honor. If we can -- if flight was not an issue much of

1 this -- much of this, not all of it but much of this, would
2 be -- would not matter. But the point is, Your Honor, he
3 cannot.

4 It is almost impossible for him to testify and not
5 talk about those -- those voices. Otherwise, we'll be
6 asking him to lie on the stand. We'll be effectively
7 preventing him from testifying. It is part and parcel all
8 throughout the narrative of what happened that day and why
9 he was doing what he was doing.

10 I can tell him to make up some other reason. It might
11 be more convenient for us to have another reason, but that
12 is the truth of what was going on that day, and that's the
13 reason for it. It had nothing to do with insanity.

14 THE COURT: Well, is it a defense to the charge of
15 leaving the scene?

16 MR. ABUSAFT: Your Honor, leaving -- no. It doesn't
17 need to be a defense to leaving the scene. That's not the
18 point of it. We're going to most likely --

19 THE COURT: It's not being introduced as a defense to
20 the charge?

21 MR. ABUSAFT: No, Your Honor. And leaving the scene
22 is only going to be introduced not to prove itself.

23 We will have by that point most likely pled guilty to
24 escape and leaving the scene. So the state's not going to
25 be introducing information about leaving the scene to prove

1 leaving the scene either, Your Honor.

2 They're going to be introducing evidence about leaving
3 the scene to infer guilt about murder. So they're not
4 using it for that either -- that reason either.

5 So we need to be able to explain an alternative theory
6 of why he left it, and that may be -- he may or may not --
7 I can't disclose what he would testify before he chooses to
8 testify -- but that may or may not relate to voices. That
9 may or may not relate to other things, Your Honor.

10 The point is that voices are part and parcel to this
11 story, to this narrative of what happened that day.

12 THE COURT: So as I understand it, what you're saying
13 is, he's going to plead guilty and admit criminal
14 responsibility, criminal intent, for leaving the scene or
15 failing to stop after having left the scene.

16 MR. ABUSAFT: Yes, most likely, Your Honor.

17 THE COURT: Okay.

18 MR. ABUSAFT: Again, these are not -- this is not
19 being used a defense.

20 This is being used as an explanation because it's
21 not -- if the state's -- the state's going to be using
22 flight not to prove the crime, which he would have already
23 pled guilty to, but they're going to be using it to infer
24 guilt of the murder. So we get to explain that by whatever
25 truthful reason that that was occurring so that this is not

1 about -- this is not about defenses.

2 THE COURT: Okay. Mr. Barnette, do you want to
3 respond?

4 MR. BARNETTE: Your Honor, it's misleading in talking
5 about voices or anything. There's nothing. And,
6 basically, voluntary intoxication is not a defense.

7 I mean, I could state case after case after case in
8 the South Carolina that states that. And, basically, he
9 voluntarily intoxicated himself, basically, from drugs, is
10 what it came from, was this thing.

11 He created that thing himself, so therefore I don't
12 think he can use -- it's not a defense. I can't be used as
13 an excuse under our law. So therefore I don't think he's
14 entitled to be able to use that in court.

15 THE COURT: All right. Well, do y'all need to talk a
16 minute?

17 MR. ALLEN: Please.

18 (Pause.)

19 MR. ABUSAFT: Your Honor, two points on voluntary
20 intoxication and then one -- one point on flight.

21 Your Honor, even in cases of voluntary intoxication
22 there is a charge saying that voluntary intoxication is not
23 a defense, but the voluntary intoxication can be brought up
24 in trial to explain people's conduct.

25 I believe that the state -- I believe Mr. Barnette was

1 recently in a case with a young man in the last couple of
2 months where voluntary intoxication came up. It was spoken
3 about, and it was also instructed to the jury that it's not
4 a defense.

5 So I think that that analogy is actually very
6 appropriate. You can -- you can tell, instruct, the jury
7 that insanity, criminal responsibility is not an issue in
8 this case but still allow the testimony to explain his
9 conduct.

10 Secondly, Your Honor, I -- I think we should -- I
11 think this is slightly different than voluntary
12 intoxication. When you hear voluntary intoxication you're
13 really talking about somebody who on the day in question
14 became high and became drunk and then committed a crime.

15 Your Honor, in this particular case what -- what the
16 evaluator said was there may -- he may have now a mental
17 illness that was due to previous drug use. But, anyway,
18 that -- that's irregardless.

19 Finally, on the issue of flight the state can't have
20 it both ways.

21 The state wants to make the jury infer something from
22 flight; therefore, we get to rebut that in whatever
23 truthful way that is.

24 If they don't want to infer flight, then we can --
25 then we may be able to deal with this issue. We may have a

1 better handle on trying to deal with this issue and be able
2 to limit the testimony because so much of this is about
3 what happened afterwards potentially.

4 But they don't get it both ways, Your Honor. They're
5 choosing, which case law says -- the Fourth Circuit has
6 said to use an inference that is already a questionable
7 inference to make. That's the Fourth Circuit that has said
8 that. They're choosing to make that connection, therefore
9 we get the opportunity to rebut.

10 MR. BARNETTE: Get it both ways? They want it both
11 ways. He hasn't been evaluated, Judge. There's nothing in
12 evidence showing any kind of mental illnesses here. And
13 you've got the report. I disagree with some of the things
14 that he has said about that report.

15 And I think it speaks very close to malingering from
16 there, Your Honor, misrepresentation, exaggeration.
17 There's all kinds of things here that's being talked about.
18 And, basically, you know, and it's a very thorough
19 examination. There's no evidence of it. So, therefore,
20 you know, and I guess he's aiming to argue voluntary
21 intoxication.

22 I don't know if he took drugs that day or not. He
23 claims it's from some other use. I don't know. I don't
24 think the report says that. So from there I would argue
25 against it, Your Honor.

1 And we may want to go into the flight argument here
2 since he's bootstrapping that to it. And that's their
3 motion concerning that. And I'll be glad to respond if
4 they make that motion too.

5 THE COURT: All right. Well, let me say this.

6 I'm inclined not to permit it because I don't believe
7 under the circumstances of this case it's relevant.

8 It's also confusing and misleading to a jury because
9 it tends to intimate that the defendant suffers from some
10 type of mental illness or defective condition, and that's
11 not the case and that's not being asserted, and therefore
12 it's not relevant to anything.

13 However, what I'll do is in the event that the
14 defendant elects to testify we'll allow him to proffer that
15 testimony outside of the presence of the jury, and then
16 I'll make a final determination under the context of the
17 case as to whether or not it should be permitted.

18 All right. What's next?

19 So there's no pretrial ruling on the admission of that
20 testimony. That will be excluded until such time as I
21 permit it, and that'll be determined after the proffer is
22 made.

23 All right. What's the next one?

24 MR. BARNETTE: Nothing else from the state at this
25 point, Your Honor.

1 THE COURT: All right.

2 MR. ABUSAFT: Your Honor, the defense has multiple
3 pretrial motions.

4 THE COURT: Okay.

5 MR. ABUSAFT: First motion, Your Honor, is that the
6 state's completely complied with Rule 5 and Brady.

7 Specifically, Your Honor, I don't know if you want to
8 handle these or you want to handle these actually the day
9 of, but one specific issue, Your Honor, is that the --
10 there has been certain contact information -- we believe
11 the state to be in contact with certain witnesses in this
12 case, and that contact information has not been turned over
13 to the defense.

14 Certain contact information was originally deleted
15 from the case file. Some of that information has been
16 turned over, though that contact information -- you know,
17 phones that don't work and stuff. So as much as the state
18 is in contact with witnesses, we would like that
19 information turned over.

20 THE COURT: All right. Mr. Barnette.

21 MR. BARNETTE: Your Honor, the reason why some things
22 were deleted like social security numbers and so forth is I
23 know this Court is aware of -- and maybe other judges in
24 our circuit is aware of -- in post conviction relief we had
25 stuff given to inmates.

1 we had one inmate that actually threatened a witness
2 that I'm going to give all of your personal information to
3 all of the people down here at the county jail since I'm
4 down here in the D.O.C. So we started redacting that
5 information.

6 I think the Supreme Court actually followed up with
7 that and asked personal information not be handed over from
8 there, Your Honor.

9 THE COURT: what information do you contend or are you
10 agreeing to provide to the defense?

11 MR. BARNETTE: We gave the statements of each
12 defendant, Your Honor. He contacted me about one specific
13 witness.

14 THE COURT: You're saying each witness?

15 MR. BARNETTE: What's that?

16 THE COURT: You gave a copy of the statement of each
17 witness?

18 MR. BARNETTE: Yes, sir, that we had.

19 THE COURT: That has -- that he's referring to that
20 has the redacted information?

21 MR. BARNETTE: Yes, sir. They have -- he has a
22 witness' name and their -- their information is redacted
23 off that, Your Honor, so they can't from the standpoint of
24 when P.C.R. is given that people aren't contacted, he
25 contacted --

1 THE COURT: What information does he have regarding
2 each of the witnesses?

3 MR. BARNETTE: He has their name and has their -- I
4 think from that standpoint. The addresses, the phone
5 numbers, social security and date of birth has been taken
6 off those forms.

7 THE COURT: Right.

8 MR. BARNETTE: He contacted me about a witness,
9 specifically. I gave him the last known phone number that
10 we had. I handed that to him. He's contacted about two
11 other witnesses. We have not had contact with those people
12 at this point.

13 THE COURT: All right. Mr. Abusaft.

14 MR. ABUSAFT: That's fine. Well, that's fine with me,
15 Your Honor. I sent an email and I guess -- I didn't -- I
16 didn't get a response about those. I asked about them. So
17 that -- that answer's satisfactory to me, Your Honor.

18 THE COURT: Okay. All right. What's next?

19 MR. ABUSAFT: Yes. Your Honor, motion to determine
20 any prior record the state intends to introduce should the
21 defendant choose to testify.

22 THE COURT: Now, these motions -- these are not
23 written motions you're making?

24 MR. ABUSAFT: What do you mean, Your Honor?

25 THE COURT: Well, I mean, did you put them in writing?

1 MR. ABUSAFT: Yes, Your Honor. It should have been in
2 that -- in that packet that I sent you. I can hand you up
3 a --

4 THE COURT: I've got a motion in limine and I've got a
5 motion to exclude flight. And then I've got a memorandum
6 in support. But that's all I have.

7 MR. ABUSAFT: Well, I have a list of the motions in
8 limine, Your Honor. That's what I'm reading off of right
9 now.

10 THE COURT: Well, my question is did you -- did you
11 file written motions.

12 MR. ABUSAFT: I guess I just don't understand what
13 you're saying, Your Honor. Like I did for the --

14 THE COURT: Are all of these contained? The ones
15 you're referencing now, they're all in your motion in
16 limine?

17 MR. ABUSAFT: Yes, Your Honor.

18 THE COURT: Okay. All right. Good.

19 All right. So what's the next one?

20 MR. ABUSAFT: To determine any prior record the state
21 chooses to intend, Your Honor -- introduce, Your Honor.

22 THE COURT: No. 3 on the motion list.

23 MR. BARNETTE: May I approach, Your Honor? This is a
24 copy of those.

25 Your Honor, under 404(b), Your Honor, there is several

1 offenses we're looking at as well as under Rule 609.

2 Your Honor, the first one was a possession of weapon
3 by a felon, Your Honor. He actually pled guilty to that
4 charge, I believe, earlier this year, either January or
5 February of this year.

6 Your Honor, he has not been sentenced on that charge
7 yet. But it occurred nine days prior to this incident,
8 Your Honor, where he was in possession of a weapon by a
9 felon -- of a gun.

10 At that time we definitely think that'd be relevant to
11 be used, and especially with the accident defense trying to
12 be used in this case. And I'll go into more detail about
13 that later, Your Honor.

14 Then under 609, Your Honor, he had several offenses in
15 Greenville, Your Honor, that was charged as armed
16 robberies, Your Honor.

17 They were -- they were reduced to common-law
18 robberies, Your Honor, but he also had weapons in those
19 cases from there, Your Honor. We'd like to use those,
20 obviously, to impeach him, especially if his testimony is
21 going to be accident, Your Honor, concerning that, Your
22 Honor. So we'd like to bring that to the Court's
23 attention.

24 I did include in the 60 -- or the 404(b) motion, Your
25 Honor, I copied his rap sheet, Your Honor. I do also --

1 got -- let me mark this as Court's Exhibit 4, Your Honor.

2 Here's the federal report. The defense has already
3 got a copy of that, Your Honor.

4 (Recommendation for prosecution marked Court's Exhibit
5 No. 4.)

6 THE COURT: Marked as Court's Exhibit 4.

7 MR. BARNETTE: Your Honor, this is actually by the
8 federal justice system, Your Honor, concerning his case,
9 the possession of a firearm or ammunition by a convicted
10 felon, Your Honor. Has a very detailed evaluation of his
11 prior record also, Your Honor.

12 THE COURT: All right. So I have two -- two packets
13 of information that have been handed up. One is entitled
14 notice of use of other crimes or wrongs or acts under
15 404(b), which was filed by the solicitor on July the
16 20th of 2018. And I also have Court's Exhibit No. 4, which
17 was just referenced as -- this is a criminal history of the
18 defendant that was generated by the department of justice?

19 MR. BARNETTE: That's correct, Your Honor. And then
20 the 404(b) argument too would be intent, Your Honor, since
21 they're arguing accident.

22 THE COURT: Okay.

23 MR. BARNETTE: Or mistake or accident in the absence
24 of that.

25 THE COURT: All right. Mr. Abusoft, do you understand

1 what he's intending to present?

2 MR. ABUSAFT: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. ABUSAFT: At this -- at this point I would like to
5 move to prevent the state from using any remote convictions
6 over ten years old under 404(b).

7 THE COURT: which ones are those?

8 MR. ABUSAFT: Your Honor, I'd just -- I would have to
9 look at his 404(b) motion. There's a long list of them
10 that maybe he plans to use under that.

11 THE COURT: You mean, there are a lot of them that are
12 over ten years old?

13 MR. ABUSAFT: Yes, Your Honor, at least is what I see,
14 yes, represented from the state.

15 THE COURT: Okay.

16 MR. ABUSAFT: Your Honor, may it please the Court.

17 Your Honor, I think the case law is kind of clear on
18 this issue. It has to be under Lyle and Summersett, in
19 which I provided Summersett. I have not provided Lyle to
20 you, Your Honor.

21 Your Honor, can you give me one moment, please?

22 (Pause.)

23 MR. ABUSAFT: Your Honor, if you'll look at the packet
24 I provided you it's the one -- if you'll look at the top,
25 right corner, they've been bate stamped. This will be page

1 ten, Supreme Court.

2 The Supreme Court of South Carolina, states, State vs.
3 James A. Summersett.

4 THE COURT: Okay.

5 MR. ABUSAFT: I'm sorry. If you'll turn -- actually
6 move down to -- what's been bate stamped as 13.

7 THE COURT: All right.

8 MR. ABUSAFT: Of the highlighted portion there it
9 says, Your Honor, "The Riley shooting is not probative
10 whether the Dooley shooting was an accident, intentional,
11 or inintentional -- unintentional. The facts of these two
12 shootings are not analogous to the situation where, for
13 example, a man who is on trial for shooting and killing his
14 second wife claims accident, having previously accidentally
15 shot and killed his first spouse. Here, there is no
16 logical relevance between the two shootings."

17 Your Honor, I think it's a perfect example of what the
18 Court is holding a standard to being able to introduce
19 prior acts as analogist for this purpose, Your Honor.

20 In this particular case a man had -- a man was on
21 trial for a shooting and claimed that he shot by accident.
22 And he had previously claimed that he -- in a previous
23 situation he had shot at the ground and the bullet had
24 bounced up and hit somebody and he claimed in -- in that
25 particular case that it was an accident.

1 And so, Your Honor, those two cases are much more
2 analogist than what the state is going to be attempting to
3 use here.

4 The previous -- the previous convictions here, Your
5 Honor, are robberies of people that he didn't know in
6 completely different situations, not involving a spouse or
7 a domestic violence situation or anything not nearly as
8 similar as the case here in Summersett, and the Court held
9 that they couldn't use it there.

10 There's -- there's simply nothing analogist between
11 what the state is claiming they can use to show lack of
12 accident and the particular facts of the case here.

13 It requires more than just saying he used a gun in one
14 crime so I guess he's now a gun -- he's now an expert
15 firearms person. And then to say, well, because of that
16 experience he couldn't have had an accident, now, there's
17 just no logical connection between those previous cases
18 that they're trying -- these previous convictions that
19 they're trying to demonstrate and the facts of the case
20 here.

21 And I would point you, Your Honor, to Lyle itself.
22 Your Honor, excuse me. Your Honor, I don't have it here
23 with me but I would point you to --

24 THE COURT: well, let me ask you this.

25 Do I understand that you're not objecting to the

1 state's examining the defendant as to his proficiency or
2 familiarity with the use and possession of firearms?
3 You're just objecting to the admission of the actual
4 conviction?

5 MR. ABUSAFT: Yeah, Your Honor. If they -- if they
6 want to ask him has he -- you know, is he proficient or
7 does he know about firearms, and I guess the limits of his
8 knowledge of that, no, Your Honor. I don't think I would
9 have -- I don't think I would a problem with that, Your
10 Honor.

11 But to bring up a prior conviction where, obviously,
12 the intent is to demonstrate to the jury that he has some
13 kind of -- that he's a bad person that commits crimes all
14 of the time, that I do have a problem with, and I don't
15 think it passes the 403 analysis. And it also is contrary
16 to both Lyle and Summersett.

17 THE COURT: Okay. Do you want to talk about Lyle
18 first?

19 MR. ABUSAFT: Well, Your Honor, I would just point
20 you -- I'm sorry, Your Honor. I have -- I did not include
21 it in the packet here, Your Honor, and I have left my copy.

22 THE COURT: I'm familiar with it.

23 MR. ABUSAFT: You are familiar. But there is some
24 intense language in Lyle about this particular issue and
25 how -- how the Court should put -- should really put the

1 state to the test about this. And if there is any -- if
2 there's anything -- if there is any question about the
3 logical nexus, it literally says the benefit of the doubt
4 goes to the defendant.

5 And so, Your Honor, I'd ask that you -- I will bring
6 that to your office, Your Honor, and I ask that you look at
7 that language.

8 THE COURT: Okay. Mr. Barnette.

9 MR. BARNETTE: Your Honor, obviously, it goes to
10 intent or accident in this situation.

11 These prior crimes, he's used weapons before. You
12 know, he says this is an accident. He actually, I guess,
13 unbuckled the seat belt if you read the facts of the memo
14 that I received, is when the gun went off.

15 Obviously, he knows weapons and so forth. We'd ask
16 for that right there from that standpoint, Your Honor.
17 404(b) I think allows that, as well as 609 will allow that
18 in that situation. So we'd ask the Court to consider that.

19 THE COURT: All right. I'll -- I'll take that matter
20 under advisement.

21 All right. Next one.

22 MR. ABUSAFT: Your Honor, just one last point.

23 Your Honor, I won't belabor it here, but as far as the
24 conviction that the state brought up regarding his -- his
25 recent federal conviction for possession of a weapon by a

1 felon, Your Honor, at that -- I think that relevance of
2 that crime is mooted. In that particular case he brought a
3 firearm to a police officer and said please take this away
4 from me, and that's what resulted in that conviction, Your
5 Honor. And so I'm not sure of the relevance for it under
6 609, 404(b) or any other reason. I just ask you to take
7 that under advisement also.

8 THE COURT: Do you want to respond any further?

9 MR. BARNETTE: Your Honor, it fits their theory that
10 he knew that was wrong. If he's not supposed to possess a
11 weapon, well, how can he possess a weapon the day of the
12 murder that occurred?

13 MR. ABUSAFT: Your Honor, I guess I don't -- I don't
14 understand the relevance of what he was -- what he was
15 saying.

16 Your Honor, him possessing even for -- even under the
17 law of accident possession of a weapon illegally in and of
18 itself is not -- does not prevent the defense. So I just
19 don't know what that means.

20 MR. BARNETTE: I would disagree with him, Your Honor.

21 THE COURT: Well, it wouldn't prevent it if you were
22 acting in self-defense.

23 MR. ABUSAFT: No. I think -- I think it's more than
24 that, Your Honor. I think the case law -- and I will be
25 happy to brief the issue.

1 THE COURT: All right. Well, y'all do that. You can
2 brief it for me.

3 MR. ABUSAFT: Thank you, Your Honor.

4 MR. BARNETTE: Your Honor, I don't think I need to
5 brief it. I can give you the case law.

6 THE COURT: You don't have. He's suggesting he wanted
7 to, so.

8 MR. BARNETTE: I might as well just shortcut all of
9 this.

10 State vs. Smith, Your Honor, is 391 S.C. 408 case, 706
11 S.E. 2d, 12, Your Honor, a 2011 case that was tried here in
12 Spartanburg County. Judge Early was the judge, Your Honor.

13 You cannot -- basically, the case law is very
14 straightforward about that, Your Honor, and I think you
15 just stated it from that standpoint.

16 "The defendant was not entitled to a jury charge on
17 accident, in prosecution for murder, where the defendant
18 was acting unlawfully at the time the victim was shot, as
19 he was" -- in this case selling crack at a trailer to the
20 victim, Your Honor. In this case he was in possession of a
21 weapon illegally, Your Honor. He has knowledge that he is.
22 He's pled guilty to it. He's not entitled to accident in
23 this case.

24 MR. ABUSAFT: No, sir, Your Honor. That may -- that
25 may be what you glean from a quick reading of one case,

1 Your Honor, but the case law is actually quite tortured on
2 this issue of accident.

3 I have researched that. I did not brief it because I
4 did not think it was an issue. I didn't see or hear a
5 motion to prevent us from getting accident.

6 But, Your Honor, there's three requirements to
7 accident. It's, one, it was unintentional, one, you
8 weren't acting unlawfully, and, one, you were exercising
9 due care, Your Honor.

10 Unlawful -- Jean Toal -- Jean Toal took it all the way
11 from beginning with a dissent where she disagreed with the
12 majority, to taking the majority, that held that possession
13 of a firearm in and of itself is -- does not present
14 accident.

15 Now, if your illegal possession of the firearm is a
16 cause of the problem, ends up being a cause of the crime in
17 and of itself, which is a very strange distinction, but the
18 def -- what the case laid out, Your Honor, was if you had a
19 gun and you bring -- let's say you bring a gun to a fight,
20 is the reason why it escalated into the crime that it
21 eventually became, then that illegal carrying of the gun
22 results in you not being able to use accident. But in and
23 of itself it's not true, Your Honor, and I'll be happy to
24 brief it for you if you require it or if you need it.

25 THE COURT: I'm not requiring it, but if you want to

1 submit some cases, I'll be happy to read them.

2 MR. ABUSAFT: I will. I'll be happy to do that, Your
3 Honor.

4 MR. BARNETTE: The reason I bring this up at this
5 point, Your Honor, is post conviction relief. I'm trying
6 to avoid that in this situation.

7 I believe that is the case law. I disagree vehemently
8 with him. I don't think there's any exception to the other
9 self-defense, what you just stated, in this case. This is
10 not a self-defense case, therefore I don't think he's going
11 to be entitled to a charge of accident, or even to argue
12 it. So that's the reason I bring it up at this point
13 instead of waiting until the day of trial and then
14 basically everybody says, well, we've got a post conviction
15 problem now.

16 I'm pretty sure -- I mean, he can be firm in his
17 conviction, but I'm pretty sure I've researched this issue
18 myself and that should only bring it up at this point, Your
19 Honor, because the offer's done after -- I mean, if he
20 doesn't plead to it by the end of this day, it's off the
21 table.

22 MR. ABUSAFT: Your Honor, would you like to give me
23 five minutes? I can -- I've already looked at the case
24 law, so I can go into my computer and try to cite some to
25 you now if you would like it done now.

1 THE COURT: You mean read them to me?

2 MR. ABUSAFT: Yes, sir.

3 THE COURT: Well, I don't want you to read them to me,
4 but I'll be happy to read them myself if you'll submit them
5 to me.

6 I mean, I'm happy to hear any argument you want to
7 make, but I don't want you reading the case law to me.

8 MR. ABUSAFT: No, Your Honor. I mean, I think I've
9 explained my position as best as I can about where -- where
10 the case law is. I'll look at it again and submit them to
11 you today.

12 THE COURT: That's fine.

13 MR. ABUSAFT: Your Honor, at this point we ask for a
14 list of state's witnesses and their criminal histories.

15 MR. BARNETTE: Your Honor, I give state's witnesses on
16 the day of trial. That's when we're required to do it, and
17 that's when we'll do it, Your Honor, from that standpoint,
18 as well as criminal histories at that time.

19 THE COURT: Okay. That'll be provided at the trial
20 date.

21 MR. ABUSAFT: I'll be skipping, obviously, No. 5, Your
22 Honor.

23 And I think we've already dealt with six, a prior bad
24 act. Well, prior bad -- motion to determine the existence
25 and admissibility of any prior bad acts the state may

1 intend to introduce as Lyle testimony, the ones that
2 potentially are outside of his convictions, I don't know if
3 there's any acts they plan on using.

4 THE COURT: Are there any outside of the actual
5 convictions?

6 MR. BARNETTE: No, sir.

7 THE COURT: Okay.

8 MR. BARNETTE: And, Your Honor, just to mention, on
9 Summersett, Your Honor, that's an unpublished opinion. I
10 think they're talking about prior bad acts and not actual
11 convictions from that standpoint. I don't know for sure.
12 But it is an unpublished opinion on top of that.

13 MR. ABUSAFT: And then Your Honor, our final -- well,
14 we already dealt -- well, yes, Your Honor. Motion to
15 prevent state's use of remote convictions under Lyle. I
16 think we already sort of dealt with that.

17 THE COURT: We have.

18 MR. ABUSAFT: And then motion to suppress the use of
19 flight to infer guilt is irrelevant, Your Honor. It's
20 irrelevant under South Carolina Rule of Evidence 402 under
21 South Carolina Constitution and federal constitution.

22 THE COURT: All right. Mr. Barnette.

23 MR. BARNETTE: Your Honor, I think the case law is
24 pretty clear from that. The State vs. Martin is the latest
25 case that I found. Your Honor, that's a Court of Appeals

1 case, 403 South Carolina, 1974, S.E. 2d, 42, Your Honor.

2 May I approach, Your Honor?

3 Your Honor, basically, flight evidence is relevant
4 where there's a nexus between the flight and the offense
5 charged.

6 Your Honor, in this case the defendant actually shoots
7 her or takes her out of her vehicle -- the victim in this
8 case -- puts her on the ground, jumps into her car, takes
9 her car, is driving around. Actually drives by the scene
10 again where a sheriff's deputy saw him that was already
11 there.

12 There's a highway patrolman that's actually behind
13 him.

14 He leaves the scene again and drives actually through
15 back yards of several houses there in the neighborhood,
16 goes on the road and actually goes 23 miles.

17 There is no way that he could -- I mean, this is -- if
18 you look at the totality of the evidence, Your Honor, it
19 creates inferences that the defendant has knowledge that
20 he's being sought by the authorities. He's actually saw --
21 the police are aware of his wrongdoing and proceeding for
22 that scene.

23 He just shot a lady, took her car, was there at the
24 scene, saw the police there and left. Blue lights was
25 turned on. He never would stop. He went 23 miles, all the

1 way to his residence, I believe, where his mother lives
2 from there.

3 To me there's not a more classic case than you have in
4 this situation where flight should be allowed in this case
5 as an inference.

6 I do -- I can go through the other case, Your Honor.
7 He has State vs. Pagan, Your Honor. The defendant was out
8 on bond for murder. So this is a failure to stop well
9 after this thing. This immediately occurs right
10 afterwards, Your Honor.

11 United States vs. Porter. It's a Fourth Circuit case,
12 821 F. 2d, 968, Your Honor. State vs. Robertson, Your
13 Honor, was the defendant's flight from police officer,
14 recovered a weapon.

15 All of this occurred after the fact, Your Honor. This
16 is immediately right after the crime occurs that this
17 defendant did, and all the case law supports that.

18 THE COURT: Mr. Abusaft.

19 MR. ABUSAFT: Obviously, the defense, since we briefed
20 the issue, disagreed that all of the evidence -- excuse
21 me -- all the case law is reason for the state.

22 Your Honor, the requirement, the legal requirements,
23 the broadest standard is what the state just quoted, which
24 is actually a nexus to the crime charged. But as you get
25 into this -- the more specifics of what the case law holds,

1 is that there are -- there's two basic exceptions.

2 One is if the defendant is unaware of an investigation
3 against him or if there is -- if there's another charge
4 which the flight relates to, Your Honor.

5 Now, nexus does not mean -- you know, is not a
6 temporal requirement. So the state's suggesting that
7 somehow the closeness in time changed. That's not the
8 standard. Nexus is a connection.

9 The two cases I've given, I gave, to you, Your Honor,
10 is State vs. Pagan and State vs. Robertson. Those are the
11 main ones, Your Honor. In State vs. Pagan --

12 THE COURT: Those are -- those -- you gave me the
13 actual cases, or they're in the memo?

14 MR. ABUSAFT: They're in the memo, but they're -- I
15 gave you the actual cases also, Your Honor.

16 THE COURT: All right.

17 MR. ABUSAFT: State vs. Pagan and State vs.
18 Robertson -- State vs. Pagan, Your Honor, is where the
19 defendant was out on bond. He was -- he had been charged
20 with murder. He was out on bond.

21 when he -- he picks up a woman. They're in the car
22 together. The police get behind them and blue light them.

23 Testimony uncontroverted at trial, Your Honor, was
24 that the reason he gave to the woman, his passenger, that
25 he fled from police was, one, he was driving under sus --

1 he was driving without a license, and, two, because he was
2 on bond for a murder and they had a girl -- basically, it's
3 a jumbled statement, but it basically results in him saying
4 there's a witness against me.

5 Right. And the Supreme Court of South Carolina even
6 with that testimony said there wasn't a nexus. Largely,
7 you can -- they -- they don't do a great job of analysis in
8 that particular case, or detailed analysis, but clearly
9 because of the other law driving the relation to the
10 driving without a license, that alternative reason for him
11 fleeing from police makes the inference that the state
12 wants to make inadmissible.

13 There's also a case I cite to you in the memo --
14 excuse me -- in the brief where the court says in the
15 2000 -- so relatively recent -- that unexplained flight is
16 admissible for an inference of guilt.

17 The point is this is an inference. You're allowing
18 the jury to make what the Fourth Circuit has called is a
19 very tenuous inference, Your Honor, a guess from the facts.
20 And so if there is some other reason or he is not aware
21 that he be under investigation, this inference can't be
22 made.

23 In this particular case our position is that when he
24 left Natalie's house, Ms. Niemitalo's house, she was
25 conscious -- this is undisputed. She was conscious, she

1 was with a friend, and to the best of his knowledge that
2 this shooting would be treated as what it was, an accident,
3 Your Honor.

4 So when the blue lights got behind him he would have
5 had no reason to believe he was under a murder
6 investigation, right, but he was driving under suspension,
7 Your Honor, and so he fled for those reasons.

8 And so to allow -- the case law says if the flight is
9 related to a separate charge -- and the state has charged
10 him with driving under suspension -- when the flight is
11 related to a separate charge it cannot be used.

12 Now, if we were trying all of these cases together,
13 then of course it'd be -- it would be used to make the
14 facts of the driving under suspension, but by this time
15 next week he'll have pled guilty to those charges and it
16 simply will be irrelevant to this murder charge and the
17 state will be just using it in an attempt to have the jury
18 make a decision on an emotional basis.

19 I'd ask you to look at -- I'd ask you to take it under
20 advisement, and I'll brief on this issue, which is in
21 greater detail.

22 THE COURT: I will.

23 MR. BARNETTE: And, Your Honor, I did hand up
24 Robertson and Pagan too, Your Honor, up there, both
25 argument and so forth.

1 And, Your Honor, this is part and parcel of the crime.
2 I mean, he leaves. If this is an accident, why did he pull
3 her out of the car and lay her down while she's dying,
4 jumps in her car and leaves, if this is such an accident?

5 I mean, that action alone, I mean, this is part and
6 parcel of this crime. I mean, it's part of the facts of
7 this case, the res gestae in this case.

8 There is not a better example I've seen of flight
9 being used in a case than this one. And then he comes back
10 and he drives by the scene. He's not from that area. He's
11 from Greenville. All of his prior offenses are in
12 Greenville County.

13 So I don't know if he got confused in the back roads
14 and came back, but he comes back by the scene. He sees
15 E.M.S. He sees the sheriff's department there. We've got
16 on video where he comes back.

17 Then by the time the highway patrol has gotten behind
18 him, from that standpoint, he sees everybody. He could
19 easily have pulled into the driveway. He decides to leave
20 the scene. He drives through back yards on the video tape
21 and then goes on a 23-mile chase until he wrecks in the
22 back of a pickup truck from there.

23 There's no question that this part is res gestae. I
24 mean, he created this situation. It's just part of the
25 facts of the case.

1 All of the cases he cites, this stuff happens long
2 after this. Like on Pagan, he's out on bond. And I
3 understand why the Supreme Court did that. It has nothing
4 to do with this case from that standpoint.

5 And then the other case, Robertson case, the same way.
6 This happens way after the time. I mean, this is part of
7 the facts, part of actions of the case.

8 When he took her out of that car and took her car
9 after he shot, it created this whole situation from that
10 standpoint. If it was an accident, why didn't he stay
11 there? He didn't.

12 So, but he keeps saying, well, I drove back around.
13 Well, he's not from the area, so he don't know the area,
14 because, like I said, when we looked to see what prior
15 offenses he had when this crime occurred we -- he didn't
16 have any in Spartanburg. They're all in Greenville.

17 MR. ABUSAFT: Your Honor, I just want to clear up a
18 couple of things.

19 I appreciate the state's jury argument, but this has
20 nothing to do with whether it's an accident or not. This
21 has to do with flight and the law of this state dealing
22 specifically with flight.

23 I want to be -- I want to be very clear what we're
24 talking about. The state can talk about him leaving the
25 scene, right. They can talk about it, but that has nothing

1 to do with flight in the legal sense. May be flight as in
2 what a layperson would think.

3 But talking about when he was blue-lighted, that has
4 specific law, and that law has to deal with are you aware
5 of an investigation against you and is there other pending
6 charges, potential charges, that could relate -- that could
7 relate to your flight.

8 I want to be clear about Robertson because, obviously,
9 in Pagan the Court said that information was inadmissible.
10 In Robertson they said flight evidence was admissible. So
11 I want to be clear about that.

12 But the important parts of Robertson -- Robertson was
13 a case where a young man was arrested for armed robbery,
14 and during the pendency of his armed robbery he was
15 informed by law enforcement that he was also under
16 investigation for murder.

17 At some point he decides to then -- excuse me -- at
18 some point he decides to then help law enforcement out and
19 takes law enforcement to the site where the gun is.

20 And on the way back from that site he then escaped
21 from law -- fled from law enforcement. And the state -- at
22 trial the state attempted to use the flight against him.

23 The Court in its reasoning says, yes, we believe that,
24 yes, it is clear that the -- that Robertson's case -- the
25 use of flight against him -- is attenuating. This is the

1 word they use -- attenuated because of his knowledge of the
2 murder. But because of his intimate involvement and
3 knowledge of the investigation against him -- the armed
4 robbery -- so much so that he was participating in helping
5 law enforcement that overcomes the attenuation.

6 So the important parts of this case is that it's all
7 about knowledge. When those blue lights went on
8 Mr. Brewton -- the only information Mr. Brewton had is that
9 there was an accidental shooting at this point but that he
10 was driving under suspension.

11 And so when he fled because of that suspension, that
12 makes this inadmissible in the murder trial. That's the --
13 that's the case law on this specific. All of the other
14 facts about driving around Greenville and how bad he was,
15 or not bad, is completely irrelevant to the legal argument.
16 Thank you, Your Honor.

17 MR. BARNETTE: May I respond just for a second, Your
18 Honor?

19 State vs. Martin, Your Honor, says totality of the
20 evidence in this situation. The totality of the evidence
21 is he -- he knew. He just -- when he drove back by he saw
22 the highway patrolman there, the sheriff's department,
23 E.M.S., from that standpoint.

24 Unfortunately, he's very intimate in the criminal
25 justice system from his prior record, which I think becomes

1 even more relevant under this argument from that
2 standpoint, so unless prejudicial in that case. So it goes
3 to showing that, yeah, he had knowledge of the criminal
4 justice system. He knew what would happen. That's the
5 reason why he ran, because he'd just murdered somebody.

6 MR. ABUSAFT: I won't say anything, but clearly the
7 factual position -- I believe that at the time that he came
8 back to the house he was -- law enforcement had already
9 made contact with him but that -- I guess that factual
10 position can be borne out. But I don't -- I don't think it
11 holds much relevance.

12 As much as he would like to say that he saw -- he saw
13 E.M.S. and all of this and that resulted in him thinking
14 that he was in trouble, it also could result in him saying
15 somebody's taking care of this young woman, she now -- she
16 has people around her, she is receiving medical attention.
17 That -- that inference breaks it away.

18 MR. BARNETTE: What theory are we going under now,
19 Judge? I mean, he keeps changing as we go.

20 THE COURT: I'll -- I'll review the case law and the
21 memorandum and I'll issue a ruling.

22 All right. Is that it?

23 MR. BARNETTE: Your Honor, like I said that if -- the
24 offer ends today.

25 I mean, if he doesn't plead guilty today, it's off the

Guilty plea

1 (Proceedings August 20, 2018)

2 MR. BARNETTE: May it please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 MR. BARNETTE: Your Honor, this is three indictments
5 on State vs. Lance Antonio Brewton.

6 Your Honor, he's pleading guilty to these three
7 indictments, Your Honor. 17-GS-42-5580, Your Honor, is for
8 escape; 17-GS-42-5581 for driving under suspension, Your
9 Honor; 17-GS-42-5582, Your Honor, is failure to stop for
10 motor vehicle, Your Honor, first offense.

11 All of these have been true billed by the grand jury,
12 Your Honor. These are straight-up pleas. There's no
13 negotiations or recommendations, Your Honor.

14 I understand he is going forward still on the murder
15 and possession of weapon charge on a different indictment,
16 Your Honor, 17-GS-42-5579.

17 There's no relationship, no deals, no offers on any of
18 these items, Your Honor, by the state in this case.

19 And, Your Honor, I do have eight exhibits to make part
20 of the facts and evidence in the case on this, just for the
21 plea only, Your Honor, on these three charges.

22 May I approach the bench, Your Honor?

23 THE COURT: Yes, sir.

24 All right. You are Lance Antonio Brewton?

25 THE DEFENDANT: Yes, sir.

guilty plea

1 THE COURT: Mr. Abusaft and Mr. Allen are your
2 lawyers?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I have before me three indictments. Each
5 of those indictments charge you with a separate and
6 distinct criminal offense for which you can receive
7 separate and distinct punishments or penalties.

8 Indictment 2017-05580 charges you with the crime of
9 escape in violation of Section 24-13-410.

10 The state alleges by way of this indictment that you
11 did here in Spartanburg County on or about September the
12 25th of 2017 unlawfully escape or attempt to escape from
13 custody of the Spartanburg County Sheriff's Department.

14 Escape carries a potential sentence of 15 years. It
15 requires a mandatory minimum sentence of not less than one
16 year.

17 Do you understand that charge and the potential
18 punishment?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Indictment 2017-05581 charges you with
21 driving under suspension in violation of Section 56-1-460,
22 subsection 3.

23 The state alleges on September the 25th of 2017 you
24 did drive a motor vehicle on a highway of this state while
25 your license or privilege to drive was canceled, suspended

Guilty plea

1 or revoked and that you have been previously convicted at
2 least two other times for driving under suspension.

3 A third or subsequent offense of driving under
4 suspension carries a potential fine of \$1,000 and a
5 sentence of 90 days confinement.

6 Do understand that charge and the potential
7 punishment?

8 THE DEFENDANT: Yes, sir.

9 MR. BARNETTE: Your Honor, I realize one thing.

10 It should be D.U.S. first. His two priors have just
11 fallen off. It occurred within -- the priors are actually
12 outside the 5-year period. When the officer calculated it,
13 I think he put it in there, so.

14 THE COURT: All right. Well, y'all might need to
15 correct the South Carolina Code section, the C.D.R. Code
16 number, as well as the offense.

17 MR. BARNETTE: Yes, sir. It should be a first. Yes,
18 sir. I'll correct that real quickly, Your Honor.

19 (Pause.)

20 THE COURT: First offense driving under suspension
21 carries up to 30 days in jail or a fine of \$300 or both.

22 Do you understand that charge and the potential
23 punishment?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And the remaining indictment is Indictment

Guilty plea

1 2017-05582.

2 That indictment charges you with failing to stop when
3 signaled by a law enforcement officer using a blue light or
4 a siren or both, the state alleging on September the
5 25th of 2017 you did fail to stop a motor vehicle that you
6 were driving on a road, street or highway of this state
7 after you were signaled to do so by a law enforcement
8 officer in a vehicle using a blue light or a siren or both.
9 Failing to stop carries a potential sentence of up to three
10 years in jail and a fine of \$500.

11 Do you understand that charge and the potential
12 punishment?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, how long have Mr. Abusaft and Mr.
15 Allen been representing you on these charges?

16 THE DEFENDANT: About two months.

17 THE COURT: Two months?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And during those two months have you had
20 plenty of time and opportunity to talk to him -- talk to
21 them about these charges, as well as your decision as to
22 how you wish to proceed with the disposition of them?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did they go over each of the indictments
25 with you and explain to you what the state claims that you

Guilty plea

1 did in the indictment?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did they explain to you what type of
4 punishment or penalty could be imposed if you were
5 convicted of each of those crimes?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And did you tell them everything you know
8 about the allegations made against you by way of each of
9 these indictments?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And did you discuss those allegations with
12 your lawyers in relationship to the allegations made in the
13 indictment?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And after y'all discussed it did you
16 determine whether or not you had any defense to the charge
17 of driving under suspension?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have one?

20 THE DEFENDANT: No, sir.

21 THE COURT: Did y'all discuss whether or not you have
22 a defense to the charge of failing to stop?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you have one?

25 THE DEFENDANT: No, sir.

Guilty plea

1 THE COURT: Did you and they discuss whether or not
2 you have a defense to the charge of escape?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have one?

5 THE DEFENDANT: No, sir.

6 THE COURT: Now, after having those discussions did
7 you and they discuss about how you wish to proceed with
8 your case?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And have you decided to plead guilty or
11 not guilty to each of these three charges?

12 THE DEFENDANT: Guilty.

13 THE COURT: Before I can accept your plea of guilty
14 I've got to ask you a number of questions.

15 The purpose of the questions is for me to determine
16 whether or not your decision to plead guilty is freely and
17 voluntarily made, that you're not being forced into it,
18 that you haven't been promised anything in return for it
19 and that nobody is requiring that you do it, you're doing
20 it on your own, you've made that decision knowingly,
21 wilfully and intelligently.

22 So, first of all, as I'm sure -- I'm sure they told
23 you -- and if they have not, you let me know -- but you
24 understand you have a right to remain silent?

25 THE DEFENDANT: Yes, sir.

Guilty plea

1 THE COURT: And they discussed that with you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And of course that means you don't have to
4 say anything. You don't have to testify even during a
5 trial. You don't have to make any statements that relate
6 to the allegations made against you. You don't have to
7 answer any questions pursuant to interrogation as it
8 relates to the charges brought against you. And you don't
9 have to answer my questions right now unless you want to
10 plead guilty.

11 You always have the right to remain silent and to
12 require the state to come into court with sufficient
13 evidence to establish your guilt to the satisfaction of a
14 jury beyond a reasonable doubt, and you never have to
15 assist them in their efforts to prove you guilty by you
16 providing evidence that might tend to prove your own guilt.
17 So you have an absolute right to remain silent.

18 If you wish to plead guilty you have to give that
19 right up, because, as I've stated, I have to determine that
20 your decision is freely and voluntarily made. And I do
21 that by asking you questions and getting responses.

22 Do you understand your right to remain silent?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you wish to give it up in order to
25 plead guilty?

guilty plea

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did your lawyers explain to you that you
3 have a right to confront and to examine any and every
4 witness in court who would provide evidence against you as
5 it relates to these cases?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that those witnesses
8 would have to come to court and take the witness stand?
9 They'd testify in your presence under oath so that you
10 could see them, you could hear them, your lawyers could
11 cross-examine them on their testimony in order to test
12 their credibility and the reliability of the information
13 that they're providing?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand you have that right of
16 confrontation?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand if you plead guilty that
19 doesn't happen?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you wish to give that right up in order
22 to plead guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did your lawyers also explain to you that
25 you have a right to have a jury trial and to have a jury

Guilty plea

1 decide if you're guilty or not?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand if you elect to have a
4 jury trial you help pick the jury that decides the case?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Twelve are selected. They sit over there
7 in the jury box. They listen to the testimony; they
8 consider the evidence; they decide the facts; they apply
9 the law. They decide if you're guilty or not of the crime
10 the state claims you committed.

11 Before a jury could find you guilty all 12 jurors have
12 to be convinced of your guilt beyond a reasonable doubt,
13 and the burden is on the state to prove your guilt to the
14 satisfaction of those jurors beyond a reasonable doubt.
15 And so you can have a trial in the cases and still not
16 testify, still not call any witness, still not produce any
17 evidence. The burden is not upon you to prove your
18 innocence. The burden is upon the state to prove your
19 guilt.

20 Now, if you want to testify, you can. But you can't
21 be required to. But if you choose to testify you'd have to
22 answer the state's questions in addition to your lawyers'
23 questions even if the responses to those questions might
24 tend to prove you guilty. Do you understand?

25 THE DEFENDANT: Yes, sir.

guilty plea

1 THE COURT: Do you understand your right to have a
2 jury trial?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you wish to give it up in order to
5 plead guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has anybody promised you anything that
8 caused you to make that decision?

9 THE DEFENDANT: No, sir.

10 THE COURT: Has anybody threatened you in any fashion?

11 THE DEFENDANT: No, sir.

12 THE COURT: Has anybody forced you into that decision?

13 THE DEFENDANT: No, sir.

14 THE COURT: Has anybody placed any type of pressure
15 upon you that caused you to make that decision that you
16 otherwise would not have made but for that pressure?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you pleading guilty freely and
19 voluntarily?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Was it your decision?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You're satisfied with that decision?

24 THE DEFENDANT: Yes, sir.

25 MR. BARNETTE: May I approach, Your Honor? Do you

Guilty plea

1 need him to initial this?

2 THE COURT: Yes.

3 MR. BARNETTE: Okay.

4 (Pause.)

5 THE COURT: All right. You are 39 years old.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: How far did you go in school?

8 THE DEFENDANT: Ninth grade and got a G.E.D.

9 THE COURT: You do have your G.E.D.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You're able to read and write.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you understood all of your
14 conversations and discussions with your lawyers?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you understood all of the questions
17 I've asked you up to this point?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have you ever been married?

20 THE DEFENDANT: No, sir.

21 THE COURT: Have you ever had a child?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How many?

24 THE DEFENDANT: Two.

25 THE COURT: What age?

guilty plea

1 THE DEFENDANT: Eleven and six.

2 THE COURT: And what kind of work have you done?

3 THE DEFENDANT: Detailing and pressure washing.

4 THE COURT: And who do you work for?

5 THE DEFENDANT: Myself and my -- I got a friend,
6 Cashmere. We've got our own little business.

7 THE COURT: And how long have you done that?

8 THE DEFENDANT: For the last two years.

9 THE COURT: Where is your business located?

10 THE DEFENDANT: We're mobile.

11 THE COURT: And what did you do before that?

12 THE DEFENDANT: Detailing cars.

13 THE COURT: Have you ever been treated for any type of
14 substance abuse or addiction?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And what were you treated for?

17 THE DEFENDANT: Cocaine.

18 THE COURT: And how long ago did you receive that
19 treatment?

20 THE DEFENDANT: Like six years ago.

21 THE COURT: And did you successfully complete that
22 program?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: That treatment program.

25 THE DEFENDANT: Yes, sir.

Guilty plea

1 THE COURT: And since that time have you used any
2 cocaine or other illegal drug?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And when was the most recent time that you
5 used any type of illegal substance?

6 THE DEFENDANT: The day I got locked up, sir.

7 THE COURT: And that was on September the 25th of
8 2017?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you've not used anything since, have
11 you?

12 THE DEFENDANT: No, sir.

13 THE COURT: Is there anything about your condition or
14 your addiction, should you suffer from such, that has any
15 impact upon your decision today to plead guilty?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you fully aware of what you're doing
18 now?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you ever been treated for any type of
21 mental illness or emotional disturbance?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you suffer from any such a condition
24 today?

25 THE DEFENDANT: No, sir.

Guilty plea

1 THE COURT: All right. Listen to what the solicitor
2 tells me about the facts that relate to these cases. And
3 when he's through I'm going to ask you if you agree with
4 his version and his recitation. And if you do, I'll ask
5 what you disagree with.

6 MR. BARNETTE: Thank you Your Honor.

7 Just going through the exhibits first.

8 State's Exhibit 1, Your Honor, is actually the
9 evaluation that was done in the federal prison system, Your
10 Honor, concerning the defendant saying he is competent to
11 stand trial and has no mental illnesses in this case, Your
12 Honor.

13 State's Exhibit 2, Your Honor, is the report from the
14 highway patrol, Your Honor. Trooper Stewart was the
15 individual that responded to [REDACTED] Zimmerman Road here in
16 Spartanburg County on September 25th of 2017 at
17 approximately 11:00 o'clock, Your Honor.

18 State's Exhibit 3, Your Honor, is actually the
19 Greenville County Sheriff's Report when they responded to
20 126 Darby Place in Taylors, South Carolina, in Greenville
21 after the failure to stop where the defendant had actually
22 hit the back of a pickup truck in that driveway, Your
23 Honor.

24 State's Exhibit 4, Your Honor, is actually the
25 deputy's report where the sheriff's department initially

Guilty plea

1 went out to ■ Zimmerman Road concerning the shooting
2 where the defendant shot the victim in the case. We'll
3 actually be trying that murder case later, Your Honor.
4 It's not a part of this plea.

5 And State's Exhibit 5, Your Honor, is actually the
6 in-car video of Trooper Stewart from the time he initiated
7 contact with the defendant traveling 23 miles until he
8 wrecked in Darby Place, in the back of the pickup truck,
9 Your Honor.

10 Afterwards, Your Honor, after State's Exhibit 6, Your
11 Honor, is actually a body cam video showing Deputy
12 Littleton when he was brought back to the Spartanburg
13 County Detention Center when he ran away from Deputy
14 Cockrell, Your Honor, and was captured. Part of that was
15 caught on this body cam video, Your Honor.

16 State's Exhibit 7, Your Honor, is actually the rap
17 sheet of the defendant, Your Honor.

18 It's actually more extensive than that. There's a
19 federal charge that he has pled guilty that occurred nine
20 days before that possession of weapon by a felon. I know
21 you heard about that in pretrial motions earlier last week.

22 State's Exhibit 8 is actually his driver's license
23 record, Your Honor. That's when I noticed that the two
24 charges actually aged out, Your Honor. They actually was
25 outside the 5-year period.

guilty plea

1 Your Honor, just briefly going into the facts of this
2 case, this occurred back on September 25th of 2017,
3 approximately 11:00 a.m.

4 The Spartanburg County Sheriff's Department got a
5 call, Your Honor, about a shooting that had occurred there
6 in the driveway, Your Honor.

7 Deputy Jimmy Parris arrived there, Your Honor. He
8 found the victim in this case, Natalie Niemitalo, Your
9 Honor, with Kevin Schuerman, Your Honor, was basically
10 there.

11 She had been shot in the chest, Your Honor. They
12 asked who did this, and they indicated that the defendant
13 had done this, Your Honor, had taken her vehicle, which was
14 a black Honda Civic, Your Honor.

15 Trooper Stewart shortly came right after Deputy
16 Parris, was told about the individual that was driving the
17 vehicle.

18 Your Honor, he went to look and found, actually got
19 behind the defendant in the car, Your Honor, and started
20 going after him.

21 The defendant actually drove back to the scene, Your
22 Honor. Blue lights were initiated. He had signaled to
23 him. He went straight through several back yards, Your
24 Honor. Went back on 357. Traveled approximately 23 miles
25 and went all the way to Darby Place, Your Honor, [REDACTED], in

Guilty plea

1 Taylors, South Carolina, in Greenville County, still in
2 South Carolina, Your Honor, where he ran into the back of a
3 pickup truck there in the driveway, Your Honor.

4 He was taken into custody at that point, Your Honor.
5 The gun was found inside the car. And of course I know
6 we're going to be talking about that later from there.

7 But he was taken to the Greenville Hospital System to
8 be checked out, Your Honor, because of the wreck into the
9 back of the pickup truck, Your Honor.

10 He was later taken back to the Spartanburg County
11 Detention Center. Deputy Cockrell had actually transported
12 him from the Greenville Hospital System back to the
13 Spartanburg County Detention Center.

14 When he went into the carport, Your Honor, and went
15 out to get the individual, had actually got him out of the
16 car, Your Honor, he was in shackles and still in his
17 hospital gown, Your Honor.

18 He ran and went a couple of streets over, Your Honor.
19 Several sheriff's department people started looking for
20 him. They actually found him behind a house a couple of
21 blocks away, Your Honor. He was taken into custody.

22 That's where -- State's Exhibit 6, Your Honor, is the
23 B.W.C. from Deputy Littleton, shows where he was taken into
24 custody. Like I said, it was a couple of blocks away from
25 the detention center, Your Honor.

guilty plea

1 At that time he was placed back and brought back to
2 the detention center at that time.

3 I'd like to move all eight exhibits as part of the
4 evidence and part of the facts of the case in case I missed
5 anything, Your Honor.

6 (Letter dated December 21, 2017, to the Honorable Kevin
7 F. McDonald from Gio Ramirez, Warden, marked State's Plea
8 Exhibit No. 1; incident report dated September 25, 2017,
9 marked State's Plea Exhibit No. 2; incident report dated
10 September 25, 2017 from Greenville County marked State's
11 Plea Exhibit No. 3; deputy report 17091268 marked State's
12 Plea Exhibit No. 4; in-car video marked State's Plea Exhibit
13 No. 5; escape video marked State's Plea Exhibit No. 6;
14 defendant's rap sheet marked State's Plea Exhibit No. 7;
15 defendant's 10-year driver record marked State's Plea
16 Exhibit No. 8.)

17 THE COURT: All right. Mr. Brewton, you heard what
18 the solicitor just told me about the facts that relate to
19 the failing to stop, driving under suspension and escape.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And do you agree or disagree with his
22 version of those facts?

23 THE DEFENDANT: I agree.

24 THE COURT: And you still want me to accept your pleas
25 of guilty?

Guilty plea

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. I'll accept them and hear from
3 you and your lawyers.

4 MR. ABUSAFT: Yes, Your Honor.

5 I just want to highlight that under the -- for the
6 escape charge that Mr. Brewton didn't use any tools or any
7 kind of breaking.

8 what happened was there was basically just a large
9 port that was left open and he walked out of it, Your
10 Honor.

11 He wasn't -- he didn't create a scheme to do anything,
12 just the officers were negligent in their handling of him,
13 Your Honor, and he walked out. He walked out of the
14 detention facility, Your Honor.

15 That doesn't excuse it, but it is different than
16 someone who worked a plan to try to escape. So we ask you
17 to take that into consideration, Your Honor.

18 THE COURT: All right. Mr. Brewton, do you want to
19 add anything?

20 THE DEFENDANT: No, sir.

21 THE COURT: Mr. Brewton, the state has introduced as
22 one of the exhibits, the State's Exhibit No. 7, which
23 appears to be your criminal history provided by the state
24 law enforcement division.

25 Have you been over that criminal history? You've seen

Guilty plea

1 a copy of it, have you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You've been over that criminal history
4 with your lawyers?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And is it accurate?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Was there anything you disagree about it?

9 THE DEFENDANT: We didn't -- we didn't actually sit
10 down and just go over every -- every charge.

11 THE COURT: Okay. Well, why don't y'all look at it.
12 You let me know if you agree or disagree with it.

13 MR. BARNETTE: Your Honor, a more complete one may be
14 Court's Exhibit 4 that we entered in at the pretrial
15 hearing which was done by the federal authorities.

16 THE COURT: Yeah. Look at both of them.

17 MR. BARNETTE: Yes, sir. We can make an extra copy of
18 that. And I can make that a state's exhibit, Your Honor,
19 if we need to for this plea.

20 (Pause.)

21 MR. ALLEN: Your Honor, the only thing we differ with,
22 there is a reference, I think, if I'm reading this correct,
23 there is a reference to an armed robbery in 2008. And
24 that, I think, goes with this common-law-robbery charge.
25 He had a common-law-robbery plea for which he got a

Guilty plea

1 probationary sentence, and then the probation was revoked a
2 couple of times a year here and a few years there. But one
3 of these --

4 THE COURT: Was it a correct statement he'd been
5 previously convicted twice of common-law robbery?

6 MR. BARNETTE: That's correct, Your Honor. I think
7 that's correct.

8 MR. ALLEN: That's correct.

9 THE COURT: Okay.

10 MR. ALLEN: What I'm saying is the 2008, the July 21,
11 2008, entry shows that he was put into prison for armed
12 robbery, robbery armed with a deadly weapon. It
13 actually -- Your Honor, you can tell by the sentence as
14 well it's a common law.

15 THE COURT: I think we're all in agreement about that.

16 MR. BARNETTE: And, Your Honor, I do have Court's
17 Exhibit 4, which is a more complete form.

18 Just for the record, Your Honor, and I know you know
19 this but to make sure it's complete, he's pled guilty to
20 possession of a weapon by a felon concerning the incident
21 that occurred in Greenville County nine days prior to this,
22 Your Honor. He's awaiting sentencing. I believe it's
23 coming up probably in the next month from what I understand
24 on that.

25 THE COURT: All right. Anything else from anybody?

guilty plea

1 MR. BARNETTE: Nothing else from the state, Your
2 Honor.

3 MR. ABUSAFT: I would also like to just highlight that
4 he was gone for a very short period of time out of police
5 custody, Your Honor.

6 THE COURT: On Indictment 2017-05580 -- that's the
7 indictment for escape -- Sentence of the Court is you,
8 Lance Antonio Brewton, be confined to the South Carolina
9 Department of Corrections for a period of four years.

10 Indictment 2017-05582, failing to stop, sentence of
11 three years.

12 Indictment 2017-05581, driving under suspension, 30
13 days.

14 MR. ALLEN: Thank you, Your Honor.

15 THE COURT: All right.

16 MR. BARNETTE: Thank you, Your Honor.

17 THE COURT: Now, before we break for lunch I need to
18 see the lawyers in chambers, please.

19 (whereupon, a recess was taken.)

20 THE COURT: Are there any matters that need to be
21 addressed before the jury panel is brought around?

22 MR. BARNETTE: None from the state, Your Honor.

23 MR. ABUSAFT: No, Your Honor.

24 THE COURT: All right. Bring the panel around,
25 please.

1 be there in the morning.

2 So you talk to the bailiff as you leave, but likely
3 you'll be going to the jury assembly room. If not, they'll
4 show you where the jury room is.

5 UNIDENTIFIED JUROR: Okay. Thank you, sir.

6 THE COURT: But likely the jury assembly room. And
7 then from there you'll be taken to the jury room once all
8 jurors have shown up.

9 Okay. Thank you. Have a good afternoon.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: All right. As the previous record will
13 reflect, we had some pretrial motions last week.

14 One of those motions involved the defendant, the
15 defendant's motion to exclude the use of flight as evidence
16 to infer guilt. And I heard argument as to the allowance
17 or prohibition as to that evidence.

18 And I have considered and reviewed the memorandum
19 submitted by the defendant and I've also read and studied
20 the case law that has been provided by the prosecutor and
21 defense counsel.

22 It appears to me to be fairly clear as to the law, is
23 that evidence of flight is relevant and it's admissible
24 when there is a nexus between the flight and the offense
25 for which the defendant stands charged.

1 The case of State vs. Martin provides that it is
2 sufficient that circumstances justify an inference that the
3 accused's actions were motivated as a result of his belief
4 that police officers were aware of his wrongdoing and were
5 seeking him for that purpose.

6 The case of State vs. Robinson also provides that
7 evidence of flight should be excluded when the flight is
8 clearly linked to a separate offense for which the
9 defendant is not on trial.

10 In this case the flight evidence that the state
11 intends to introduce is connected with the case for which
12 the defendant is now on trial. And in the Robinson case
13 the Court went on to say that they rejected the claim that
14 the defendant's statement as to why he was fleeing from the
15 police is dispositive on the issue of the admissibility of
16 the flight evidence.

17 They went on to say that objectively viewed there is a
18 sufficient nexus between flight and the charge that would
19 permit the admission of that flight evidence.

20 And it would appear to me in this case we have the
21 same thing. As I understand the facts as presented by both
22 sides, the defendant was in a vehicle along with the
23 deceased, along with another passenger, that there was some
24 type of a scuffle, argument or altercation between the
25 defendant and the deceased as it relates to who was going

1 to be driving the vehicle, that a weapon in the possession
2 of the defendant discharged killing the deceased, and that,
3 you know, immediately thereafter she was removed from the
4 vehicle.

5 The defendant took possession of her vehicle -- not
6 his -- took possession of her vehicle and drove it away and
7 subsequently left the scene and then upon being pursued by
8 law enforcement failed to stop and had a -- what I believe
9 was described as a 23-mile chase -- after which the
10 defendant wrecked the vehicle and therefore was then
11 apprehended.

12 So it appears to me that there's a clear nexus between
13 the flight and the crime for which the defendant now stands
14 trial, and therefore while he may have a different
15 explanation other than guilt for an offense for which he
16 now stands charged, that's something that the jury may
17 consider, but it is not dispositive on the issue as to
18 whether or not flight evidence should be introduced, and
19 that is because there is clearly circumstances sufficient
20 that have been shown to exist from which an inference that
21 the accused's actions were motivated by his belief that
22 they were searching for him for having committed a criminal
23 offense relating to the decedent's death, and therefore
24 that evidence of flight should be permitted.

25 Now, so far as the other matters are concerned which

1 relate to the defendant's testifying or not, those matters
2 will be addressed when and if the defendant makes the
3 decision to testify.

4 Were there other pretrial motions that I have not
5 addressed or --

6 MR. ABUSAFT: Yes, Your Honor.

7 THE COURT: What is that?

8 MR. ABUSAFT: May it please the Court.

9 Your Honor, for the purpose of the record I just want
10 to be clear and make sure that the findings are clear that
11 our argument was not -- had nothing to do with the flight
12 from the scene.

13 We believe that the analysis should begin at when law
14 enforcement blue-lighted him and from that point forward.

15 THE COURT: Did I not just address that?

16 MR. ABUSAFT: Your Honor, I believe you spoke about --
17 you spoke about something that we didn't argue before Your
18 Honor, and I'm just making it clear. I'm not arguing with
19 your -- your ruling, Your Honor. I'm just making it clear
20 what our position was.

21 THE COURT: I know. And that's why --

22 MR. ABUSAFT: That had nothing to do -- one, we
23 don't -- it is not our -- it is not our facts that there
24 was ever a scuffle, like you said, Your Honor. But more to
25 the point is that that entire part of the narrative is not

1 relevant to the analysis of what our motion was.

2 Our motion begins at the time that law enforcement
3 blue-lighted him. And the reason why he didn't stop was
4 because of he was driving under suspension.

5 THE COURT: All right. And how long after the event
6 did the failing to stop take place?

7 MR. ABUSAFT: Between 10 and 15 minutes.

8 THE COURT: Thank you. So I think that's a sufficient
9 nexus.

10 MR. BARNETTE: No, sir. That's not 10 or 15 minutes.
11 I'll show you the video.

12 THE COURT: Well, even if it is, it is sufficient to
13 me. It's a sufficient nexus.

14 MR. BARNETTE: And to me it's shorter than that, Your
15 Honor.

16 THE COURT: Okay.

17 MR. ABUSAFT: Your Honor, I'm no arguing with your
18 point. I'm just clarifying it for the record.

19 THE COURT: I understand.

20 MR. ABUSAFT: And what we'll be taking exception for
21 if it becomes necessary later on.

22 THE COURT: I understand. All right.

23 MR. ABUSAFT: Your Honor, I think there was some more
24 mundane points that we never got to because we were dealing
25 with some of these other things like sequestration of the

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1 attention now as they give you their opening statements.

2 Ms. Wells.

3 MS. WELLS: Thank you, Your Honor. May it please the
4 Court.

5 On September 25th of 2017 Natalie Niemitalo was at her
6 house here in Spartanburg County with her friend, Kevin
7 Schuerman, and her boyfriend, Lance Brewton, the defendant.

8 They were getting ready that morning to go to the
9 store, and they went out to Natalie's mother's black Honda
10 civic and got into it. Natalie got into the driver's seat;
11 Kevin got into the front passenger seat; and the defendant
12 got into the back seat.

13 At some point while still in the driveway the
14 defendant decided that he wanted to drive the car. He got
15 out and he walked around to the driver's side.

16 He began to argue with Natalie, and during that
17 argument he shot her. He then dragged her out of the car,
18 left her in the driveway bleeding and took the vehicle and
19 drove away.

20 Kevin had run from the vehicle after the gunshot and
21 was hiding. He came back. He saw Natalie laying in the
22 driveway. He took her into his arms and he held her. He
23 called 9-1-1 and reported what happened. Law enforcement,
24 E.M.S. arrived.

25 Mr. Brewton comes back by the residence. A state

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1 trooper who had been out there sees him and he follows him.
2 And Mr. Brewton takes him on a chase from Spartanburg
3 County over 20 miles into Greenville County where Mr.
4 Brewton wrecks his car in the driveway of a residence. And
5 he's arrested.

6 while all of that's going on Natalie is being treated.
7 She's taken to Spartanburg Regional, and she dies as a
8 result of Mr. Brewton shooting her. And that, ladies and
9 gentlemen, is why you are here today.

10 As you heard several times, my name is Jennifer Wells.
11 I'm an assistant solicitor. That means I'm a prosecutor.
12 And this is my boss. This is Solicitor Barry Barnette.

13 It is our job to bring forth to you, the finders of
14 fact, all of the relevant evidence in this case so that you
15 can make a determination and render a verdict in this case.

16 Now, how are you going to do that? How will that
17 happen? Well, what you're going to hear is we're going to
18 bring evidence to you. And evidence can come to you in
19 many forms. In this case it's going to come to you from
20 testimony, live witness testimony from this stand.

21 Folks are going to come up here. They're going to
22 take an oath to tell you the truth about what they know in
23 this case, and then they're going to tell you what they
24 heard and what they saw and what they examined and what
25 they determined that's relevant to this case.

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1 You're going to -- and during that testimony some of
 2 those folks will talk about exhibits, actual physical
 3 pieces of evidence that may be admitted into evidence and
 4 that you may be able to have back with you in the jury room
 5 as you deliberate in this case. And also some of the
 6 evidence in this case may come to you through stipulations
 7 or agreements between the state and the defense about what
 8 some of the evidence may be.

9 Now, who is going to take the stand? what are the
 10 witnesses that you may hear from in this case?

11 Well, first, you're going to hear from the first
 12 officer on the scene, the first sheriff's deputy to arrive.
 13 He is going to talk to you about who he talked to, what he
 14 saw and what he heard out there that day.

15 You're also going to hear from Kevin Schuerman,
 16 Natalie's friend who was with her day that who made the
 17 9-1-1 call. He's going to talk to you about what he heard
 18 and saw back on September 25th of last year.

19 You're going to hear from the deputies who collected
 20 the evidence in this case, and they'll talk to you about
 21 what they collected and why and why those things might be
 22 important.

23 And you're going to hear from SLED agents -- the state
 24 law enforcement division -- and they -- evidence gets sent
 25 to them so that they can analyze certain pieces in their

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1 crime lab. And you'll hear about the analysis they
2 conducted and the conclusions that they reached from that
3 analysis.

4 And you'll also hear from the forensic pathologist,
5 the doctor who conducted the autopsy on Natalie in this
6 case.

7 Now, once you've heard all of this evidence and the
8 case is closed and the state and the defense have made
9 their arguments to you, you're going to go in that jury
10 room, and the door is going to close, and this case will be
11 yours. You will have important decisions to make.

12 What I would say to you is something that Judge Cole
13 touched upon in his statement, his opening charge to you.
14 Don't check your common sense at the door. Each of you
15 comes in this courtroom today with the good common sense
16 you use every day to make important decisions about how
17 you're going to conduct your life, how you're going to
18 raise and take care of your family, all of those things.
19 Don't leave that at the door.

20 You'll hear a lot of lawyer talk. We'll object.
21 We'll say things, and you'll say what are they talking
22 about. Don't let that distract you from the important job
23 that you each have here today, which is to take the
24 evidence and the facts that you hear from the stand, the
25 law as Judge Cole gives it to you and put those two things

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1 together, to take that law, apply it to the facts and
2 render a verdict in this case.

3 I submit to you that once you've heard all of the
4 evidence in this case, you've heard from the witnesses,
5 you've heard the testimony, you've have seen the evidence,
6 you've had a chance to apply the law to it, you will render
7 a verdict of guilty in this case.

8 The state will come back before you at the end of this
9 trial and ask you to do just that. Thank you.

10 THE COURT: Mr. Abusaft.

11 MR. ABUSAFT: Solicitors. May it please the Court.

12 THE COURT: Yes, sir.

13 MR. ABUSAFT: Ladies and gentlemen of the jury, when I
14 was growing up I was about as close as I could possibly be
15 to my mother. I grew up in a 2-parent household, but me
16 and my mom, we were like this.

17 She had two great hobbies, past times, she tried to
18 pass on to me. One was reading, and that took. I loved
19 reading also.

20 And her second one was making puzzles. Didn't matter
21 the kind of puzzle. She -- she made puzzles that were
22 landscapes, beautiful buildings, scenes from American
23 history. But no matter what the puzzle, they were always
24 intriguing. They were 5,000, 7,000, 10,000 piece puzzle.
25 Once she even did a 20,000-piece puzzle.

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1 And so she'd always try to involve me in it, but I
2 never truly had the patience to do it. So I'd start with
3 it, but it would -- I would quickly lose interest. But I
4 could watch as the progression of the puzzle was going,
5 because she would put all of the pieces on our living room
6 table. And so it would start off as a mass of pieces, but
7 slowly but surely it would grow into one coherent picture.

8 And because the puzzles that she used were so
9 beautiful she would frame them after she made them, and so
10 we would have puzzles all over our walls in frames. And
11 when she ran out of room in our house she would give them
12 to friends.

13 There were some days though that I would come home and
14 I would be expecting for her to have finished the puzzle.
15 I'd come home to find her irritated, angry, borderline
16 upset, you see, because at the end of working through a
17 7,000, 9,000-piece puzzle, she would come to the end and
18 she would find that a couple of pieces were missing.

19 Now, my mom was a reasonable woman. So if those
20 pieces were on the edge, if they were in the corner, if
21 they were just maybe a baby-blue piece that was with the
22 sky or a dark piece at the bottom of the building, she'd go
23 get a marker and she'd fill it in. Or if it was on the
24 border, well, she's just let the frame hide that missing --
25 that missing piece.

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1 But sometimes, sometimes, those missing pieces were
 2 right there in the center of the puzzle. They marred the
 3 entire picture, and in their belief -- this happened -- on
 4 those occasions she would go to the box that the puzzle
 5 came in. She'd flip it on the back. She'd look at the
 6 bottom and there'd be a little statement said if you're not
 7 satisfied here is the address, send it back, you can have
 8 your money.

9 Ladies and gentlemen, this case is a puzzle of missing
 10 pieces, and those pieces aren't on the corners and they
 11 aren't on the edges. They are the most important parts of
 12 this case. At the end of this case I'm going to ask to you
 13 send it back.

14 Now, I'm going to walk you through the pieces to this
 15 case, or, more importantly, the pieces that are going to be
 16 missing. But first I want to talk to you about some
 17 important principles of law. These are -- these principles
 18 of law you have to -- are going to be the lens through
 19 which you look at all of the pieces that are going to be
 20 presented to you. So let me take a moment.

21 Mr. Bailiff, will you hit the lights for me?

22 It has been a cornerstone of our criminal justice
 23 system for as long as this nation has been a nation that no
 24 one -- no one must prove themselves innocent. They are
 25 presumed innocent.

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1 Lance, stand up.

2 This is Lance Brewton. He is an innocent man. He
3 stands here right now an innocent man. When the solicitors
4 talk, he remains innocent man. When the first witness
5 speaks to you, he is an innocent man. When the solicitors
6 conclude their case, he is an innocent man.

7 It is not until you get into that back room and you as
8 a group decided -- decide that you -- that this case has
9 been proven beyond a reasonable doubt -- that we'll touch
10 on that in just a second -- beyond a reasonable doubt that
11 he is anything but the innocent man that he stands there as
12 right now.

13 Thank you. Be seated.

14 It's almost like a boxer. A boxer before a boxing
15 match comes in and he's got a big robe on. You may have
16 seen Muhammad Ali and Mike Tyson and any of these
17 gentlemen. They wear a robe, and they get into the ring
18 and they take that robe off.

19 Right now he is wearing a robe of innocence. It cloaks
20 him. It completely protects him.

21 Now, you may -- you may have the inkling, the feeling,
22 that why would anybody bring me here, why would they pay a
23 judge, a defense attorney, a solicitor -- why would we all
24 be here if he hadn't done something wrong. That's a
25 natural inclination. But it's one you can no longer make.

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1 You can make that inclination when you're sitting at the
2 kitchen table reading about things in the newspaper, but
3 now that you've been constricted into this criminal justice
4 system you have a duty to follow our constitution and
5 presume him innocent all the way until he's been proven
6 guilty of these charges beyond a reasonable doubt.

7 The state has the burden of proof in this case. I
8 won't belabor this point, but what that means is -- and we
9 say this humbly. We say this with no arrogance. But Lance
10 has to prove to you nothing and the state must prove to you
11 everything.

12 If at the end of this case there's an ambiguity,
13 there's something that you wish you knew, there's something
14 you don't understand, you hold it against them. You cannot
15 hold it against Lance, because he must prove to you
16 nothing. That is a right that's enjoyed by everyone in
17 this county, in this state, in this nation.

18 And what they must prove is that he has done something
19 beyond a reasonable doubt. It is simply the highest burden
20 in our criminal justice system. It is the highest burden
21 in our justice system, period.

22 This is not a medical malpractice trial; this is
23 not -- this is not -- this is not the burden when people
24 are fighting over money. This is the highest burden in our
25 system because we are fighting over freedom.

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1 Mr. Bailiff, hit the lights.

2 Now, let's get to those pieces of the puzzle. On
3 September the 25th of 2017 Lance and Ms. Niemitalo were
4 boyfriend and girlfriend. They had been boyfriend and
5 girlfriend for the better part of two years.

6 And leading up to that day they had been together
7 solid for five days. They had been spending time with each
8 other. They'd enjoyed each other's company. They had been
9 socializing. They'd also, you will hear testimony, that
10 they had engaged in narcotics use.

11 On the morning of September 25th Natalie and Lance
12 were at the house, and Natalie got a call from her father.
13 Her father told her that they needed to go to the
14 convenience store because her mother had been arrested.

15 There was a car. The car was there and it needed to
16 be picked up. Natalie went and got her mother's vehicle
17 and drove back to the house.

18 After she got back to the house Lance went outside and
19 began walking the dog. Kevin Schuerman, their family
20 friend, arrived at the house.

21 They all decided that they will go to the local
22 convenience store, so they piled into her mother's 2-door
23 Honda. Natalie sat in the front; Kevin sat in the front
24 passenger seat; and Lance sat in the back.

25 Natalie began to put on her makeup. Key in the

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1 ignition, but they hadn't gone anywhere. Natalie begins
2 putting on her makeup.

3 Lance, like a lot of boyfriends, got impatient and
4 decided he wanted -- he wanted to drive. Baby, let me
5 drive. So he asked Kevin to scoot his seat up and let
6 Lance out.

7 When Lance got out of the vehicle a firearm dropped
8 out of his pocket. Lance was always on it. He always had
9 a firearm. You'll hear testimony why. But this was
10 nothing unusual for him.

11 And at this point Lance made a tragic mistake, because
12 he picked up that gun and he didn't put it back in his
13 pocket. He held it in his hand. He got out of the car.
14 He walked around to the driver's side.

15 Him and Natalie began to fuss. They began to bicker
16 over who was going to drive. Natalie said I got it, I want
17 to drive, baby. Lance said no, no, you're going to be
18 putting on your makeup, I want to drive. Lance reached
19 over and undid her seat belt.

20 Now, Kevin Schuerman. You will hear from him. He was
21 in the vehicle. He'll tell you that this is what they
22 always did. They were always bickering. This was nothing
23 unusual. He wasn't afraid. In that car he wasn't afraid.
24 He didn't think something bad was going to happen. This is
25 literally what they did all the time. He had seen -- he

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1 had seen this so many times, this way of them communicating
2 between each other, that he had created a process where he
3 just ignored them, because they fought over silly stuff.

4 This was -- have you ever seen a couple that when
5 they're in public they'll argue in front of you and make
6 everybody else uncomfortable? That was this couple.

7 Kevin reached across her and unbuckled her seat belt
8 and then, bang, gun went off. Kevin ran from the vehicle.
9 He'll tell you he never even saw them. His ears were
10 ringing. He thought he had been shot. Once he got his
11 senses about him he came back to the vehicle and he saw
12 Lance lay her on the ground. Lance then got into the
13 vehicle. He drove away.

14 Later on that day -- later on law enforcement got
15 behind him. Lance panicked. He drove to his home on the
16 borderline of Greenville and Spartanburg, about 20
17 something miles away where he was -- where he wrecked his
18 vehicle in his driveway, and then he was arrested.

19 Now, during the course of this trial you're going to
20 hear some negative things about Lance. He has not always
21 lived an upright life. You're going to hear about
22 narcotics use. You're going to hear about his narcotics
23 use; you're to going to hear about his narcotics use with
24 Natalie. He was an addict.

25 Not now, not during this trial, not later on am I

James Parris
Direct examination by Mr. Barnette

1 going to ask you to approve of Lance's life. I'm not going
2 to ask you to appoint him as your boyscout leader. I'm not
3 going to -- this will never be a beauty contest. But what
4 I am going to ask you to find, is at the end of this case
5 that he did not kill Natalie Niemitalo with malice
6 aforethought.

7 Ladies and gentlemen, when the pieces of the puzzle
8 are missing, the most important pieces, you have but one
9 choice, and that's to send it back. We'll talk again soon.
10 Thank you.

11 MR. BARNETTE: May it please the Court, Your Honor.
12 I'd like to call Deputy Parris to the stand.

13 JAMES PARRIS, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. BARNETTE

16 Q If you would, sir, state your full name for the
17 record.

18 A James Parris.

19 Q And where do you work at, sir?

20 A Spartanburg County Sheriff's Office.

21 Q And what is your position there, sir?

22 A I'm a master deputy with uniform patrol.

23 Q And how long have you been with the sheriff's
24 department, sir?

25 A As of October of this year, 37 years.

James Parris
Direct examination by Mr. Barnette

1 Q Back on September the 25th of 2017 did you receive a
2 call for ■ Zimmerman Road here in Spartanburg County?

3 A Yes, I did.

4 Q And can you tell the jury what -- what you did once
5 you received the call?

6 A I responded to a report of a shooting at ■ Zimmerman
7 Road in Inman, which is in Spartanburg County. I responded
8 blue lights and siren, up to my response to that call.

9 Q When you arrived there, what did you find, sir?

10 A I found a female that was laying on the driveway being
11 held by a male -- later identified as Mr. Schuerman --
12 bleeding, suffering from an apparent gunshot wound.

13 Q And during this time did you have your body-cam video
14 on, sir?

15 A Yes, I did.

16 Q And did that record what happened once you got there?

17 A Yes, it did.

18 Q And the first 30 seconds of the body cam, there's no
19 audio, is there?

20 A No, sir.

21 Q And is that the way all the body cams are?

22 A Yes, sir.

23 Q So actually delay on the audio, then it'll pick up, is
24 that right?

25 A Yes, sir.

James Parris
Direct examination by Mr. Barnette

- 1 Q That's normal on any -- every body cam.
2 A Every body cam that I'm familiar with.
3 Q And as you checked with her and everything, and did
4 you find out who was the individual that shot her?
5 A I did.
6 Q And who was that, sir?
7 A Mr. Schuerman told me that her boyfriend, Lance. And
8 he was not very articulate on the last name. He said
9 Brewer or Brewton. But he did say that he goes by L.B.,
10 and said that that was her boyfriend.
11 Q And did he describe the vehicle that he took?
12 A He did.
13 Q And what kind of vehicle was it, sir?
14 A A black Honda Civic.
15 Q And later on with the body cam -- I know it's been
16 shown and whatever -- did -- does that black Honda or Civic
17 come back by the scene?
18 A Yes, it does.
19 Q And do you briefly see that on the body-cam video?
20 A Yes, sir.
21 Q And did you try to run out and see what -- where he
22 went or whatever?
23 A I was attempting to get back toward the vehicle. I
24 was a distance away. State trooper was coming by that had
25 stopped at the scene and been given the description and the

James Parris
Direct examination by Mr. Barnette

1 direction of travel of the vehicle. And he was behind the
2 vehicle at that point.

3 Q And Trooper Stewart was that trooper. He came to the
4 scene basically when you did, or right afterwards.

5 A He stopped at the scene right after I arrived, and I
6 began giving him the description that I was being given and
7 the direction of travel.

8 Q And then you saw him pull behind the vehicle that was
9 described.

10 A Yes, sir. He left the area going in the same
11 direction as the vehicle was reported to have left in.

12 Moments later he came back. The Honda was in front.
13 And he stopped to confirm briefly that that was the
14 description of the vehicle and then went after it.

15 The vehicle actually turned around and came back
16 toward the residence again with Trooper Stewart behind it
17 and turned out across the field, across the street, from
18 the residence, attempted to evade Trooper Stewart.

19 Q And so he drove through the field, two back yards of
20 the houses?

21 A Yes, sir, he did.

22 Q And you stayed there. And as E.M.S. got there did you
23 observe what they were doing?

24 A Yes, sir.

25 Q And did they actually find a bullet?

James Parris
Direct examination by Mr. Barnette

1 A Yes, they did.

2 Q And did you tell them to be very careful with that?

3 A I did. I instructed them to lay it back down where
4 they found it.

5 Q And, obviously, that'd be on the video. There is more
6 additional video, but it just shows her being treated by
7 E.M.S., doesn't it?

8 A Yes, sir.

9 Q From there. So we're going to see the part up to
10 where the bullet was found, is that right, sir?

11 A Yes, sir.

12 MR. BARNETTE: Your Honor, I'd like to enter State's
13 Exhibit 13 into evidence at this time.

14 MR. ABUSAFT: Without objection, Your Honor.

15 THE COURT: It's admitted.

16 MR. BARNETTE: May I publish it to the jury, Your
17 Honor?

18 THE COURT: You may.

19 (Video marked State's Exhibit No. 13.)

20 (Whereupon, State's Exhibit No. 13 was played for the
21 jury.)

22 Q Like we said the first 30 seconds, there will not be
23 no audio, is that right, sir?

24 A Yes, sir.

25 (Whereupon, State's Exhibit No. 13 was played for the

James Parris
Direct examination by Mr. Barnette

1 jury.)

2 Q Okay. Then, like I said, there's more on the video,
3 but she's being treated at the time and everything. We saw
4 what was -- they found the bullet in her shirt.

5 A Yes, sir.

6 Q And just going back through there, initially when you
7 got there you started talking to him, and he just described
8 what happened, who did it and what vehicle it was.

9 A Yes, sir.

10 Q And just to make sure the jury can see it, like I
11 said, I know they'll have the video later if they need to
12 look at it again. You can see the car where the highway
13 patrolman actually goes through the back yard, through the
14 field through the back yards.

15 A Yes, sir. You can see the car ahead of it. As a
16 matter of fact, it actually lost the front bumper cover as
17 it went across the field, and you can see that in the field
18 out there before the helicopter came in.

19 Q And I think crime scene was called in later, the I.D.
20 unit. They basically took pictures of that, is that right?

21 A Yes, sir. They did.

22 MR. BARNETTE: One moment, Your Honor, please.

23 (Pause.)

24 Q Please answer any questions the defense may have for
25 you, sir. Thank you.

James Parris
Cross-examination by Mr. Abusaft

1 A Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. ABUSAFT

4 MR. ABUSAFT: May it please the Court, Your Honor.

5 THE COURT: Mr. Abusaft.

6 Q Officer, when this video starts, that's the first time
7 you got to the -- to Ms. Niemitalo's home?

8 A Yes, sir. That's as I'm approaching the driveway to
9 the residence.

10 Q So you -- you weren't around when -- when they were in
11 the vehicle.

12 A No, sir.

13 Q You weren't around when the shot was fired.

14 A No, sir.

15 Q You don't know anything about that.

16 A Nothing. Personal knowledge, no, sir.

17 Q Thank you.

18 MR. BARNETTE: I have no further questions of this
19 witness.

20 THE COURT: Step down.

21 MR. BARNETTE: We'd ask for him to be excused, Your
22 Honor.

23 THE COURT: He may be.

24 (Whereupon, the witness was excused.)

25 MS. WELLS: May it please the Court.

Kevin Schuerman
Direct examination by Mr. Barnette

1 THE COURT: Yes, ma'am.

2 MS. WELLS: Your Honor, the state's next witness would
3 then be Kevin Schuerman.

4 KEVIN SCHUERMAN, having been
5 first duly sworn, testified as follows:

6 THE COURT: You'll be using that black microphone. So
7 be sure you get close enough to it and speak loudly so we
8 can all hear it.

9 THE WITNESS: Okay.

10 DIRECT EXAMINATION BY MS. WELLS

11 Q Hang on one second, Mr. Schuerman. There are a few
12 housekeeping matters.

13 (Pause.)

14 Q Mr. Schuerman, where do you live?

15 A Right now?

16 Q Yes.

17 A Oh, I live with my girlfriend off East North Street.

18 Q And East North Street. Is that in Greenville?

19 A Yes, ma'am.

20 Q What do you do for a living?

21 A I run a small website and then also do a lot of
22 e-commerce and things like that.

23 Q Okay. Now, do you know or did you know Natalie
24 Niemitalo?

25 A Yes, ma'am.

Kevin Schuerman
Direct examination by Mr. Barnette

1 Q And how did you Natalie?

2 A Through a group of friends. We just sort of -- yeah.
3 Through a group of friends. And than I ended up becoming
4 pretty close to her family and stuff like that.

5 Q Do you remember about when you met Natalie?

6 A For the first time, it was probably about two years
7 ago.

8 Q And eventually did you end up moving in down the
9 street from her?

10 A I lived there for a point, for a period of time.

11 MS. WELLS: Your Honor, may I approach?

12 Q Mr. Schuerman, I'm going to show you what's been
13 marked for identification purposes as State's Exhibit 77
14 and ask if you recognize that.

15 A Yes, ma'am.

16 Q And what is State's Exhibit 77?

17 A That's Natalie Niemitalo.

18 Q Okay. And that's a photograph of her?

19 A Yes.

20 Q And is that a fair and accurate depiction of what
21 Natalie looked like when she was alive?

22 A Yes.

23 MS. WELLS: Your Honor, I'd offer State's Exhibit 77
24 at this time with permission to publish.

25 MR. ABUSAFT: Without objection.

Kevin Schuerman
Direct examination by Mr. Barnette

1 THE COURT: You may.

2 (Photograph marked State's Exhibit No. 77.)

3 Q Now, Mr. Schuerman, I want to direct your attention
4 back to September 25th of last year, 2017. You said that
5 at some point you had lived -- you were living down the
6 street from Natalie. Were you living down the street from
7 her at that time?

8 A Yes. I was kinda renting a room from her father in
9 one of his houses. He owns a lot of houses in the area.
10 So I was kinda staying in one of those.

11 Q And where did Natalie live in relation to you?

12 A She lived on Zimmerman Road, about half a mile, within
13 walking distance of where I was staying.

14 Q And on the morning of the 25th did you have any reason
15 to go to Natalie's house?

16 A Other than just going to see my friend and that I
17 didn't have anything else to do, no.

18 Q So did you go over there that morning?

19 A Yes.

20 Q And when you got there, what, if anything, did you
21 see?

22 A I got there and Lance was in the driveway. I was
23 kinda walking around, on the phone, and just kind of
24 standing out there.

25 Q Okay. And when you say Lance, do you see Lance here

Kevin Schuerman
Direct examination by Mr. Barnette

1 in the courtroom today?

2 A Yes.

3 Q And can you point him out for the members of the jury
4 and can you describe what he has on?

5 A A suit, blue jacket, blue button-up, blue tie, brown
6 loafers.

7 MS. WELLS: Your Honor, I ask that the record reflect
8 that Mr. Schuerman's identified the defendant, Lance
9 Brewton.

10 THE COURT: It shall.

11 MS. WELLS: Thank you, Your Honor.

12 Q So, Mr. Brewton is sitting here in court today. You
13 saw him in the driveway?

14 A Yes.

15 Q And did you know who he was that day?

16 A Yes.

17 Q All right. And what -- how did you know Mr. Brewton?

18 A Just knew that he was Natalie's boyfriend on and off
19 for a while.

20 Q I'm sorry. Could you repeat the last --

21 A He was -- I knew that they were dating like on and off
22 either -- yeah. So for a long time.

23 Q Okay. And when you answer sometimes at the end of
24 your answers your voice kinda trails off. If you could,
25 keep your voice up.

Kevin Schuerman
Direct examination by Mr. Barnette

1 A Sure. I'm sorry.

2 Q And everything's being record. If I'm having a hard
3 time hearing you, the jurors at the end may have a hard
4 time as well.

5 A Sure. Sorry about that.

6 Q No. That's okay. Just letting you know. It's
7 normal.

8 A Okay.

9 Q You said that when you got there -- what was -- what
10 was Mr. Brewton doing when you got to the house?

11 A I don't really know. He was just standing outside.
12 He was kinda acting erratic, I guess you would say. Kind
13 of -- I couldn't really understand what he was talking
14 about. It was sort of, I don't know, just sort of on edge,
15 I guess.

16 Q All right. And did -- at that particular moment did
17 that cause you any reason for concern?

18 A Not concern. At the time I was on the phone with my
19 mother, and I had other stuff going on. So I didn't really
20 pay too much attention to it.

21 Q Did you stay in the driveway with Mr. Brewton?

22 A No. I went inside.

23 Q And when you got inside, who all -- who, if anyone,
24 was inside?

25 A Just Natalie, and she was in the bathroom. And

Kevin Schuerman
Direct examination by Mr. Barnette

1 then -- I forget her name. There was one of her mother's
2 friends, I think, in the back room, but I didn't know she
3 was there. I think she was asleep.

4 Q And did you -- did you and Natalie have a chance to
5 talk?

6 A Yeah. We talked for a little bit, and then it was
7 decided we were going to go to the gas station to go get
8 some drinks and stuff like that.

9 Q And when you decided to go to the gas station where --
10 what vehicle did you decide to go in?

11 A The only one, the Honda.

12 Q The Honda.

13 A Uh-huh.

14 Q And can you describe that Honda for the jury?

15 A It's a black Honda Civic.

16 MS. WELLS: Your Honor, may I approach?

17 THE COURT: You may.

18 Q Mr. Schuerman, I'm going to talk and show you a couple
19 of photos. First I'm going to show you State's Exhibit --
20 what's been marked for identification purposes as State's
21 Exhibit 17 and ask if you recognize that.

22 A Yes, ma'am.

23 Q What is State's Exhibit 17?

24 A ■ Zimmerman Road.

25 Q And when you say ■ Zimmerman Road, who lived there?

Kevin Schuerman
Direct examination by Mr. Barnette

1 A Natalie's mother and Natalie.

2 Q And is that picture a fair and accurate depiction of
3 how Natalie and her mother's residence appeared to you back
4 in September of 2017?

5 A Uh-huh.

6 Q All right.

7 MS. WELLS: Your Honor, we would offer Government's
8 Exhibit -- State's Exhibit 17 at this time.

9 MR. ABUSAFT: Without objection.

10 THE COURT: It's admitted.

11 (Photograph marked State's Exhibit 17.)

12 MS. WELLS: Thank you, Your Honor.

13 Q Now, I'm going to show you what's been marked for
14 identification purposes as State's Exhibit 44 and ask if
15 you recognize that.

16 A Yes, ma'am.

17 Q And what's State's Exhibit 44?

18 A Natalie's mother's Honda Civic.

19 Q And is that how the Honda Civic looked to you back in
20 September of '17?

21 A Yes.

22 Q Okay.

23 MS. WELLS: Your Honor, we'd offer State's Exhibit 44
24 at this time.

25 MR. ABUSAFT: Without objection.

Kevin Schuerman
Direct examination by Mr. Barnette

1 THE COURT: It's admitted.

2 (Photograph marked State's Exhibit No. 44.)

3 MS. WELLS: And, Your Honor, we'd ask for permission
4 to publish State's 17 and State's 44 as well.

5 THE COURT: You may.

6 Q Mr. Schuerman, I'm first going to show you what's been
7 admitted as State's Exhibit 77 and ask if you recognize.
8 And that's the photograph you identified as Natalie, is
9 that correct?

10 A Yes, ma'am.

11 Q And I'm going to now show you what's been admitted
12 into evidence as State's 17. And that was a photograph of
13 Natalie's residence, is that correct?

14 A Yes, ma'am.

15 Q And, finally, showing you what's been admitted into
16 evidence as State's Exhibit 44. That's Natalie's mother's
17 Honda Civic.

18 A Yes, ma'am.

19 Q Now, you said that y'all got into that Civic to go to
20 the store that day.

21 A Yes, ma'am.

22 Q when you got into the Civic, where was it parked?

23 A In the driveway.

24 Q And when y'all got in, where did everybody get in the
25 vehicle? where did everybody end up?

Kevin Schuerman
Direct examination by Mr. Barnette

1 A Natalie got in the driver's side; Lance got in the
2 back seat behind me on the passenger side; and I got in the
3 front passenger seat.

4 Q Was that unusual to you?

5 A Kind of. Lance usually sits in the front if Natalie's
6 driving, or how I've noticed them sitting.

7 Q Did you offer to allow --

8 A Yes.

9 Q -- Mr. Brewton to sit in the front?

10 A I did.

11 Q Did he take you up on that offer?

12 A At first, no, and then he wanted to be let out of the
13 vehicle, at which time he went around to Natalie's side and
14 wanted to drive.

15 Q When he got out of the vehicle did you notice that he
16 made any motions or stooped to pick anything up or anything
17 like that?

18 A No.

19 Q Did you see a weapon on him when he got out of the
20 car?

21 A I did not.

22 Q And did you stay in the vehicle --

23 A Yes.

24 Q -- when Mr. Brewton got out?

25 A Yes. I kinda just lifted the seat up and let him out.

Kevin Schuerman
Direct examination by Mr. Barnette

1 Q And you said that he went around to the driver's side
2 and told Natalie he wanted to drive.

3 A Yes.

4 Q What did you hear between the -- between them?

5 A Not much. They were just -- it was a very short
6 argument, and they just were going back and forth about who
7 was going to drive.

8 Q And what were you doing?

9 A Just staring straight ahead pretty much waiting for
10 them to decide.

11 Q And while you were staring straight ahead did anything
12 happen?

13 A That's when the gunshot -- I heard the gunshot go off.

14 Q And when you said you heard the gunshot, what -- did
15 it have any affect on you?

16 A Yes. My ears started ringing, and I thought I had
17 been the one. I didn't know exactly what had happened. I
18 thought I had been the one that got shot. So I got of the
19 car and kind of went behind the building. And then when I
20 noticed I was okay and it wasn't me, I went back to the
21 vehicle.

22 Q You said you ran behind the building. Where was that
23 building?

24 A It's a garage right behind the house.

25 Q And you said you realized you were okay. When you

Kevin Schuerman
Direct examination by Mr. Barnette

- 1 came to the driveway, what did you see?
- 2 A Natalie being pulled out of the car.
- 3 Q And who was pulling Natalie out of the car?
- 4 A Lance was.
- 5 Q Can you describe how he did that?
- 6 A Just by her arms, I guess.
- 7 Q Pulled, got underneath her arms and pulled her out?
- 8 A I think so, yes.
- 9 Q You think so.
- 10 A I mean, I didn't -- here's the car. Here's them. So
- 11 I'm kinda blocked from view. At the time I got there he
- 12 had already pulled her out of the car and she was on the
- 13 ground.
- 14 Q When you say she was on the ground, she's laying in
- 15 the driveway?
- 16 A Uh-uh.
- 17 Q And Mr. Brewton was -- where was he?
- 18 A At the time, I guess, he was getting into the car when
- 19 I saw him.
- 20 Q Okay. And where -- what did he do next?
- 21 A Drove off.
- 22 Q Did you see which direction he went in?
- 23 A Went in the direction of Natalie's father's house. So
- 24 she -- got out of the driveway to your right.
- 25 Q And when you got to Natalie, can you describe her

Kevin Schuerman
Direct examination by Mr. Barnette

1 condition?

2 A Just kind of gasping for air, confused, couldn't
3 really speak that much, just in pain.

4 Q What did you do?

5 A I immediately called 9-1-1, and then they told me to
6 go inside and get a towel. And then I just kind of held
7 there or held her and put the towel on her wound and waited
8 for the cops to get there.

9 MS. WELLS: May I approach, Your Honor?

10 THE COURT: Yes, ma'am.

11 Q Mr. Schuerman, I'm going to show you what's been
12 marked as State's Exhibit No. 1 and ask if you are able to
13 recognize that.

14 A Yes.

15 Q And how are you able to recognize State's Exhibit 1?

16 A I put my initials on it.

17 Q And when -- you put your initials on it after you had
18 an opportunity to listen to it?

19 A Yes, yes.

20 Q Okay. And do you know what's -- is it contained
21 within State's Exhibit 1?

22 A It's the police recording of me calling the -- the
23 dispatch.

24 Q Okay. It's the 9-1-1 call?

25 A Yes.

Kevin Schuerman
Direct examination by Mr. Barnette

1 Q All right. And you had an opportunity to listen to
2 this call in its entirety.

3 A Yes.

4 Q And is it a fair and accurate recording of the 9-1-1
5 call that you made on September the 25th of 2017?

6 A Yes.

7 MS. WELLS: Your Honor, we'd offer State's Exhibit 1
8 at this time with permission to publish.

9 MR. ABUSAFT: Your Honor, we object.

10 THE COURT: Okay.

11 MS. WELLS: May we approach?

12 THE COURT: Yes.

13 (Bench conference held off the record in the presence
14 of the jury but out of the hearing of the jury.)

15 THE COURT: All right. Ladies and gentlemen, I've got
16 one issue I'll need to address, so I'll ask you to please
17 go to your jury room.

18 Do not discuss the case.

19 I'll bring you back in just a few minutes.

20 (The following takes place outside the presence of the
21 jury.)

22 THE COURT: All right. Mr. Abusoft, your objection to
23 the admission of the exhibit is what?

24 MR. ABUSAFT: Your Honor, one, I believe it's
25 cumulative and I don't believe -- that's my main objection,

Kevin Schuerman
Direct examination by Mr. Barnette

1 Your Honor. He's here on the stand.

2 THE COURT: That it's cumulative?

3 MR. ABUSAFT: Yes, Your Honor. He's here and he
4 can -- he can testify to -- that he made a 9-1-1 call. But
5 there's no need to play the 9-1-1 call.

6 THE COURT: Is there any other ground for the
7 objection?

8 MR. ABUSAFT: Your Honor, it is -- and I believe it is
9 an out-of-court statement used for the truth here.

10 THE COURT: And the declarant is here and can be
11 examined.

12 MR. ABUSAFT: Yes, Your Honor, but --

13 THE COURT: Do you have any other objection?

14 MR. ABUSAFT: Cumulative is the main one, Your Honor.

15 THE COURT: All right. Bring the jury back.
16 Overrule the objection.

17 (The following takes place in the presence of the
18 jury.)

19 THE COURT: Ms. Wells.

20 MS. WELLS: Thank you, Your Honor.

21 Your Honor, we'd offer State's Exhibit 1 at this time.

22 THE COURT: It's admitted over objection.

23 (9-1-1 call marked State's Exhibit No. 1.)

24 MS. WELLS: And would ask for permission to publish.

25 THE COURT: You may.

Kevin Schuerman
Direct examination by Mr. Barnette

1 MS. WELLS: Thank you, Your Honor.

2 (Whereupon, State's Exhibit No. 1 was played for the
3 jury.)

4 Q And that was the call that you had with 9-1-1.

5 A Yes, ma'am.

6 Q And when the officer arrived on scene did you have a
7 chance to speak with him?

8 A Yes, ma'am.

9 Q And did you tell him what happened?

10 A Yes, ma'am.

11 Q Did anyone out there ask you whether or not anyone
12 might have been using narcotics or illegal drugs that day?

13 A Yes, ma'am.

14 Q And did you answer those questions?

15 A Yes, ma'am.

16 Q What did you say?

17 A I said there's a possibility that Natalie and Lance
18 had been using drugs.

19 Q You said -- excuse me. You're doing that drop.

20 A Had been using drugs. I said it was a possibility. I
21 didn't see any drugs being used that day but...

22 Q So you thought it might be possible.

23 A Yes.

24 Q Okay. And what type of drugs did you think it might
25 be possible that they might have used?

Kevin Schuerman
Direct examination by Mr. Barnette

- 1 A Methamphetamine or heroin.
- 2 Q Had you used any drugs that day?
- 3 A No.
- 4 Q Now, Mr. Schuerman, you do have one, a prior,
5 conviction for 2014 for shoplifting, is that right?
- 6 A Yes, ma'am.
- 7 Q while you were out there with law enforcement did you
8 have a chance where you saw Natalie's mother's car come
9 back by the residence?
- 10 A Yes. It drove by and then he cut through -- but
11 through some lawns or some yards when the police started
12 chasing him.
- 13 Q when you say he, who are you talking about?
- 14 A Lance.
- 15 Q And you said the police were chasing him.
- 16 A Yes, at that time, yes.
- 17 Q And did you stay on the scene that day?
- 18 A Yes, until the helicopter left, yes.
- 19 Q And you had a chance to speak with an investigator
20 about what you -- what you saw that day?
- 21 A Yes, ma'am.
- 22 Q And did you provide them with a statement?
- 23 A Yes, ma'am.
- 24 Q And once the helicopter arrived, what did you do?
- 25 A I went back home, and then I called everyone I know,

Kevin Schuerman
Direct examination by Mr. Barnette

1 you know, to let them know.

2 Q Excuse me?

3 A I called -- I called everyone that I -- that I felt
4 like needed to know.

5 Q Now, while you're on scene -- I want to back up. I
6 missed a question. While you're on the scene and you're
7 speaking with the first deputy, you're on the phone. Who
8 are you talking to, do you remember?

9 A At which time?

10 Q Like early on when the -- like when the police arrive
11 and you're on the phone.

12 A My mom.

13 Q I'm sorry?

14 A My mom. Oh, there was actual several phone calls
15 made. I called my mom; I called Brian and another friend,
16 Hog -- they were together -- just to tell them what had
17 happened.

18 Q So you called your mom and you called some friends.

19 A Yes.

20 Q You then you said -- you testified previously that you
21 went home and called and talked to people.

22 A Yes.

23 Q And at some point later that day you learned that
24 Natalie had passed away?

25 A Yes.

Kevin Schuerman
Cross-examination by Mr. Abusaft

1 MS. WELLS: May I have a moment please, Your Honor?

2 THE COURT: Yes, ma'am.

3 (Pause.)

4 MS. WELLS: Your Honor, at this time I have no further
5 questions for Mr. Schuerman. I'm going to hand these to
6 the court reporter.

7 THE COURT: Mr. Abusaft.

8 CROSS-EXAMINATION

9 BY MR. ABUSAFT

10 Q Lance, how are you today?

11 A I'm all right. How about you?

12 Q When you first got to Natalie's home you saw Lance
13 outside?

14 A Yes.

15 Q And you say he was acting strangely?

16 A Yes.

17 Q But it wasn't anything that grabbed your attention.

18 A No.

19 Q And you went into the home.

20 A Uh-huh.

21 Q Natalie was taking a shower?

22 A Yes. well, she was in the bathroom. She had just
23 gotten out of the shower and was in the bathroom.

24 Q Everything was normal.

25 A Pretty much.

Kevin Schuerman
Cross-examination by Mr. Abusaft

- 1 Q Seemed normal.
- 2 Now, you and Natalie and all -- you, Natalie and Lance
- 3 all decided to go to the store.
- 4 A Uh-huh.
- 5 Q Natalie was driving.
- 6 A Yes.
- 7 Q You were in the front passenger seat.
- 8 A Yes.
- 9 Q Lance was sitting behind you.
- 10 A Yes.
- 11 Q And then Lance decided he wanted to drive.
- 12 A Yes. Well, he told me to let him out. I'm pretty
- 13 sure he did.
- 14 Q And you didn't get out the car at that point.
- 15 A No. I just sort of lifted the seat up and let him
- 16 out.
- 17 Q So the vehicle you were in was a small vehicle.
- 18 A Yes, 2-seat -- 2-door.
- 19 Q Okay. So 2-door. This meant when the sides -- that
- 20 when you pushed the -- when pulled the crank it kind of
- 21 rolls forward?
- 22 A It rolls forward and the seat pops up, yes.
- 23 Q The seat. So if something had dropped out of his
- 24 pocket in the back seat, you wouldn't have seen it.
- 25 A Probably not, no.

Kevin Schuerman
Cross-examination by Mr. Abusaft

- 1 Q Okay. Then you let Lance out of the car?
- 2 A Yes.
- 3 Q Lance walked around to the driver's-side door?
- 4 A Yes.
- 5 Q Okay. And Lance began to speak with Natalie.
- 6 A Yes.
- 7 Q At this -- at this point were you afraid?
- 8 A No.
- 9 Q Was anything out of the ordinary to you?
- 10 A Not really, no.
- 11 Q Did anything indicate danger to you?
- 12 A No, not at the time. I mean, I had heard them argue
- 13 before, and it was kinda common. So I didn't think
- 14 anything of it.
- 15 Q So the argument in the car on this day was just
- 16 regular.
- 17 A Yeah.
- 18 Q Actually, you had in your experience with them before,
- 19 you had seen them arguing even worse. You had seen them in
- 20 worse arguments.
- 21 A Yes.
- 22 Q And nothing violent occurred.
- 23 A No.
- 24 Q In your time with Lance you had never seen him violent
- 25 with Natalie?

Kevin Schuerman
Cross-examination by Mr. Abusaft

1 A Not that I remember, no.

2 Q And you told me -- you told the prosecutor that the --
3 the discussion was very short.

4 A Yes, very short.

5 Q So Lance wasn't in a rage; he wasn't -- he wasn't
6 violent. He wasn't doing any of that.

7 A He seemed like he was extremely paranoid and extremely
8 on edge. But violent, no. Just very paranoid.

9 Q You never saw a gun.

10 A No.

11 Q You didn't see a shot fired.

12 A No.

13 THE COURT: Please answer out loud.

14 A No.

15 Q You only heard the shot.

16 A I only heard it, yes.

17 Q When you heard the shot you ran away from the vehicle.

18 A Yeah, yes. Not exactly ran, but I moved away from the
19 vehicle, yes.

20 Q I just want to be clear. You were sitting about a
21 foot away from Natalie, right?

22 A Yes, so.

23 Q If -- if Lance had gotten into some kind of -- if he
24 had gotten into some violent rage you would have been right
25 there in the line of fire.

Kevin Schuerman
Cross-examination by Mr. Abusaft

1 A Right.

2 Q You would have potentially been hurt yourself.

3 A Right.

4 Q Okay. So you got out of that car, and then you hid
5 behind the garage.

6 A Momentarily. It wasn't even -- I hadn't even made it
7 up around the corner before I realized that I hadn't been
8 shot.

9 Then I went right back to the vehicle. But my ears
10 were ringing so loud, like, I was trying to gather my --
11 what had happened, what even took place, because I really
12 didn't know. All of a sudden I just heard a gunshot and my
13 ears started ringing, and my immediate instinct was to get
14 away from the vehicle. So I hadn't even turned the corner
15 yet before I went back to the car.

16 Q I understand.

17 Now, Kevin, this isn't the first time that you've
18 talked to me, is it?

19 A No. I talked to you on the phone.

20 Q We've spoken on the phone twice?

21 A Once briefly and then the second time, yes.

22 Q And one of those times when me and you had a
23 conversation we talked about what happened with Lance and
24 Natalie, is that right?

25 A Right.

Kevin Schuerman
Cross-examination by Mr. Abusaft

1 Q And during that conversation I asked you what your
2 thoughts were about what happened that day, is that right?

3 A Yes.

4 MS. WELLS: Your Honor, I'm going to object to any
5 speculation that Mr. Schuerman may have made with defense
6 counsel.

7 He can talk about the facts but not what he thinks
8 happened.

9 THE COURT: Sustained.

10 MR. ABUSAFT: Your Honor, I would ask the question
11 again.

12 THE COURT: You need to make a proffer?

13 MR. ABUSAFT: I don't believe so, Your Honor, but I --

14 THE COURT: Well, I sustain the objection.

15 MR. ABUSAFT: I'm sorry? May we approach?

16 THE COURT: Yes. would you like to make a proffer?

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 Q When you came back to the car, Kevin, you saw Natalie
20 laying on the ground.

21 A Yes.

22 Q Okay. And you said that the car had obscured your
23 view of how she got there, is that right?

24 A I mean, I could see over it. I could see Lance's
25 head, and then I could see, I mean, yeah, pretty -- I mean,

Kevin Schuerman
Cross-examination by Mr. Abusaft

1 not totally obscured, no.

2 Q But did you see -- did you see Lance? Did you not
3 tell the prosecutor that you didn't see how -- you couldn't
4 see how she got on the ground? Am I correct?

5 A I assumed that he had pulled her out of the car. I
6 think I saw the very end portion of that happening.

7 Q But you didn't see her -- you didn't see him slam her
8 down or throw her.

9 A Not --

10 Q Toss her, drag her.

11 A Not really, I mean, other than pull her out of the car
12 and drop her on the ground, I mean, like, it wasn't, like.

13 Q Did he place her on the ground, or did you see it?
14 I'm trying to get an understanding. Was your view obscured
15 or not?

16 A Like I said, half way.

17 Q Okay. So you could see Lance.

18 A I could see the tops. I can't see whether he -- you
19 know, I can't say what velocity he placed her on the
20 ground.

21 Q So you didn't see. So you just saw her -- her on the
22 ground.

23 A Yes.

24 Q Okay. So, Lance, I just want to make sure I
25 understand you fully. I mean -- excuse me -- Kevin. I

Kevin Schuerman
Cross-examination by Mr. Abusaft

- 1 just want to make sure I understand you fully. You were
2 not scared of Lance.
- 3 A At that time?
- 4 Q Yes.
- 5 A I wasn't really thinking. I think -- no. I wasn't
6 scared of him. No.
- 7 Q As best as you can tell Natalie wasn't scared of
8 Lance.
- 9 A Not at all.
- 10 Q Natalie and Lance bicker like this all of the time.
- 11 A A lot.
- 12 Q It's not unusual.
- 13 A No.
- 14 Q You heard them bicker so much that you just started
15 tuning them out.
- 16 A Pretty much.
- 17 Q They had worse arguments over silly things.
- 18 A Yes.
- 19 Q That was their way.
- 20 A I wouldn't say their way, but it was common.
- 21 Q Okay. You never saw a gun.
- 22 A No. I didn't see a gun. No.
- 23 Q You never saw the shot.
- 24 A No. Just heard it.
- 25 Q For all you know this could have been a complete --

Kevin Schuerman
Cross-examination by Mr. Abusaft

1 MS. WELLS: Objection.

2 THE COURT: Sustained.

3 Q Thank you, Kevin.

4 MS. WELLS: Your Honor, I don't have any further
5 questions for this witness. May he be excused?

6 THE COURT: You may step down. You may also be
7 excused. Thank you.

8 (whereupon, the witness was excused.)

9 THE COURT: we'll take a short break.

10 I'll ask the jury to please go to your jury room.

11 Remember my caution. You're not to discuss the case
12 in any fashion.

13 We'll bring you back after that break.

14 (The following takes place outside the presence of the
15 jury.)

16 THE COURT: Court is in recess for 15 minutes.

17 (whereupon, a recess was taken.)

18 THE COURT: All right. Are we ready for the jury?

19 MR. BARNETTE: The state's ready, Your Honor.

20 THE COURT: Bring them in.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: The jury is present. You may proceed.

24 MR. BARNETTE: Like to call Trooper Stewart to the
25 stand, please.

Christian Stewart
Direct examination by Mr. Barnette

1 CHRISTIAN STEWART, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q If you would, sir, please give your full name for the
5 record, please.

6 A Christian Stewart.

7 Q And where do you work at, sir?

8 THE COURT: Excuse me just a minute.

9 Now, you need to use that black microphone. You'll
10 need to get closer to it.

11 Q Raise your voice up to make sure this lady back here
12 can hear you. I know you're soft-spoken.

13 A Christian Stewart with the South Carolina Highway
14 Patrol.

15 Q And what is your position with them, sir?

16 A Trooper.

17 Q And how long have you been with them, sir?

18 A Highway patrol, three years.

19 Q And back on September 25th of 2017, was you working
20 that day?

21 A Yes.

22 Q And did you receive a call or heard about [REDACTED]
23 Zimmerman Road here in Spartanburg County?

24 A I did.

25 Q And did you respond to that call?

Christian Stewart
Direct examination by Mr. Barnette

1 A I did.

2 Q And when you arrived there, what did you see?

3 A I saw the deputy and the male and the female victim
4 sitting on the ground.

5 Q And did you get a description of the vehicle --

6 A I did.

7 Q -- that left the scene? And what did you do once you
8 got that description?

9 A I left the scene and traveled in the direction that he
10 was said to be traveling.

11 Q And what happened then?

12 A A short time later that vehicle matching that
13 description passed me going back towards the residence the
14 incident occurred.

15 Q And did you turn around on that vehicle?

16 A I did.

17 Q And what happened after that?

18 A We passed back in front of the residence that the
19 incident occurred. I briefly stopped and asked the deputy
20 to give me the description again, and he confirmed that
21 description. And I proceeded to attempt to conduct the
22 traffic stop on that vehicle.

23 Q And you had your blue lights on, is that right?

24 A I did.

25 Q And did he stop?

Christian Stewart
Direct examination by Mr. Barnette

1 A He -- we made a short little drive through a
2 neighborhood, and he came back in front of the residence
3 that the incident occurred, stopped briefly, and then the
4 pursuit began.

5 Q Okay. So he didn't stop for your blue lights.

6 A No.

7 MR. ABUSAFT: Objection, Your Honor. I renew my
8 pretrial motion.

9 THE COURT: All right. Overruled.

10 Q And how far did this chase or pursuit go?

11 A Approximately 23 miles.

12 Q Okay. And do you have an in-car video? Is that
13 right?

14 A Yes.

15 Q And does that in-car video fairly represent what you
16 saw that day?

17 A Yes, it does.

18 Q And you said it was about 23 miles. Where did it end
19 at, sir? Was it 126 Darby Place?

20 A Yes, sir.

21 Q Was that in Taylors?

22 A Yes.

23 Q And how did it end? How did the car stop?

24 A A collision with a vehicle that was in the driveway of
25 that residence.

Christian Stewart
Direct examination by Mr. Barnette

1 Q Let me show you what's been marked as State's Exhibit
2 -- well, State's Exhibit 44 is already into evidence.

3 Let me show you State's Exhibit 45 and 46 as well. Do
4 those photographs fairly represent the vehicle after it
5 collided into the pickup truck?

6 A They do.

7 MR. ABUSAFT: Your Honor, may I see the photos?

8 THE COURT: Sure.

9 (Pause.)

10 Q Do these photos fairly represent what you saw that
11 day?

12 A They do.

13 MR. BARNETTE: Your Honor, I'd like -- 44 is already
14 into evidence. I'd like to introduce 45 and 46 into
15 evidence at this time.

16 MR. ABUSAFT: Without objection.

17 THE COURT: They're admitted.

18 (Photographs marked State's Exhibits Nos. 45 and 46.)

19 MR. BARNETTE: May I publish them to the jury, Your
20 Honor?

21 THE COURT: You may.

22 MR. BARNETTE: Thank you.

23 Q Showing you State's Exhibit 44. Was this the black
24 Honda the defendant was driving?

25 A It was.

Christian Stewart
Direct examination by Mr. Barnette

1 Q And was this vehicle registered to him?

2 A It was not.

3 Q Was it registered to Ms. Niemitalo in this case, or
4 registered to her mother?

5 A Yes.

6 Q Show you State's Exhibit 45. Was that the front of
7 the vehicle you saw there at Darby Place?

8 A Correct.

9 Q And State's Exhibit 46. Is this the back of the Honda
10 Civic?

11 A It was.

12 Q And the license plate was not registered to him, is
13 that right?

14 A It was not.

15 Q Thank you, sir.

16 MR. BARNETTE: Your Honor, I'm going to show State's
17 Exhibit 14 to the witness here in a second.

18 Q Showing you State's Exhibit 14, Trooper Stewart. Is
19 this a copy of the video from your -- the chase, the
20 pursuit of the defendant in this case?

21 A It is.

22 Q Does it fairly represent what happened that day?

23 A Yes.

24 MR. BARNETTE: Your Honor, I'd like to enter State's
25 Exhibit 14 into evidence at this time.

Christian Stewart
Direct examination by Mr. Barnette

1 MR. ABUSAFT: Your Honor, again, I renew my pretrial
2 motion to the video itself since the officer is here. Both
3 cumulative and bolstering.

4 THE COURT: All right. Overruled.

5 (In-car video marked State's Exhibit No. 14.)

6 MR. BARNETTE: Thank you, Your Honor. I'd like to
7 publish it to the jury at this time.

8 THE COURT: You may.

9 Q Same thing. It takes a while. It takes 30 seconds
10 for this to come on to audio, right?

11 A Correct, yes, sir.

12 (Whereupon, State's Exhibit No. 14 was played for the
13 jury.)

14 Q Trooper Stewart, let me stop it there for a second
15 now.

16 At this time -- I know this goes on for something like
17 50 something minutes. Obviously, you got him stopped
18 there. He didn't initially get out of the car, is that
19 right?

20 A No. He didn't.

21 Q Did Greenville County come -- you're in Greenville
22 County at this point.

23 A Yes. I am.

24 Q Did the Greenville County Sheriff's Department come to
25 support you?

Christian Stewart
Direct examination by Mr. Barnette

1 A Yes.

2 Q And did they call their SWAT teams and so forth?

3 A They did.

4 Q And I'll fast forward it. Like I said, the jury will
5 have this available to them if they want to see it,
6 obviously, in the jury room. But fast forward to the point
7 where he comes outta the car and everything. Is that okay,
8 sir?

9 A Yes, sir.

10 Q There's a period of time that it was just like this
11 basically.

12 A Correct.

13 Q And you're waiting for backup at that point.

14 A Yes.

15 Q Showing it 23 minutes, same thing, is that right, sir?

16 A Yes.

17 (Whereupon, State's Exhibit No. 14 was played for the
18 jury.)

19 Q I will stop it there. That's when he was taken into
20 custody, is that right, Trooper Stewart?

21 A Correct.

22 Q We'll stop there. And, obviously, the rest of the
23 video will still be in evidence.

24 Just a couple of questions. I know initially when you
25 started the chase you was talking about a white male. Is

Christian Stewart
Direct examination by Mr. Barnette

1 that what initially you were given over the radio, or was
2 told?

3 A Told on the scene, yes, sir.

4 Q And later on you found it was a black male, was the
5 suspect.

6 A Yes. When we came back by and I stopped briefly, I
7 confirmed that correct description.

8 Q And how -- what's the speed y'all reached during this
9 pursuit?

10 A Approximately 80 -- 80-90, possibly tops.

11 Q And, obviously, can see on the video and everything.

12 And after you secured him and everything did the
13 Spartanburg County Sheriff's Department take the video
14 afterwards, after Greenville County turned it over to them?

15 A Once Greenville County processed it, Spartanburg
16 County did their processing.

17 Q But it was secured at the scene and turned over to
18 evidence for processing, is that right?

19 A Yes, yeah.

20 Q And you just made aware -- obviously, y'all was just
21 being careful around the house, and therefore, because he
22 was going to that house. You didn't know what -- who was
23 in the house or what was around the house, is that right?

24 A Correct.

25 Q Okay.

Christian Stewart
Cross-examination by Mr. Abusaft

1 MR. BARNETTE: One moment, Your Honor, please.

2 (Pause.)

3 Q Please answer any questions the defense may have for
4 you, sir. Thank you.

5 THE COURT: Mr. Abusaft.

6 CROSS-EXAMINATION

7 BY MR. ABUSAFT

8 Q Officer, those strange movements that he was making at
9 the end, those were in response to officer commands, is
10 that right?

11 A Which strange? What do you mean, a strange movement?

12 Q When he was spinning on the ground.

13 A He was rolling on the ground in response to the SWAT
14 team's commands.

15 Q They were telling him to do that.

16 A Yes.

17 Q Did you do any investigation of what residence that
18 was that he drove into the driveway?

19 A I shortly, later, found out that was the residence
20 that he resided at.

21 Q So that was his home.

22 A Yes, that was his home.

23 Q Officer, when this video picks up is that your first
24 encounter with this incident?

25 A When the video picks up that's shortly after I left

Michael Sean Nix
Direct examination by Mr. Barnette

1 the residence that the incident occurred at, traveling the
2 direction that I was told him last seen traveling.

3 Q All right. So you weren't there when the shot was
4 fired?

5 A I was not there when the shot was fired.

6 Q You don't know anything about that.

7 A Only what I was told on the scene.

8 Q You're not here giving any opinion on that or any
9 evidence on that.

10 A I'm here giving the facts that I was told on the
11 scene, as the other deputy.

12 Q All right. Thank you.

13 MR. BARNETTE: Your Honor, we have no further
14 questions. We'd ask this witness be excused, Your Honor.

15 THE COURT: You may step down. You may also be
16 excused.

17 (Whereupon, the witness was excused.)

18 MR. BARNETTE: I would like to call Investigator Nix
19 to the stand, please.

20 MICHAEL SEAN NIX, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BARNETTE

23 Q If you would, sir, please state your full name for the
24 record.

25 A Michael Sean Nix, Spartanburg County Sheriff's Office.

Michael Sean Nix
Direct examination by Mr. Barnette

1 Q And what's your position there, sir?

2 A I'm a forensics officer.

3 Q And how long have you been in law enforcement, sir?

4 A Seventeen years in April.

5 Q And how long have you been in evidence processing,
6 sir?

7 A Twelve years. It'll 13 this November.

8 Q Back on September 25th of 2017 was you called to a
9 crime scene on ■ Zimmerman Road?

10 A Yes, sir.

11 Q And when you arrived there, what did you find, sir?

12 A I found when I arrived there officers or one officer
13 was already on the scene if I remember correctly. The
14 victim was laying in some grass beside the driveway being
15 tended to by emergency medical personnel.

16 Q And did you start processing the scene at that point?

17 A Not right away but soon, shortly thereafter, yes.

18 Q And later on was she removed from the scene after --
19 afterwards by E.M.S.?

20 A Yes, sir.

21 Q As a matter of fact, there was a helicopter came by at
22 one point.

23 A There was a helicopter called in, yes, sir.

24 Q And at some point it moved some evidence? Obviously,
25 the wind from --

Michael Sean Nix
Direct examination by Mr. Barnette

1 MR. ABUSAFT: Objection, Your Honor. Leading.

2 MR. BARNETTE: I'll rephrase the question, Your Honor.

3 THE COURT: Don't lead.

4 Q And obviously -- was there a helicopter that came to
5 the scene?

6 A I'm sorry? Say that again, sir.

7 Q Helicopter, medical helicopter, came to the scene.

8 A Yes, sir.

9 Q And what happened when the helicopter got there?

10 A When it was trying to find a landing space, which was
11 the field across from the incident location, the down draft
12 from the blades blew some items around.

13 Q Afterwards did you take pictures of the crime scene,
14 sir?

15 A Yes, sir.

16 Q Let me show you this too.

17 MR. BARNETTE: Do you want to look at these before I
18 show them to him?

19 MR. ABUSAFT: Yes, sir.

20 (Pause.)

21 Q Let me show you what's been marked State's Exhibit
22 No. 11. I believe that's a map of the area. And let me
23 show you 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30,
24 31. I'm going to let you look at those first, sir. See if
25 those fairly represent the crime scene at ■ Zimmerman

Michael Sean Nix
Direct examination by Mr. Barnette

1 Road, sir.

2 (Pause.)

3 A Yes, sir.

4 MR. BARNETTE: Your Honor, I'd like to enter State's
5 Exhibit No. 11 and 18, except for 20, all the way through
6 31, Your Honor, into evidence at this time.

7 MR. ABUSAFT: Without objection.

8 THE COURT: They're admitted.

9 (Map marked State's Exhibit No. 11; photographs marked
10 State's Exhibits No. 18, 19, 21 through 31.)

11 MR. BARNETTE: May I publish it to the jury, Your
12 Honor?

13 THE COURT: You may.

14 Q Showing you State's Exhibit No. 11. This is a map of
15 the area, showing this area. This shows ■ Zimmerman
16 Road.

17 A Yes, sir.

18 Q And is that in Spartanburg County?

19 A Yes, sir.

20 Q And what lake is this over here, sir?

21 A Lake Lyman, I believe.

22 Q So this is the Inman area where this occurred at.

23 A Some people call it Lyman, but it is closer to Inman,
24 yes, sir.

25 Q Okay. Show you State's Exhibit 18. Can you tell the

Michael Sean Nix
Direct examination by Mr. Barnette

1 jury what this is, sir?

2 A That is a side view of the house showing the carport
3 that is attached to the house.

4 Q And what was in this area here, sir?

5 A There would be some items of evidence, but mostly what
6 you're seeing on that photo is medical debris.

7 Q Showing you State's Exhibit No. 19. What is this,
8 sir?

9 A A closer-up picture of the area.

10 Q That's actually State's Exhibit 21 -- or 19. This
11 will be Exhibit No. 21. Can you tell us what that is, sir?

12 A It's another closeup picture except this time just a
13 different point of view.

14 Q State's Exhibit 22. What is this, sir?

15 A There is some medical debris there. There is also a
16 black knit cap and I believe two shirts if I'm not
17 mistaken.

18 Q And did you collect those two shirts as evidence, sir?

19 A Yes, sir. It's actually a shirt and a tank top.

20 Q And later on was there a bullet found near that area
21 or in that area where the shirts were found?

22 A Underneath them, yes, sir.

23 Q Showing you State's Exhibit 23. What is this over
24 here, sir?

25 A It's a high heel shoe or, yes, a woman's shoe, yes,

Michael Sean Nix
Direct examination by Mr. Barnette

1 sir.

2 Q And so that was a woman's shoe over in the bushes
3 there?

4 A Yes, sir, it is.

5 Q After taking pictures of this and everything did you
6 start marking where the evidence was?

7 A Yes, sir.

8 Q Okay. And, if you would, tell us what these placards
9 represent, sir.

10 A Placards are placed over items of evidence which we
11 intend to collect.

12 Q And did you get closeup pictures of those pieces of
13 evidence too, sir?

14 A Yes, sir.

15 Q Showing you State's Exhibit 25. What is that a
16 picture of, sir?

17 A A pair of sunglasses.

18 Q Okay. Showing you State's Exhibit 26. What is that a
19 picture of, sir?

20 A Appears to be an area of blood on the driveway.

21 Q And is that marked with a placard two?

22 A Yes, sir.

23 Q Showing you what's been marked as State's Exhibit 27.
24 What is that, sir?

25 A It's a closer-up picture of what we just previously

Michael Sean Nix
Direct examination by Mr. Barnette

- 1 described.
- 2 Q And that was on the edge of the driveway, is that
3 right?
- 4 A Yes, sir, it was.
- 5 Q State's Exhibit 28. What is that, sir?
- 6 A That is a black knit cap.
- 7 Q State's Exhibit 29. What is that, sir?
- 8 A That would be the high heel shoe or woman's shoe.
- 9 Q That we saw in the earlier picture?
- 10 A Yes, sir.
- 11 Q State's Exhibit 30. What is that, sir?
- 12 A I'm assuming we're talking about the item in the
13 middle, and that would be a fired bullet which was supposed
14 to be marked with placard No. 7.
- 15 Q Okay. And showing you -- and did you collect that
16 bullet, sir?
- 17 A I did, sir.
- 18 Q Showing you what's been marked as State's Exhibit 31.
19 What is that, sir?
- 20 A It's a closer-up picture of the fired bullet.
- 21 Q And I skipped this one by accident. State's
22 Exhibit 29. What is that, sir?
- 23 A That's a picture of the high heel shoe again.
- 24 Q Let me show you what's been marked as -- let me show
25 first. Let me show you what's been marked as State's

Michael Sean Nix
Direct examination by Mr. Barnette

1 Exhibit 2, sir. If you would, take a look at that, sir.
2 what was that, sir?

3 A That is a fired bullet recovered from the scene.

4 Q Was that the bullet we saw in the pictures, sir?

5 A Yes, sir.

6 Q And did you collect that bullet?

7 A Yes, sir, I did.

8 MR. BARNETTE: Your Honor, I'd like to move that into
9 evidence at this time -- State's Exhibit 2.

10 MR. ABUSAFT: Without objection.

11 THE COURT: It's admitted.

12 (One fired bullet marked State's Exhibit No. 2.)

13 Q If you would, go ahead and open that, sir, if you
14 would. And, sir...

15 MR. BARNETTE: Your Honor, permission to publish the
16 bullet -- publish No. 2 to the jury.

17 THE COURT: You may.

18 Q And this is actually the bullet that was found beside
19 the shirt and everything on the ground.

20 A Yes, sir.

21 Q Thank you, sir.

22 You can put that back in the envelope there.

23 A Yes, sir.

24 Q Let me let you look at State's Exhibit 69. Let me
25 show you what's been marked as State's Exhibit 69. Did you

Michael Sean Nix
Direct examination by Mr. Barnette

1 do a diagram of that crime scene?

2 A Yes, sir.

3 Q And it's four pages. Do you have the measurements
4 where it was found and everything in relation to each
5 other?

6 A Yes, sir.

7 MR. BARNETTE: Your Honor, I'd like to enter State's
8 Exhibit 69 at this time into evidence.

9 MR. ABUSAFT: Without objection.

10 THE COURT: It's admitted.

11 (Diagram marked State's Exhibit No. 69.)

12 MR. BARNETTE: Permission to publish, Your Honor.

13 THE COURT: You may.

14 Q And this is additionally -- is this just a diagram of
15 the area, about the exhibit there, sir?

16 A Yes, sir.

17 Q And is this drawn to scale?

18 A It is not to scale.

19 Q Show you page two of it. If you would, tell the jury
20 what that is, sir.

21 A That's a -- it's the same diagram as the first one
22 except I've added in items of evidence. They're out in the
23 front or toward the front of the yard, which is in this
24 nine and ten.

25 Q Okay. We'll get to nine and ten here in a second.

Michael Sean Nix
Direct examination by Mr. Barnette

1 That's where those items were found, is that right,
2 sir?

3 A Yes, sir.

4 Q I show you a third page of this, sir. What is this,
5 sir?

6 A That is closer-up sketch of the driveway area on the
7 side of the house.

8 Q So like No. 1 would go to placard No. 1.

9 A Yes, sir.

10 Q And No. 2 would go to placard two -- three to three
11 and so forth.

12 A Yes, sir.

13 Q Showing the jury the items that you found.

14 A Yes, sir.

15 Q No. 7 was the actual bullet that was found?

16 A Yes, sir.

17 Q No. 6 was the woman's shoe?

18 A Yes, sir.

19 Q Showing you page four. You actually listed what items
20 were found and where.

21 A Yes, sir.

22 MR. BARNETTE: Let me show this to defense counsel
23 first.

24 (Pause.)

25 Q Investigator Nix, let me show you what's been marked

Michael Sean Nix
Direct examination by Mr. Barnette

1 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43, sir. If you
2 would, look at those and see if those fairly represent what
3 you saw that day.

4 (Pause.)

5 A All right.

6 MR. BARNETTE: Your Honor, I'd like to enter these
7 into evidence at this time.

8 THE COURT: Thirty-four through forty-three?

9 MR. BARNETTE: Yes, sir.

10 MR. ABUSAFT: Without objection.

11 THE COURT: They're admitted.

12 (Photographs marked State's Exhibits Nos. 34 through
13 43.)

14 MR. BARNETTE: May I publish it to the jury, Your
15 Honor?

16 THE COURT: You may.

17 Q Kinda walk this backwards.

18 Let me start with -- start with Exhibit 38, sir. What
19 is that a picture of, sir?

20 A The front of the house in the background and that
21 would -- in the foreground is a vehicle -- paperwork
22 holder, I believe, is what I called it -- and I placed a
23 wooden stake on top of it to keep it from blowing away any
24 further.

25 Q Okay. So that was blown when the helicopter came.

Michael Sean Nix
Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q And State's Exhibit 39. Is that -- what is that a
3 picture of, sir?

4 A Closer up of the paperwork folder.

5 Q And what is State's Exhibit 40?

6 A The paperwork folder itself.

7 Q Okay. And State's Exhibit 41. What is that a picture
8 of, sir?

9 A Again, in the background, front of the house, more to
10 the side of it. And the evidence placard is going to be
11 the registration for the vehicle. Again, it was blown from
12 where it was originally at.

13 Q And State's Exhibit 42. What was that, sir?

14 A That is a closer-up picture of the vehicle
15 registration. I'd placed a brick on it to keep it from
16 flying away as well.

17 Q And State's Exhibit 43. What is that, sir?

18 A That is the registration itself for that vehicle.

19 Q And it was registered to Bruce Niemitalo?

20 A Yes, sir.

21 Q And at the scene also did you collect the tank top and
22 the shirt that was found at the scene?

23 A Yes, sir.

24 Q And let me show what's been marked as State's
25 Exhibits 50 through 52.

Michael Sean Nix
Direct examination by Mr. Barnette

1 MR. ABUSAFT: Your Honor, may we approach?

2 THE COURT: Sure.

3 (Bench conference held off the record in the presence
4 of the jury but out of the hearing of the jury.)

5 MR. ABUSAFT: Without objection, Your Honor.

6 THE COURT: They are admitted.

7 (Photographs marked State's Exhibits Nos. 50 through
8 52.)

9 MR. BARNETTE: Thank you, Your Honor. I'd like to
10 publish 50 and 51 and 52 to the jury.

11 THE COURT: You may.

12 Q Actually 51. Is this the t-shirt? Thank you, sir.
13 Is that the t-shirt that you collected at the scene that we
14 saw in the earlier pictures?

15 A Yes, sir.

16 Q And this here, what does this appear to be right here,
17 sir?

18 A That appears to be blood.

19 Q And was there a -- I mean, a bullet hole in there
20 also?

21 A There was a hole in the shirt, yes, sir.

22 Q Okay. And then State's Exhibit 52. What is this,
23 sir?

24 A That is the back of the shirt.

25 Q And what does it appear to show here?

Michael Sean Nix
Direct examination by Mr. Barnette

1 A That appears to be another area of blood.

2 Q Okay. And showing State's Exhibit 50. What is this,
3 sir?

4 A That is the white tank top that was collected at the
5 scene.

6 Q Okay. And what does this appear to be up here, sir?

7 A That also appears to be blood.

8 Q And what does that appear to be right there, sir?

9 A Appears to be a hole in the shirt, or the tank top
10 rather.

11 Q And did you collect those two items, sir?

12 A Yes, sir, I did.

13 Q Let me show you this, sir. Sixty-seven and
14 sixty-eight, was those the two items that we just saw that
15 you -- and did you collect those items?

16 A Yes, sir.

17 Q Do you want to take a look just to make sure?

18 A Sure.

19 (Pause.)

20 MR. BARNETTE: Okay. Your Honor, I'd like to enter
21 State's Exhibits 67 and 68 into evidence at this time.

22 MR. ABUSAFT: Without objection.

23 THE COURT: They're admitted.

24 (White tank top marked State's Exhibit No. 67; gray
25 t-shirt marked State's Exhibit No. 68.)

Michael Sean Nix
Direct examination by Mr. Barnette

1 Q I would publish it to the jury, but these do have
2 blood on them.

3 A They do. Well, yes, sir. They do.

4 Q Okay. We'll let the pictures speak for themselves at
5 this time. But this will be back in evidence, obviously.

6 Later on, sir, did you process the black Civic Honda
7 in this case?

8 A Yes, sir.

9 Q And did y'all take it back and process it?

10 A Yes, sir. It was taken to the county shop.

11 Q And did you take pictures of the items that you
12 processed, sir, when you went through the car?

13 A Yes, sir.

14 MR. BARNETTE: Show this to defense.

15 (Pause.)

16 MR. ABUSAFT: May we approach, Your Honor?

17 THE COURT: You may.

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 Q Let me show you what's been marked as State's Exhibits
21 53, 54, 55, 56, 57, 58 or 66 -- excuse me -- 71, 61, 62,
22 58, 60, 70, 63 and 65. I'm sorry I got out of order a
23 little bit. If you would, take a look, sir, and see if
24 those fairly represent what you saw when you processed this
25 vehicle.

Michael Sean Nix
Direct examination by Mr. Barnette

1 (Pause.)

2 Q Thank you, sir. Does that fairly represent what you
3 saw that day?

4 A Yes, sir.

5 MR. BARNETTE: Your Honor, at this time I'd like to
6 move State's Exhibits 53, 54, 55, 56, 57, 58, 60, 61, 62,
7 65 or 63, 65, 66, 70 and 71 into evidence at this time.

8 MR. ABUSAFT: Without objection.

9 THE COURT: They're admitted.

10 (Photographs marked State's Exhibits Nos. 53, 54, 55,
11 56, 57, 58, 60, 61, 62, 63, 65, 66, 70 and 71.)

12 Q Before I publish that...

13 MR. BARNETTE: I'd like to publish these to the jury,
14 Your Honor, but I've still got to publish State's
15 Exhibit 34.

16 Q This is back at the crime scene, Investigator Nix.
17 What is that a picture of, sir?

18 A It's a picture of what appears to be tire-track marks
19 through the field.

20 Q Is that a field kind of across from where the [REDACTED]
21 Zimmerman was kinda of --

22 A It's kind of across, yes, sir.

23 Q And showing you State's Exhibit 35. What is that,
24 sir?

25 A That is a piece of a vehicle. I think I labeled it as

Michael Sean Nix
Direct examination by Mr. Barnette

1 a wheel-well part or something like that.

2 Q And did it appear to come from the -- once you
3 processed the Honda, did it come from the Honda?

4 A It appeared to have come from the vehicle, yes, sir.

5 Q And there was tire tracks that way too?

6 A This picture here shows where that particular piece
7 ended up after the helicopter blew it out of the way, but
8 originally it was in the field across from the incident
9 location.

10 Q Show you State's Exhibit 36. What is that a picture
11 of, sir?

12 A That's just another picture of that wheel-well cover
13 or whatever it's called.

14 Q And State's Exhibit 37. What is that, sir?

15 A Same except for the evidence placard in front of it.

16 Q And it's marked on your exhibit list too, is that
17 right?

18 A It is.

19 Q Showing you State's Exhibit 53. What is that, sir?

20 A That is the front of the Honda.

21 Q Showing you State's Exhibit 54. What is that, sir?

22 A That's a close-up view to the passenger front corner
23 of the vehicle.

24 Q What is State's 55, sir?

25 A That is a picture of the driver's side of the vehicle

Michael Sean Nix
Direct examination by Mr. Barnette

1 with what looks like fingerprint-lift tape on it.

2 Q And showing you State's Exhibit 56. What is that,
3 sir?

4 A That is a picture of the gas-tank door with a
5 fingerprint-lift tape on it.

6 Q And was this submitted for analysis by the sheriff's
7 department?

8 A I submitted them in for analysis, yes, sir.

9 Q Was Courtney Burgess the person that did the analysis
10 on those?

11 A I don't remember, but I believe she was.

12 Q Okay. Showing you State's Exhibit 57. What is this a
13 picture of, sir?

14 A That is the front driver's seat area with an air bag
15 deployed from the steering wheel.

16 Q Okay. Showing State's Exhibit 58. What is that a
17 picture of, sir?

18 A That's a picture of the center console, and it's kinda
19 hard to make out, but there is a handgun right next to the
20 green soda bottle.

21 Q Is that the handgun you're talking about?

22 A Yes, sir.

23 Q And that was one -- and did you collect that handgun,
24 sir?

25 A Yes, sir.

Michael Sean Nix
Direct examination by Mr. Barnette

1 Q Showing you State's Exhibit 60. What is this a
2 picture of, sir?

3 A That's a picture through the passenger door. And,
4 again, you can see a center console. And, again, it's hard
5 to make out, but there is -- the handgun is in the center
6 console.

7 Q Was this what we're talking about right here?

8 A Yes, sir.

9 Q State's Exhibit 61. What is that, sir?

10 A That's a closer-up picture of the handgun from the
11 center console.

12 Q State's Exhibit 62. What is that a picture of, sir?

13 A That's a picture of the handgun, the same handgun,
14 just showing that there are unfired cartridge casings in
15 the magazine and one in the chamber.

16 Q Was that the -- and you collected those bullets, as
17 well as the gun, is that right, sir?

18 A Yes, sir.

19 Q Showing you State's Exhibit 70. What is that a
20 picture of, sir?

21 A That's a picture of the front passenger -- I'm sorry.
22 I got my bearings turned around. I can't see it too well
23 from here.

24 Q If you need to step down, sir, you can.

25 (Whereupon, the witness left the stand.)

Michael Sean Nix
Direct examination by Mr. Barnette

- 1 A That's one of the floorboards of the vehicle.
2 (Whereupon, the witness returned to the stand.)
3 Q What's that in the bottom of that floorboard?
4 THE COURT: Watch the microphone.
5 THE WITNESS: Oh, I'm sorry.
6 A It appears to be a cartridge case.
7 Q And showing you State's Exhibit 71. What is that a
8 picture of, sir?
9 A That is a picture of an unfired cartridge case.
10 Q Showing you State's Exhibit No. 63. What is that a
11 picture of, sir? Let me turn around.
12 A That is a picture of the back seat, back floorboard
13 area of the vehicle.
14 Q And did you take a look at what those items were?
15 A I believe it was a purse that was slightly under the
16 seat. And the items that are shown there are items that
17 were removed out of the purse as I was going through it.
18 Q And State's Exhibit 65. Is that right, sir?
19 A Yes, sir.
20 Q And showing you State's Exhibit 66. What is that a
21 picture of, sir?
22 A A social security card that was in the purse.
23 Q And can you read that name for us?
24 A It appears to say Natalie Rae Niemitalo.
25 Q Thank you, sir.

Michael Sean Nix
Direct examination by Mr. Barnette

1 Let me show you what's been marked as State's
2 Exhibit 7. what is that, sir?

3 A That would be the handgun collected from the vehicle.

4 Q And did you collect that gun, sir?

5 A Yes, sir.

6 Q And did you secure and place it into evidence, sir?

7 A Yes, sir.

8 MR. BARNETTE: Your Honor, I'd like to move State's
9 Exhibit 7 into evidence at this time.

10 MR. ABUSAFT: Without objection.

11 THE COURT: It's admitted.

12 (Semiautomatic pistol marked State's Exhibit No. 7.)

13 Q Let me show you what's been marked as State's
14 Exhibit 8. what is that, sir?

15 A That is an unfired cartridge case.

16 Q And where did you find that at, sir?

17 A I have found it in the front passenger floorboard of
18 the vehicle.

19 Q And you secured that and placed that into evidence,
20 sir, is that right?

21 A Yes, sir.

22 MR. BARNETTE: Your Honor, I'd like to enter State's
23 Exhibit 8 into evidence at this time.

24 MR. ABUSAFT: Without objection.

25 THE COURT: It's admitted.

Michael Sean Nix
Direct examination by Mr. Barnette

1 (Unfired cartridge case marked State's Exhibit No. 8.)

2 Q Let me show you what's been marked as State's
3 Exhibit 78. What is that, sir?

4 A That is a .45 caliber unfired cartridge case. That's
5 what it says. Yes, sir.

6 Q And did you collect that item and place it into
7 evidence, sir?

8 A Yes, sir.

9 Q And where was it found at?

10 A It was found in the front -- I'm sorry. I have it
11 backwards. The -- I'm sorry. Earlier I said that the 9mm
12 shell casing was found in the front passenger -- or
13 front-driver floorboard. I meant it was found in the front
14 passenger floorboard. And this .45 caliber, according to
15 my report, was found in the front driver floorboard.

16 MR. BARNETTE: Your Honor, I'd like to enter that into
17 evidence at this time -- Exhibit 78.

18 MR. ABUSAFT: Without objection, Your Honor.

19 THE COURT: It's admitted.

20 (Unfired cartridge case marked State's Exhibit No. 78.)

21 Q Let me show you State's Exhibit 79. What is that,
22 sir?

23 A These would be the rounds that were taken out of the
24 fired -- the handgun rather.

25 Q And did you collect and place those into evidence,

Michael Sean Nix
Direct examination by Mr. Barnette

1 sir?

2 A Yes, sir.

3 MR. BARNETTE: Your Honor, I'd like to enter those
4 into evidence at this time.

5 MR. ABUSAFT: without objection, Your Honor.

6 THE COURT: It's admitted.

7 (Unfired cartridge case marked State's Exhibit No. 79.)

8 MR. BARNETTE: May I publish it to the jury, Your
9 Honor?

10 THE COURT: You may?

11 Q If you would, sir, come on down for a second.

12 (whereupon, the witness left the stand.)

13 Q Just let the jury see that there. I know it's got
14 a --

15 THE COURT: Y'all be sure to keep your voices up
16 because you're ahead of the court reporter and you've got
17 your back to her.

18 Q Okay. And you also -- is that the clip that was
19 inside the gun?

20 A Yes, sir.

21 Q And was both of these items sent to SLED for
22 processing for evidence?

23 A Yes, sir.

24 Q And you may have a seat, sir. Or go ahead. You've
25 got the scissors there. Open real quick.

Michael Sean Nix
Direct examination by Mr. Barnette

1 A All right.

2 Q And that's the shell casing you secured from the car,
3 is that right?

4 A Yes, sir.

5 MR. BARNETTE: Your Honor. Permission to publish
6 State's Exhibit 8 to the jury.

7 THE COURT: You may.

8 Q And that was a fired shell casing, is that right?

9 A Fired, yes, sir.

10 Q And was that sent to SLED for analysis?

11 A Yes, sir.

12 Q Place that back in.

13 Let me show you State's Exhibit 78. Is that the
14 unfired bullet that was found inside the car?

15 A Yes, sir.

16 Q This is 79. Was those the four bullets that was found
17 in the clip of the gun?

18 A The clip and the chamber. I'm sorry. That was the
19 chamber. Those were the clips.

20 Q So these four...

21 MR. BARNETTE: May I publish these to the jury, Your
22 Honor? This is State's Exhibit 79.

23 THE COURT: You may.

24 Q Those are the four bulls that was still in the --

25 A Magazine, yes, sir.

Michael Sean Nix
Direct examination by Mr. Barnette

1 Q In the magazine. And then this one here was in the
2 chamber itself.

3 A Yes, sir.

4 Q There were still five bullets in the gun.

5 A Yes, sir.

6 Q Please have a seat, sir.

7 (Whereupon, the witness returned to the stand.)

8 Q And these also -- like I said, these all was collected
9 for evidence, and everything was processed, is that right,
10 sir?

11 A Yes, sir.

12 Q There was other items that was processed, I believe,
13 by Deanna Burgess from the sheriff's department.

14 A Yes, sir.

15 Q I know we have a stipulation concerning that we'll
16 tell the Court. And was those things secured and placed
17 into evidence, sir?

18 A Yes, sir.

19 Q Let me let you look at State's Exhibit 4, sir. Was
20 that the t-shirt that was secured in this case?

21 A Yes, sir.

22 Q Was that placed into evidence and secured into
23 evidence?

24 A Yes, sir.

25 Q So was that the t-shirt that was actually collected

Michael Sean Nix
Direct examination by Mr. Barnette

1 from the defendant?

2 A Yes, sir. I believe so.

3 Q And it was placed into evidence, is that correct?

4 A Yes, sir.

5 Q And this was after the event, after everything had
6 occurred, is that right?

7 A Yes, yes, yes.

8 MR. BARNETTE: Your Honor, I'd like to enter State's
9 Exhibit 4 into evidence at this time.

10 MR. ABUSAFT: Without objection.

11 THE COURT: It's admitted.

12 (White t-shirt marked State's Exhibit No. 4.)

13 Q Let me let you look at State's Exhibit No. 5. What is
14 that, sir?

15 A Says it is a gunshot residue evidence collection kit
16 from -- it's labeled from Mr. Brewton.

17 Q Okay. Was that collected by Investigator Burgess,
18 Deanna Burgess?

19 A Yes, sir.

20 Q And was that placed into evidence?

21 A Yes, sir.

22 MR. BARNETTE: Your Honor, I'd like to enter State's
23 Exhibit 5 into evidence at this time.

24 MR. ABUSAFT: Without objection.

25 THE COURT: It's admitted.

Michael Sean Nix
Direct examination by Mr. Barnette

1 (GSR kit marked State's Exhibit No. 5.)

2 Q And let me show you State's Exhibit No. 6. What was
3 that, sir?

4 A It's kinda hard to read. Appears to say one buccal
5 slob -- one buccal swab's collection kit. It appears to
6 have been taken from Mr. Brewton.

7 Q Was that also taken by Sergeant Burgess?

8 A Yes, sir.

9 Q And was that placed into evidence?

10 A Yes, sir.

11 Q And what this is, is this a buccal swab for D.N.A.?

12 A Yes, sir.

13 Q Okay.

14 MR. BARNETTE: Your Honor, I'd like to enter this into
15 evidence as State's Exhibit 7 [sic] at this time.

16 MR. ABUSAFT: Without objection.

17 THE COURT: It is admitted.

18 (Buccal swabs marked State's Exhibit No. 6.)

19 Q Can you tell us what State's Exhibit No. 9 is, sir?

20 A That's a victim blood standard.

21 Q And was that gathered from the victim by the coroner's
22 office or by Dr. Wren -- or by the coroner's office?

23 A It was gathered by the coroner's office, and I
24 collected it from them.

25 Q Okay. And you received that from that, was the victim

Michael Sean Nix
Direct examination by Mr. Barnette

1 in this case, or her blood.

2 A Yes. It's a blood standard from her.

3 Q And did you place this into evidence, sir?

4 A Yes, sir.

5 Q Was this secured?

6 A Yes, sir.

7 MR. BARNETTE: Your Honor, I'd like to enter State's
8 Exhibit 9 into evidence at this time.

9 MR. ABUSAFT: Without objection.

10 THE COURT: It's admitted.

11 (Blood standard marked State's Exhibit No. 9.)

12 MR. BARNETTE: Thank you, Your Honor. Permission to
13 publish these items to the jury at this time.

14 THE COURT: You may.

15 Q If you would, showing you State's Exhibit 5. This
16 actually was the gun residue kit collected from Mr.
17 Brewton?

18 A Yes, sir.

19 Q And that was sent to SLED for analysis, is that right?

20 A Yes, sir.

21 Q State's Exhibit No. 6. That was actually the buccal
22 or D.N.A. swab taken from Mr. Brewton in this case?

23 A Yes, sir.

24 Q It's hard to see, but State's Exhibit No. 9, was that
25 the victim's standard in this case that was taken?

Michael Sean Nix
Direct examination by Mr. Barnette

1 A Yes, sir.

2 MR. BARNETTE: One moment, Your Honor, please.

3 (Pause.)

4 MR. BARNETTE: Your Honor, one moment. I'm trying to
5 find one more set of pictures.

6 (Pause.)

7 THE COURT: If it's convenient, it's a good time to
8 break for lunch. We can continue with that after lunch if
9 you'd like.

10 MR. BARNETTE: I think I've got them here, Your Honor.

11 Q Let me show you 32 and 33. If you would, does that
12 fairly represent where the unfired shell casing was found?

13 A Yes, sir.

14 Q Or the fired -- excuse me -- the fired shell casing.

15 A No. This is the unfired.

16 Q That's the unfired.

17 A Yes, sir, because the earlier one you showed me, I did
18 correct myself and say that it was fired.

19 Q Are you sure?

20 A Yeah, because I can see the hollow-out -- I guess you
21 would call it -- area there.

22 Q Okay.

23 MR. BARNETTE: Your Honor, I'd like to enter State's
24 32 and 33 into evidence at this time.

25 MR. ABUSAFT: Without objection.

Michael Sean Nix
Direct examination by Mr. Barnette

1 THE COURT: They're admitted.

2 (Photographs marked State's Exhibits Nos. 32 and 33.)

3 MR. BARNETTE: And permission to publish it to the
4 jury, Your Honor.

5 THE COURT: You may.

6 Q And State's Exhibit 32, what is that a picture of,
7 sir?

8 A A picture of the front passenger floorboard of the
9 Honda Civic.

10 Q Okay. And 33. Is that a picture of the shell casing?

11 A That's a picture of an unfired shell casing, yes, sir.

12 Q Thank you, sir.

13 MR. BARNETTE: One moment, Your Honor, please.

14 (Pause.)

15 Q Please answer any questions.

16 MR. BARNETTE: You may want to break for lunch at this
17 time, Judge.

18 THE COURT: All right. We will recess for lunch.

19 Let me caution the jury and remind you of the
20 instruction previously given. No discussions, no media
21 exposure, no research, no investigation.

22 Have a good lunch. Please report to your jury room at
23 2:30, 2:30 this afternoon. Again, they may have you report
24 to the jury assembly room. You talk to the bailiff before
25 you leave.

Michael Sean Nix
Cross-examination by Mr. Abusaft

1 Mr. Abusaft.

2 MR. ABUSAFT: May it please the Court.

3 CROSS-EXAMINATION

4 BY MR. ABUSAFT

5 Q Officer Nix, one of the things that you identified for
6 the prosecution was a buccal swab, is that correct, or
7 buccal swab?

8 A You can say that either way, yeah.

9 Q Okay. And what's that for?

10 A That is a swab that you take for D.N.A. purposes.
11 It's usually done to the inside of a person's cheek.

12 Q That's just for identification purposes?

13 A That's just to collect D.N.A., yeah, for
14 identification purposes later on.

15 Q And you spoke about five bullets being found in the --
16 remaining in the chamber -- excuse me -- in the gun that's
17 between the clip and the chamber.

18 A Yes, sir.

19 Q Okay. And just to be clear you showed us. You talked
20 to us a lot about different bullets being found. There was
21 only one fired bullet, is that correct?

22 A There was only one fired bullet, yes, sir.

23 Q Okay. And you found bullets that were two different
24 calibers, is that right?

25 A Are you talking about cartridge cases, sir?

Michael Sean Nix
Cross-examination by Mr. Abusoft

1 Q Yes.

2 A Yes.

3 Q There was one that was a .45 and there were some that
4 were 9mm.

5 A The two found in the vehicle, excluding the ones in
6 the gun that you're talking about, were a .45 caliber and a
7 9mm.

8 Q Okay. All right. And a .45 caliber doesn't match the
9 gun that was found in the vehicle.

10 A It does not.

11 Q That bullet couldn't be used in that firearm.

12 A No, sir. It couldn't.

13 Q Okay. And the gun -- I mean -- excuse me -- and the
14 vehicle that it was found in was registered to
15 Ms. Niemitalo's father.

16 A Yes, sir.

17 Q Okay. To the best of your knowledge that was not
18 Lance Brewton's vehicle.

19 A To the best of my knowledge, no, sir.

20 Q Okay. And you spoke earlier about a helicopter
21 landing, is that correct?

22 A That is correct, sir.

23 Q And it blew some of the evidence or some of the things
24 that you collected, it blew it out of position, where they
25 originally were, and knocked it some place else.

Michael Sean Nix
Cross-examination by Mr. Abusaft

- 1 A To my recollection, three items, yes, sir.
- 2 Q Okay. I just want to be clear. And there are a lot
3 of pictures, and some of them deal with the same stuff.
4 And pictures like this, this is mostly things left from the
5 E.M.T.
- 6 A There is medical debris left behind, but there are
7 also items of evidence scattered in with it, yes, sir.
- 8 Q Scattered amongst the stuff left by the E.M.T.
- 9 A Yes, sir.
- 10 Q Okay. You spoke about a sample, a blood sample, taken
11 from Ms. Niemitalo, is that correct?
- 12 A Yes.
- 13 Q That's just used to identify her blood. That was a
14 sample. It was a standard to be able to identify her blood
15 with.
- 16 A Yes, sir.
- 17 Q Okay. And I just want to make sure. You weren't
18 there when Kevin Lance and Ms. Niemitalo were in the car.
- 19 A No, sir.
- 20 Q You don't know what happened.
- 21 A No, sir.
- 22 Q You don't know how the gun -- you don't know how that
23 gun went off.
- 24 A No, sir.
- 25 Q You're not here to give an opinion or to -- any direct

Michael Sean Nix
Redirect examination by Mr. Barnette

1 evidence about that.

2 A No, sir.

3 Q Thank you very much.

4 MR. BARNETTE: Just a few on redirect, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. BARNETTE

7 Q You was talking about three items that was blown by
8 the helicopter. Which three items were those, sir?

9 A The wheel-well cover, which was, I think, was item
10 eight that we identified, the automobile paperwork
11 envelope, which I think was No. 9, and the registration,
12 which was No. 10.

13 Q So the main items right beside the driveway wasn't
14 affected by the wind.

15 A As far as I know, no, they were not.

16 Q And they appeared to be the same when you got there
17 and when you took the pictures from there.

18 A Yes, sir.

19 Q And the bullets. There was five bullets that was
20 found in the gun, is that right?

21 A Yes, sir.

22 Q And there was a fired shell casing that you found in
23 the car too.

24 A That is correct.

25 Q And that was a 9mm.

Michael Sean Nix
Redirect examination by Mr. Barnette

1 A That is correct.

2 MR. ABUSAFT: Objection, Your Honor. Leading.

3 THE COURT: Don't lead him.

4 Q Okay. And you found one other bullet, is that right?

5 MR. ABUSAFT: Objection, Your Honor. Leading.

6 Q Or did you find another bullet in the car?

7 A I found a fired shell casing or fired cartridge casing
8 in the car, yes, sir.

9 Q And did you find an unfired bullet in the car also?

10 A I found an unfired cartridge casing, yes, sir.

11 Q Okay. And it was a .45.

12 A The unfired one was a .45, sir.

13 Q Okay. Was the fired shell casing sent to SLED for
14 analysis?

15 A Yes, sir.

16 Q Let me show you State's Exhibit 78 that's been entered
17 into evidence. What is that, sir?

18 A It is listed as a -- my handwriting -- P.M.G. .45
19 caliber unfired cartridge case.

20 Q Can you look at the top of the head of the bullet and
21 tell us what it says on that, sir? The initials on the top
22 of the shell casing.

23 A Are you talking about the back part, Mr. Solicitor?

24 Q Yes, sir.

25 A The back part says P.M.G. .45 auto.

Michael Sean Nix
Redirect examination by Mr. Barnette

1 Q Okay. May I see that for a second?

2 A Yes, sir.

3 Q Isn't that a C?

4 A It is, and my handwriting is sometimes real terrible.

5 It may be a C. It looks kinda like a G on here.

6 Q Let me just publish that to jury if I could real quick
7 so they can see what we're talking about.

8 MR. BARNETTE: Permission to publish these items to
9 the jury, Your Honor.

10 THE COURT: You may.

11 Q See if I can. What does that appear to be to you,
12 Investigator Nix, on it?

13 A The best I can see it appears to be a P.M.C.

14 Q The jury will have that also.

15 Okay. And the fired bullet that you found at the
16 crime scene, who actually found that bullet, first?

17 A Emergency medical personnel is the one that advised us
18 about it first.

19 Q Right. And they're the ones that found it. You
20 didn't find. Obviously, you collected it once they -- and
21 did they provide that to the law enforcement?

22 A They let us know that it was there, yes, sir.

23 MR. BARNETTE: One moment, Your Honor, please.

24 Q Please answer any other questions the defense may have
25 for you.

Lathier Graham
Direct examination by Mr. Barnette

1 MR. ABUSAFT: No further questions, Your Honor.

2 THE COURT: You may step down.

3 MR. BARNETTE: We'd ask that the witness be excused,
4 Your Honor.

5 THE COURT: He may be.

6 (Whereupon, the witness was excused.)

7 MR. BARNETTE: Like to call Investigator Graham to the
8 stand please.

9 LATHIER GRAHAM, having been
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. BARNETTE

12 Q If you would, sir, state your full name for the
13 record.

14 A Investigator Lathier Graham, Spartanburg County
15 Sheriff's Office.

16 Q And where do you work and what's your position there,
17 sir?

18 A Crime scene investigator.

19 Q And how long have you been there, sir?

20 A I've been with the sheriff's office 14 years; crime
21 scene investigator ten years.

22 Q Back on September 25th of last year was you called to
23 the emergency room or Spartanburg Regional?

24 A Yes, sir.

25 Q And there did you meet with the victim at that time?

Lathier Graham
Direct examination by Mr. Barnette

1 A Well, the hospital staff was working on her. I was
2 standing by waiting for a chance to complete my
3 investigation.

4 Q And did you go up and get a G.S.R. kit off her?

5 A Yes, sir, once they were done.

6 Q And what is a G.S.R. kit?

7 A It's a gunshot residue kit.

8 Q And so did you collect that from her hands?

9 A Yes, sir, I did.

10 Q And was that placed in evidence by you?

11 A Yes, sir, it was.

12 Q If you would, sir, please take a look at that. Is
13 that the kit that you collected from the victim in this
14 case?

15 A Yes, sir, it is.

16 MR. BARNETTE: Your Honor, I'd like to enter State's
17 Exhibit 3 into evidence at this time.

18 MR. ABUSAFT: Without objection.

19 THE COURT: It is admitted.

20 (G.S.R. kit marked State's Exhibit No. 3.)

21 MR. BARNETTE: May I just publish it to the jury, Your
22 Honor?

23 THE COURT: You may.

24 Q And you filled this out and put the G.S.R. kit inside
25 of this, is that right, sir?

Courtney Burgess
Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q If you would, please, answer any questions the defense
3 may have for you, sir.

4 MR. ABUSAFT: One moment please, Your Honor.

5 (Pause.)

6 MR. ABUSAFT: Your Honor, we have no questions for
7 this witness.

8 THE COURT: All right. You may step down.

9 MR. BARNETTE: We'd ask for the witness to be excused,
10 Your Honor.

11 THE COURT: He may be.

12 (Whereupon, the witness was excused.)

13 MR. BARNETTE: Your Honor, I'd like to call
14 Investigator Burgess to the stand.

15 COURTNEY BURGESS, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. BARNETTE

18 Q If you would, ma'am, please state your full name for
19 the record.

20 A Courtney Burgess.

21 Q And where do you work at, ma'am?

22 A Spartanburg County Sheriff's Office.

23 Q And how long have you been working with law
24 enforcement, ma'am?

25 A Since February of 2006.

Courtney Burgess
Direct examination by Mr. Barnette

1 Q And what is your present position with the sheriff's
2 department?

3 A I'm a latent fingerprint examiner.

4 Q And before that where did you work, ma'am?

5 A I worked for Spartanburg City Police Department in the
6 crime scene unit.

7 Q And how many times have you been qualified in
8 fingerprint analysis?

9 A Four times.

10 Q And has that been in these courts, state courts?

11 A Yes, sir.

12 Q And prior to that where did you get your education
13 from, ma'am?

14 A I have a bachelor of science in forensic
15 identification from West Virginia University. I also have
16 training in latent fingerprint identification, the science
17 and technology of fingerprints, advanced ridgeology, which
18 is just an advanced fingerprint comparison class through
19 Sirchie Laboratories in North Carolina. And I also have an
20 advanced palm print comparison class through Sirchie.

21 MR. BARNETTE: Your Honor, I'd move her as an expert
22 in fingerprint analysis at this time.

23 MR. ABUSAFT: Without objection.

24 THE COURT: She is so qualified.

25 Q Did you receive prints from Investigator Nix

Courtney Burgess
Direct examination by Mr. Barnette

1 concerning this case?

2 A I did.

3 Q Let me show the defense first.

4 (Pause.)

5 Q Show you State's Exhibit 80. Was these the
6 fingerprints that you received from the car that he
7 collected?

8 A Yes.

9 MR. BARNETTE: Your Honor, I'd like to move these in
10 as State's -- into evidence at this time.

11 THE COURT: What number is it?

12 MR. BARNETTE: No. 80. We just added to the list.

13 MR. ABUSAFT: Without objection.

14 THE COURT: It's admitted.

15 (Fingerprints from the Honda marked State's Exhibit No.
16 80.)

17 Q And on one of the prints -- I believe J -- did you do
18 a fingerprint analysis sheet on that print?

19 A I did.

20 Q And is that a copy of it, ma'am?

21 A This is. This is a chart that I created.

22 MR. BARNETTE: Your Honor, I'd like to move this as
23 State's Exhibit 81 at this time.

24 MR. ABUSAFT: Without objection.

25 THE COURT: It's admitted.

Courtney Burgess
Direct examination by Mr. Barnette

1 (Investigator Burgess' fingerprint analysis marked
2 State's Exhibit No. 81.)

3 MR. BARNETTE: Thank you, Your Honor. May we publish
4 these to the jury?

5 THE COURT: You may.

6 Q If you would, come on and step down for a second if
7 you would, ma'am.

8 (Whereupon, the witness left the stand.)

9 Q We're going to have to talk loud so that the court
10 reporter can hear us.

11 A Okay.

12 Q So you received these prints, and there was a number
13 of prints that you received from Investigator Nix. Did you
14 look at all of the prints?

15 A I did.

16 Q And did you get the defendant's print when he was
17 arrested on this charge?

18 A Yes.

19 Q And did you use that to compare these prints to that?

20 A I did.

21 Q And did you get any match on one of those prints?

22 A I did.

23 Q And which one was it, ma'am?

24 A It would have been --

25 Q Would it be J?

Courtney Burgess
Direct examination by Mr. Barnette

1 A Let's see. J, which is latent print 006-01.

2 Q Okay. And that print came back to the defendant in
3 this case, Mr. Brewton.

4 A It did. The No. 4 finger or the right ring finger.

5 Q The other prints, did you get any matches, or what was
6 the issues with those?

7 A There were some that were not -- not of sufficient
8 quality, meaning there wasn't enough detail in them. There
9 were some other prints that were identified as other --
10 other people. I have a list of them if you need it. And
11 some were -- just didn't match to any one of them.

12 Q Let me ask you a question. Just because I cut my hand
13 here, do I automatically leave a print on that, ma'am?

14 A No, not necessarily.

15 MR. ABUSAFT: Your Honor, objection. Leading.

16 THE COURT: Overruled.

17 Q And plus if I -- why did I not leave a print there
18 automatically?

19 A Leaving a fingerprint on a surface, number one, it
20 depends on -- it depends on the surface. If it's not a
21 smooth, nonporous surface you're not going to leave a
22 readable fingerprint.

23 It also depends on the environment that that surface
24 is in. It depends on the condition of your hands. If you
25 have really, really dry skin, you may not leave a good

Courtney Burgess
Direct examination by Mr. Barnette

1 fingerprint. If you have really oily skin, you may leave
2 like a smudge. You may leave something there, but it may
3 not be readable because it's so oily that all of the ridges
4 on the fingers kind of run together in that fingerprint.

5 Q So this surface that's a porous surface, would it
6 leave a print on that?

7 A Not if it was porous, no.

8 Q If I did this to it, what happened to the print?

9 A You -- you may leave -- again, it depends on the oil
10 and moisture content on your hands. You may leave just a
11 smudge. You know, if you touch a glass table top or the
12 refrigerator you leave smudges on it. You can see that
13 it's been touched, but there may not necessarily be a
14 fingerprint there.

15 Q So fingerprints are -- you just can't automatically
16 get those.

17 A Right.

18 Q Let me show you what's been marked State's Exhibit 81,
19 which I think is the J print. If you would, explain what
20 this is to the jury, if you would, ma'am.

21 A This is a chart that we create after an identification
22 has been made on a fingerprint.

23 And what we do, when we're looking at the latent
24 fingerprint -- this is the latent fingerprint that was
25 lifted from the crime scene that was submitted from Officer

Courtney Burgess
Direct examination by Mr. Barnette

1 Nix. This print over here is the ten-print-card
2 fingerprint or the known fingerprint from Mr. Brewton.

3 what we do is we look -- we look for similarities
4 between the two. We look for different points of minutiae.
5 Or I'll say points just to make it simple.

6 Each point in here, like this one right here, this is
7 what you call an ending ridge. And it may be a little hard
8 to see up there. But you see this -- this black line that
9 comes along and it just ends. That's what we call an
10 ending ridge.

11 So we find one over here in the latent and we find it
12 over here in the ten print.

13 And then we look for another point.

14 Go up to No. 2. It's also an ending ridge. So just
15 because we have two ending ridges in two separate prints
16 doesn't necessarily mean it's a match. They have to be in
17 the same relative location. They have to have the same
18 amount of ridges between them so --

19 MR. ABUSAFT: Your Honor, may we approach?

20 THE COURT: Sure.

21 (Bench conference held off the record in the presence
22 of the jury but out of the hearing of the jury.)

23 MR. ABUSAFT: Objection, Your Honor. Relevancy.

24 THE COURT: Overruled.

25 MR. ABUSAFT: Cumulative.

Courtney Burgess
Direct examination by Mr. Barnette

1 THE COURT: Cumulative to what?

2 MR. ABUSAFT: Your Honor, there's -- there's not an
3 issue of whether he touched the car or was in the car.
4 This is irrelevant and it's cumulative to that fact.

5 THE COURT: Okay.

6 MR. BARNETTE: Do we need to step back?

7 MR. ABUSAFT: We have a video. We've had a video put
8 into evidence about this. He was in the vehicle. He was
9 driving the vehicle.

10 THE COURT: Okay.

11 MR. BARNETTE: We can stipulate to the print.

12 THE COURT: Why don't y'all talk about it.

13 (Pause.)

14 MR. BARNETTE: Your Honor, he just indicated he'll
15 stipulate that this print is the one that was from the
16 defendant on the gas tank.

17 THE COURT: Okay. Ladies and gentlemen, when parties
18 stipulate to a fact that means that fact is agreed upon.
19 That's not something that needs any further proof.

20 It's not something that you need to consider whether
21 or not the proof is sufficient. They have agreed that the
22 proof is sufficient and that the fact as stipulated to is a
23 fact, and you may accept it as such.

24 MR. BARNETTE: Your Honor, I have no further questions
25 of Ms. Burgess. I don't know if he would or not since he

Michael Callison
Direct examination by Ms. Wells

1 stipulated to it.

2 THE COURT: He may.

3 (Whereupon, the witness returned to the stand.)

4 MR. ABUSAFT: No questions for this witness, Your
5 Honor.

6 THE COURT: You may step down.

7 MR. BARNETTE: Ask for this witness to be excused,
8 Your Honor.

9 THE COURT: She may be.

10 (Whereupon, the witness was excused.)

11 MS. WELLS: Your Honor, the state would then call
12 Deputy Michael Callison to the stand please.

13 MICHAEL CALLISON, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MS. WELLS

16 Q Deputy Callison, where are you employed?

17 A Greenville County Sheriff's Office.

18 Q And how long have you been employed there?

19 A I've been at the sheriff's office since February of
20 last year, and then I was in law enforcement before that.

21 Q And how long all total together have you been in law
22 enforcement?

23 A Seven and a half years, ma'am.

24 Q And prior to the Greenville County Sheriff's Office
25 where were you?

Michael Callison
Direct examination by Ms. Wells

1 A I was an officer with the City of Greenville with
2 different roles there.

3 Q Okay. What's your current assignment with the
4 Greenville County Sheriff's Office?

5 A I'm a canine handler.

6 Q And how long have you been in that position?

7 A With my current job, a year and a half, and then a
8 year and a half at Greenville City.

9 Q And were you -- I'm going to direct your attention
10 back to September the 25th of 2017. Were you working in
11 your capacity as a canine handler with the Greenville
12 County Sheriff's Office on that date?

13 A Yes, ma'am.

14 Q And where were you working specifically that day?

15 A I was in the northern area of Greenville County at our
16 training center when this call came out.

17 Q Okay. And you said when this call came out. You're
18 familiar with the defendant in this case, Mr. Brewton?

19 A Yes, ma'am.

20 Q And do you recognize him here in the courtroom today?

21 A Yes, ma'am.

22 Q And can you point to the members of the jury where
23 he's sitting?

24 A Yes, ma'am. He's the gentleman in the middle in the
25 defense row.

Michael Callison
Direct examination by Ms. Wells

1 MS. WELLS: Your Honor, I'd ask the record reflect
2 he's identified the defendant.

3 THE COURT: It shall.

4 MS. WELLS: Thank you, Your Honor.

5 Q Deputy Callison, you said you had a call come out, but
6 at the end of the day you realized it related to
7 Mr. Brewton.

8 what type of call did you receive?

9 A We got a -- we call it a BOLO. Dispatch tells us over
10 the radio on the five different channels that we use
11 through the county just to give us a heads up and see if we
12 can help.

13 They advised us that highway patrol was chasing a
14 vehicle coming out of Spartanburg County that was possibly
15 involved in a shooting.

16 Q And while you -- and where -- when that BOLO came out
17 where -- you said you had been at the Greenville County,
18 your training facility.

19 A Yes, ma'am.

20 Q I think you previously testified was in northern
21 Greenville County. Were you actually in the facility or
22 were you in your vehicle?

23 A I was actually leaving the training center to go
24 somewhere else. I don't remember where. But, yes, ma'am.
25 I was leaving when that call came out.

Michael Callison
Direct examination by Ms. Wells

1 Q And did you seek out this pursuit, or did it, did the
2 pursuit, find you?

3 A Well, we'll meet in the middle.

4 I was coming down Thurston Road, which is the road
5 from the training center. And as was entered into evidence
6 with the trooper's video, a few turns before the chase
7 ended you can actually see my vehicle while they're coming
8 down Milford Church Road. And I was stopped at a stop
9 sign, and here they came straight towards me.

10 Q And when you saw that what, if anything, did you do?

11 A I tried to tell dispatch, you know, that I was going
12 to try to assist the trooper. And then I started to follow
13 the trooper. I think we made three turns before the
14 vehicle had the collision in that, the final driveway.

15 Q Okay. And what was your -- what was the location of
16 your vehicle in relation to the highway patrolman's
17 vehicle?

18 A I was immediately behind him.

19 Q And when -- did -- you physically observed. You were
20 physically present and observed the vehicle accident at the
21 end of the pursuit?

22 A I didn't see the actual collision with the listed
23 Honda with the truck. I believe it hit a truck. But the
24 vehicle was still rolling backwards like we observed in the
25 video. Before the vehicle came to a stop it was rolling

Michael Callison
Direct examination by Ms. Wells

1 backwards towards the road, and that's when I made contact
2 out of my vehicle with the trooper.

3 Q And you were present in the courtroom earlier today
4 when Trooper Stewart testified.

5 A Yes, ma'am.

6 Q And you heard his testimony that there was kind of a
7 -- y'all had some time lapse in there between the rolling
8 back of the vehicle and Mr. Brewton exiting the vehicle.

9 A Yes, ma'am. I actually gave P.A. call-outs in my
10 vehicle and so forth before he surrendered.

11 Q When you say a B.A. call-out, what's that?

12 A I'm sorry. P.A.

13 Q P.A.

14 A Public -- public address, I guess, through the
15 microphone in my car.

16 Q And who -- who was that directed towards?

17 A Mr. Brewton.

18 Q Okay.

19 A Yes, ma'am.

20 Q And you saw when Mr. Brewton was getting out of the
21 vehicle, kind of moves alongside the Civic and then gets on
22 the ground and rolls.

23 A Yes, ma'am. We -- we gave him directions to come
24 along the back of the vehicle slowly and go towards the
25 back right brake light. And then once he was there we

Michael Callison
Direct examination by Ms. Wells

1 ordered him to come to the ground in that rollover since we
2 didn't know if he was armed or what not. We had him roll
3 so we could see his waistband and his hands were clear. So
4 it was a slow movement.

5 Q Is that standard procedure to have somebody roll away
6 from a location?

7 A I haven't had that in the past. I think the
8 lieutenant, the SWAT lieutenant, that was there had him
9 roll, yes, ma'am.

10 Q And then once all of that was complete, what was your
11 role from there?

12 A Once -- once he surrendered and once on the ground I
13 moved up with other officers, and I was the one that placed
14 the handcuffs on him. And then since I had a rifle,
15 another deputy took custody of him and walked him back to
16 other vehicles.

17 Q And did you collect some items of evidence from that
18 vehicle?

19 A Yes, ma'am.

20 Q Do you recall what those items were?

21 A Yes, ma'am. We -- he had some money in his pockets.
22 He had a pill container with some kind of powder. I'm not
23 sure what it was. Some money, his hat, shoes and his
24 pants.

25 Q And why did you recover those items?

Michael Callison
Direct examination by Ms. Wells

1 A I'm not quite sure. They were -- I was present, but
2 the SWAT lieutenant had me keep custody of them until
3 Sergeant Burgess -- I believe she was a sergeant with
4 forensics with Spartanburg -- came. And she took custody
5 from them -- from me of the items and also the -- the Honda
6 Civic.

7 Q Okay. Now, Deputy Callison, you held those items in
8 your custody, like you just said, until such time as
9 Sergeant Burgess could get those items and seize them from
10 you, is that right?

11 A Yes, ma'am. Just to keep the chain of custody.

12 Q And was Mr. Brewton transported to Greenville Memorial
13 Hospital?

14 A I'm not sure if he went in a -- a squad car or an
15 ambulance, but, yes, ma'am, he went to the hospital.

16 Q And why did y'all do that?

17 A I'm not sure. I wasn't in charge of that part, so.

18 Q Okay.

19 MS. WELLS: May I have a moment, please?

20 Q I'm sorry. I didn't mean to cut you off.

21 A I don't know if it was his request or not, so.

22 Q Okay.

23 MS. WELLS: May I have a moment, please?

24 (Pause.)

25 MS. WELLS: I don't have any further questions for

Michael Callison
Cross-examination by Mr. Abusaft

1 Deputy Callison.

2 THE COURT: Mr. Abusaft.

3 CROSS-EXAMINATION

4 BY MR. ABUSAFT

5 Q Deputy, you were not at the scene when Kevin Lance and
6 Ms. Niemitalo were in the vehicle.

7 A No, sir. That all occurred in Spartanburg County.

8 Q You have no information about how the firearm went
9 off.

10 A No, sir.

11 Q You have no information about the circumstances
12 surrounding it.

13 A No, sir.

14 MR. ABUSAFT: Your Honor, I have no more questions for
15 this witness.

16 THE COURT: You may step down.

17 MS. WELLS: Your Honor, may he be excused?

18 THE COURT: He may also be excused.

19 MS. WELLS: Thank you, Your Honor.

20 (Whereupon, the witness was excused.)

21 MR. BARNETTE: May we approach for a second, Your
22 Honor?

23 THE COURT: Yes.

24 (Bench conference held off the record in the presence
25 of the jury but out of the hearing of the jury.)

Thomas Edward Darnell
Direct examination by Mr. Barnette

1 THE COURT: We're going to take a quick break to
2 schedule some witnesses, so I'll ask you to please go to
3 your jury room.

4 Don't talk about the case. I'll bring you back
5 shortly.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: We'll be at ease.
9 Y'all let me know when you get things scheduled.
10 (Whereupon, a recess was taken.)

11 THE COURT: All right. Are we ready for the jury?

12 MR. BARNETTE: The state is ready, Your Honor.

13 MR. ABUSAFT: The defense is ready, Your Honor.

14 THE COURT: Bring them in.

15 (The following takes place in the presence of the
16 jury.)

17 THE COURT: The jury is present. You may proceed.

18 MR. BARNETTE: Like to call Tom Darnell to the stand,
19 Your Honor.

20 THOMAS EDWARD DARNELL, having
21 been first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BARNETTE

23 Q If you would, sir, state your full name for the
24 record, sir.

25 A My name is Thomas Edward Darnell. Last name is

Thomas Edward Darnell
Direct examination by Mr. Barnette

1 spelled D-A-R-N-E-L-L.

2 Q And where do you work at, sir?

3 A I work at SLED in Columbia, the state law enforcement
4 division.

5 Q And what is SLED?

6 A SLED is a state law enforcement agency and we -- our
7 basic mission is to assist local law enforcement with
8 criminal investigations and in this case to include
9 forensic investigations.

10 Q Are you an expert in fingerprint analysis, sir?

11 A Yes, sir.

12 Q And what kind of training have you received concerning
13 that?

14 A I -- my career started way back in 1982, and I worked
15 at Richland County Sheriff's Office for eight years.

16 I started at SLED in 1990. I actually retired from
17 there in 2009. And during that timeframe I attended
18 numerous forensic courses across the state, as well as the
19 F.B.I. Academy in Quantico, Virginia.

20 I was also -- at the time I was a training officer
21 within the department, and also for a period of time during
22 my timeframe there at SLED I was a supervisor over the
23 latent print department.

24 Upon retirement I actually kept working and went to
25 work at Richland County again and worked there for about a

Thomas Edward Darnell
Direct examination by Mr. Barnette

1 year. And then I actually went to Afghanistan for a year
2 in support of the U.S. Military as a forensic contractor.

3 In 2012 I was rehired by SLED as a part-time forensic
4 latent print examiner, and that's where I remain today.

5 Q How many times have you been qualified as a latent --
6 latent prints are fingerprints, is that correct?

7 A Correct.

8 Q How many times have you been qualified as an expert,
9 sir?

10 A Probably around 150 or so times all over this state,
11 and some out of state, state and federal court.

12 MR. BARNETTE: Your Honor, I'd like to move him as an
13 expert at this time in fingerprint analysis.

14 MR. ABUSAFT: No objection, Your Honor.

15 THE COURT: He is so qualified.

16 Q Sir, let me approach you here.

17 Did you examine what's been marked as State's -- or
18 entered into evidence as State's Exhibit No. 7, sir?

19 A Yes, I did.

20 Q And what kind of analysis did you do on that, sir?

21 A I was asked to -- or the request was made for me to
22 process the weapon and the magazine for -- to determine if
23 there was any fingerprints that might be identifiable on
24 the weapon.

25 Q And could you step down and show them how you looked

Thomas Edward Darnell
Direct examination by Mr. Barnette

1 at it? Did you find any fingerprint on the weapon, sir, or
2 on the magazine?

3 A Take this out?

4 Q Yes, sir, if you could.

5 (Whereupon, the witness left the stand.)

6 A I've got the pistol that I processed. It has the lab
7 number in it and my initials on the pistol itself.

8 And, first of all, as you can see, there is a safety
9 mechanism. So the pistol is not loaded. It won't fire.

10 I also processed the magazine that came out of the
11 pistol. I was asked to process both of these in an attempt
12 to develop any latent prints or any fingerprints that might
13 be present.

14 And the result was that I found fingerprints on the
15 pistol that were insufficient for comparison. In other
16 words, there was not enough detail for me to compare the
17 prints on the pistol itself.

18 I was however able to develop a print on the magazine,
19 and I've got it circled at the base of the magazine. I was
20 able to develop a print on the bottom portion of the
21 magazine that was identifiable.

22 Q And was you able to match that print up? I believe
23 you got a known sample from the present arrest on this
24 case.

25 A That's correct.

Thomas Edward Darnell
Direct examination by Mr. Barnette

1 Q You got the known sample of the defendant's prints.

2 A That is correct. And when I was able -- when I did
3 the comparison I was able to determine that the right thumb
4 of the defendant was -- made the impression on the
5 magazine, what we call a number one finger or the right
6 thumb.

7 Q And yes, sir. Did you generate a report based on what
8 your findings were?

9 A I did.

10 Q And is this a copy of that report, State's Exhibit 73?

11 A Yes, it is.

12 MR. BARNETTE: Your Honor, I'd like to move State's
13 Exhibit 73 into evidence at this time.

14 MR. ABUSAFT: No objection, Your Honor.

15 THE COURT: It's admitted.

16 (SLED latent prints report marked State's Exhibit No.
17 73.)

18 MR. BARNETTE: May I publish it to the jury, Your
19 Honor?

20 THE COURT: You may.

21 Q Agent Darnell, if you could, take a look at the pistol
22 itself real quick, sir.

23 (Pause.)

24 Q And I believe you indicated. Was that your writing on
25 that, sir?

Thomas Edward Darnell
Direct examination by Mr. Barnette

1 A Yes, sir. That's the laboratory number that was
2 assigned to this case once it entered the state laboratory.
3 It has an item number, which is my item seven. And the
4 initials would be under the item seven.

5 Q And, like you said, you found unreadable prints. You
6 found some, but they weren't readable at the time.

7 A That's correct.

8 Q And then you looked on the magazine of the weapon.
9 Did you -- and that was the print that you found?

10 A Yes, sir. The -- the area that is circled was a mark
11 that I placed on there just to be able to show the area
12 where the print was developed. Once it was developed I had
13 to get it photographed to be able to do a comparison.

14 Q And that print came back to the defendant.

15 A Yes, sir.

16 Q And showing you State's Exhibit 73. This is a report
17 that you generated, is that correct, sir?

18 A Yes, sir.

19 Q And item seven, what was that, sir, that you looked
20 at?

21 A Item seven was the 9mm pistol with the magazine, and
22 it has the serial number that was affixed to the pistol.

23 Q And item 71. What was that, sir?

24 A Seventy-one was the subitem number that I gave to the
25 latent impression or the fingerprint impression that was

Thomas Edward Darnell
Cross-examination by Mr. Abusaft

1 developed on the item seven magazine.

2 Q And that was this item right here in that area.

3 A That's correct.

4 Q And then you compared that to his known print that we
5 got from this arrest.

6 A That's correct, yes, sir.

7 Q And it was his print.

8 A Yes, sir. It was his right thumb on the magazine.

9 Q Thank you, sir. Please have a seat.

10 (Whereupon, the witness returned to the stand.)

11 Q If you would, sir, please answer any questions the
12 defense may have for you.

13 CROSS-EXAMINATION

14 BY MR. ABUSAFT

15 Q I just want to be clear. You weren't at the scene
16 when Kevin -- you were never at the scene when this
17 incident happened, right?

18 A No, sir. I was not.

19 Q You were just asked to review evidence afterwards.

20 A Well, I was asked to process the evidence to determine
21 if I could develop any identifiable fingerprints on the
22 evidence.

23 Q You weren't there when Kevin Schuerman, Natalie
24 Niemitalo and Lance Brewton were in the car. You have
25 no -- you weren't there.

Jamie Hall
Direct examination by Mr. Barnette

1 A No, sir. I was not. I was never at the scene.

2 Q You have no firsthand knowledge of how the firearm
3 went off.

4 A No, sir.

5 Q Thank you.

6 MR. BARNETTE: I have no further questions of this
7 witness. We'd ask him be excused, Your Honor.

8 THE COURT: You may step down.

9 MR. BARNETTE: I would like to call Jamie Hall to the
10 stand.

11 JAMIE HALL, having been first
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. BARNETTE

14 Q Please give us your full name, please.

15 A My name is Jamie Hall, H-A-L-L.

16 Q And where do you work at, ma'am?

17 A I'm employed at the South Carolina Law Enforcement
18 Division Forensic Services, better known as SLED.

19 Q And what's your position there, ma'am?

20 A I'm a forensic technician in the trace evidence
21 department.

22 Q And what is trace evidence, ma'am?

23 A Trace evidence encompasses many things. We primarily
24 do gunshot residue analysis, fire debris analysis, paint,
25 tape, glass, a variety of additional items as well.

Jamie Hall
Direct examination by Mr. Barnette

1 Q Ma'am, if you would, take a look at this. These have
2 already been entered into evidence as State's Exhibit 3,
3 which is the G.S.R. kit on the victim in this case. And
4 then State's Exhibit 5 is the gunshot residue kit on the
5 defendant, Mr. Brewton, in this case.

6 A Yes, sir.

7 Q Did you receive these items?

8 A I did. My date and initials in which I opened them is
9 here on the back.

10 Q And that in the red, I guess, on the back of those.

11 A Yes, sir, in the red.

12 Q Can you just let the jury see that?

13 (Pause.)

14 Q You actually opened these items up when you received
15 them.

16 A Yes, sir, I did.

17 Q And what did you do with them, ma'am?

18 A I processed these kits in preparation for analysis.
19 So what that means is I made sure everything was properly
20 sealed and initialed.

21 All of this information is documented onto an
22 inventory sheet for the analyst to use. I check the name
23 of who the kit was collected from, the time and date of the
24 incident, the time and date of collection, in which the kit
25 was actually collected. And I make any notations as to

Jamie Hall
Cross-examination by Mr. Abusaft

1 whether there's a lot of debris present on the stub, if
2 they're broken or if anything is missing.

3 Q And was there any issues with any of that?

4 A No, sir, there was not.

5 Q And once you took care of the process you did, did you
6 give it -- who did you give it to afterwards?

7 A In this case I returned it to a secure location, in
8 which case Lieutenant Nates received it later for analysis.

9 Q Okay. So was secured. No tampering or nothing could
10 happen with it.

11 A Correct.

12 Q And you left it for her.

13 A Yes, sir.

14 Q If you would, please answer any questions the defense
15 may have for you.

16 CROSS-EXAMINATION

17 BY MR. ABUSAFT

18 Q You weren't at the scene when this incident happened.

19 A No, sir. I was not.

20 Q You weren't at the -- you weren't near the vehicle
21 when Natalie Lance and Kevin were there?

22 A No, sir.

23 Q You have no -- you have no evidence to offer about
24 that.

25 A I did not collect the kit. The kits are received to

Jennifer Nates
Direct examination by Mr. Barnette

1 SLED after the officers collect the kits.

2 Q You have no first-hand knowledge of what happened
3 there.

4 A No, sir.

5 Q Thank you.

6 MR. ABUSAFT: I have no more questions of this
7 witness.

8 MR. BARNETTE: No other questions, Your Honor. I ask
9 for her to be excused, Your Honor.

10 THE COURT: You may step down.

11 MR. BARNETTE: I'd like to call Jennifer Nates to the
12 stand.

13 JENNIFER NATES, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. BARNETTE

16 Q If you would, ma'am, please give us your full name.

17 A Jennifer Nates, N-A-T-E-S.

18 Q Okay. And where do you work at, ma'am?

19 A I work for the South Carolina Law Enforcement Division
20 in the trace evidence section of the forensic services.

21 Q And what is trace, ma'am? what is trace evidence?

22 A Trace evidence is one of the sections the forensic
23 laboratory supports.

24 We have many different types of analyses that we are
25 responsible for. We perform gunshot residue analysis,

Jennifer Nates
Direct examination by Mr. Barnette

1 which is what was performed in this case, fire debris
2 analysis, paint examinations and comparisons, fiber exams
3 and comparisons, glass analysis, tape.

4 We also perform M.M.A.Q., which is bank dye from bank
5 robberies. And we analyze evidence for fracture fits,
6 which is a physical fit analysis trying to put two items
7 back together to try to link them to a scene.

8 Q And how long have you been with SLED, ma'am?

9 A I have been with SLED for 21 years.

10 Q And how many times have you been qualified in trace
11 evidence or gunpowder residue analysis?

12 A 126 times.

13 MR. BARNETTE: Your Honor, at this time I'd move her
14 as an expert in G.S.R. analysis.

15 MR. ABUSAFT: Without objection.

16 THE COURT: She is so qualified.

17 MR. BARNETTE: Thank you, Your Honor.

18 Q Ma'am, I'm going to let you look at State's Exhibits 3
19 and 5. If you would, take a look at those. Did you
20 receive those kits, ma'am?

21 A I did. These are the envelopes that the G.S.R. kits
22 arrive in to our facility, or they can come in different
23 types of packaging. But as Jamie had testified prior, she
24 initials and dates when she does her work on it, and then I
25 initial and date when I take it into my custody.

Jennifer Nates
Direct examination by Mr. Barnette

1 Q And, if you would, explain to the jury a little bit
2 what G.S.R. is, ma'am.

3 A Gunshot residue, or specifically gunshot primer
4 residue, is a term used to describe any of the debris and
5 residue that is discharged from a firearm when it is --
6 when it is fired.

7 This debris or particles is metallic in nature and it
8 originates from the primer composition in the cartridge.
9 We analyze for these microscopic particles to determine if
10 a gunshot -- if a person or clothing or an item was near
11 the discharge of a firearm.

12 Q And did you do that analysis on these two kits?

13 A I did.

14 Q And did you generate a report from your analysis?

15 A I did.

16 Q Let me show you State's Exhibit 74 after I show it to
17 defense counsel.

18 (Pause.)

19 Q Is this a copy of your report, ma'am?

20 A It is.

21 MR. BARNETTE: Your Honor, I'd move State's Exhibit 74
22 into evidence at this time.

23 MR. ABUSAFT: Without objection.

24 THE COURT: It's admitted.

25 (SLED trace evidence report marked State's Exhibit No.

Jennifer Nates
Direct examination by Mr. Barnette

1 74.)

2 MR. BARNETTE: May I publish it to the jury, Your
3 Honor?

4 THE COURT: You may.

5 Q If you would, step on down here if you would, ma'am.
6 (Whereupon, the witness left the stand.)

7 Q Publishing State's Exhibit 74 to the jury here, if you
8 look at the first kit involving Natalie in this case, item
9 three, which I believe is State's Exhibit 3, is this item
10 right here, what kind of analysis did you do on that,
11 ma'am?

12 A In this case all G.S.R. kits that we receive, we
13 perform what is called analysis using a scanning electron
14 microscope.

15 Each of these G.S.R. kits contains what are called
16 particle lifts, which is a small ground particle lift that
17 has a small adhesive on it like a very light adhesive.

18 So the officers when they collect them, they will dab
19 them over each area of the person's hands. Normally the
20 kits are right palm, right back, left palm and left back.
21 Newer kits are right hand and left hand. So we have made
22 some changes.

23 So that part of a lift is placed inside a chamber
24 which is under a vacuum so that the instrument can perform
25 an automated analysis.

Jennifer Nates
Direct examination by Mr. Barnette

1 It will scan over the perimeters that I set out for it
2 to scan and determine if there are any particles interest
3 present.

4 After the analysis is completed I go back, review the
5 data and review each particle that the instrument flagged
6 for me to look at.

7 When I look at these particles I have to relocate to
8 the particles. So I tell the instrument to go back in the
9 coordinance for the particle, and then I take an ex-ray of
10 it to determine what the particle is made of. And what
11 we're looking for for gunshot residue is to find a particle
12 that is molten in nature and contains antimony, barium and
13 lead, which are the three components from the primer
14 composition which make it characteristic of primer gunshot
15 residue.

16 Q And did you find that on -- in this case?

17 A I did find it on the kit submitted from Natalie
18 Niemitalo.

19 Q And what does that show you? If she was a car in
20 close proximity to the victim, how is that?

21 A Normally if a firearm is charged in a vehicle it's an
22 enclosed small space. The debris is going to or the
23 gunshot residue is going to deposit on anything in the
24 vicinity to that, which when you're in a closed space
25 usually anybody in that vehicle will have gunshot residue

Jennifer Nates
Direct examination by Mr. Barnette

1 on them from that discharge.

2 Q Let me show you the second page of your report. Did
3 you also do a G.S.R. analysis on the kit from the defendant
4 in this case, Mr. Brewton?

5 A I did receive a kit from Lance Brewton in this case.

6 Q And this was State's Exhibit 5. This is the item that
7 you received, is that right?

8 A Item No. 5, yes, sir.

9 Q Please tell us what your findings was on your
10 examination.

11 A My findings on this kit as well were multiple
12 particles characteristic of gunshot primer residue, were
13 found on the samples submitted from Lance Brewton.

14 Q And if he fired a firearm would you find G.S.R. on
15 somebody that fired a firearm?

16 A You can usually. Some guns, very rarely, do not
17 deposit any residue, but normally if you fire a weapon you
18 will have gunshot residue deposit on your hands.

19 Q So this is consistent with firing a firearm, what you
20 found on it.

21 A It can be consistent with firing a firearm, yes.

22 Q Please have a seat, ma'am. Thank you.

23 (Whereupon, the witness returned to the stand.)

24 Q Please answer any questions the defense may have for
25 you, ma'am.

Jennifer Nates
Cross-examination by Mr. Abusaft

1 CROSS-EXAMINATION

2 BY MR. ABUSAFT

3 Q Am I correct that G.S.R. just demonstrates that you
4 fired a firearm or can demonstrate that you fired a
5 firearm?

6 A It can, yes.

7 Q It doesn't give any indication of how the firearm was
8 fired and why?

9 A No, sir. The presence of G.S.R. just means that a
10 firearm was discharged.

11 Q An accidental -- or excuse me -- a...

12 MR. ABUSAFT: One moment, Your Honor.

13 (Pause.)

14 Q An accidental discharge or a discharge or a firearm
15 discharging on its own would leave the same residue as if
16 you chose to shoot a firearm, is that correct?

17 A If it's an accidental discharge it will be the same
18 residue or as if you fired it intentionally, but you would
19 have to be in the proximity to that weapon to have it
20 deposited on you.

21 Q Thank you.

22 MR. ABUSAFT: I have no more questions for this
23 witness.

24 MR. BARNETTE: No further questions of this witness,
25 Your Honor. We would just ask for her to be excused.

1 THE COURT: Step down.

2 (Whereupon, the witness was excused.)

3 MR. BARNETTE: Your Honor, we have a stipulation that
4 we're going to introduce at this time. Ms. Wells is going
5 introduce that.

6 THE COURT: Okay.

7 MS. WELLS: May it please the Court, Your Honor.

8 Your Honor, this is marked as Court's Exhibit 3,
9 stipulation No. 1 and is captioned the State of South
10 Carolina vs. Lance Antonio Brewton.

11 If it pleases the Court, I'll read it into the record.

12 "The parties hereby stipulate to the following as
13 fact: The following items were properly and legally
14 collected by Sergeant Deanna Burgess of the Spartanburg
15 County Sheriff's Office. SLED item No. 4, white t-shirt,
16 which is described and thereafter as a white t-shirt with
17 Tanu Harlem on the label and red stain on the back, also
18 listed as Spartanburg County Sheriff's Office Item No. 25.
19 SLED item No. 5, G.S.R. kit from Lance Antonio Brewton,
20 also listed as Spartanburg County Sheriff's Office Item No.
21 31. SLED Item No. 6, buccal swabs from Lance Antonio
22 Brewton, also listed as Spartanburg County Sheriff's Office
23 Item No. 33. The white t-shirt, the G.S.R. kit and the
24 buccal swabs were properly collected and the proper and
25 valid chain of custody has been maintained for the above

1 listed items listed by their SLED numbers. The items
2 listed on attachment No. 1, the Greenville County
3 Department of Public Safety Property Evidence Report, were
4 properly received by Sergeant Deanna Burgess of the
5 Spartanburg County Sheriff's Office from Deputy Zachary
6 Tarrant and Deputy Michael Callison of the Greenville
7 County Sheriff's Office. The items listed from item
8 No. 2-B-1 through 2-B-8 on this report were property [sic]
9 and legally obtained by Sergeant Burgess and a valid chain
10 of custody has been maintained on the items listed on this
11 report by the Spartanburg County Sheriff's Office. Also,
12 State's Exhibit 47 and 48 of the white t-shirt, SLED item
13 No. 4, were taken by Sergeant Deanna Burgess and are fair
14 and accurate representations of what she saw when she took
15 the pictures and can be entered into evidence."

16 And it's signed by both attorneys for the defendant,
17 both attorneys for the state and the defendant himself,
18 Lance Brewton.

19 Your Honor, we would move -- we would then move
20 State's Exhibits 47 and 48 into evidence and ask for
21 permission to publish at the appropriate time.

22 May I approach?

23 (Photograph marked State's Exhibit No. 47; Photograph
24 marked State's Exhibit No. 48.)

25 THE COURT: All right. Mr. Abusoft, the defense is in

Jasmine Ruiz-Yi
Direct examination by Mr. Barnette

1 agreement with the stipulation?

2 MR. ABUSAFT: Yes, Your Honor.

3 THE COURT: All right. Ladies and gentlemen, as I
4 previously stated, a stipulation is an agreement as to a
5 fact, and that agreement establishes that fact without any
6 further proof being necessary.

7 MR. BARNETTE: May it please the Court.

8 The next witness will be Jasmine Ruiz-Yi. I may not
9 have pronounced that correctly. I'll let her correct me if
10 I'm wrong.

11 JASMINE RUIZ-YI, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. BARNETTE

14 Q If you would, ma'am, please state your full name for
15 the record.

16 A My name is Jasmine Ruiz-Yi, R-U-I-Z, hyphen, Y-I.

17 Q And where do you work at, ma'am?

18 A I work at the South Carolina Law Enforcement Division
19 as a forensic serologist in the D.N.A. department.

20 Q And how long have you worked there, ma'am?

21 A I've worked there a little bit over three years now.

22 Q And how many items have you processed for the D.N.A.,
23 first of all?

24 A I'd say I've processed hundreds by now.

25 Q Okay. Did you receive a t-shirt in this case?

Jasmine Ruiz-Yi
Direct examination by Mr. Barnette

1 A One moment.

2 Q And let me let you look at what's marked as -- what's
3 been entered into evidence as State's Exhibit No. 4. I
4 believe it's the white t-shirt. If you would, take a look
5 at that, ma'am, and see if that's the t-shirt you received.

6 A Yes, sir.

7 Q And how do you know that, ma'am?

8 A I know from the initials on the bag that I placed on
9 the item, as well as on the envelope of the item.

10 Q And you didn't see any evidence of tampering or
11 anything like that. It was sealed when you received it, is
12 that right?

13 A Yes, sir.

14 Q If you would, tell the -- let me show you what's been
15 marked as 4.1. This us a cutting you took from the
16 t-shirt, ma'am?

17 A Yes, sir.

18 Q And you secured this and forwarded it to D.N.A., is
19 that right?

20 A That's correct.

21 MR. BARNETTE: Your Honor, I'd like to enter State's
22 Exhibit 4.1 into evidence at this time. I'd like to move
23 that into evidence at this time, Your Honor.

24 MR. ABUSAFT: Without objection.

25 THE COURT: It's admitted.

Jasmine Ruiz-Yi
Direct examination by Mr. Barnette

1 (Cutting from t-shirt marked State's Exhibit No. 4.1.)
2 Q If you would, ma'am, please step down and show the
3 Court -- show the jury what you did with the t-shirt and
4 how you examined it.

5 (Whereupon, the witness left the stand.)

6 Q If I can show you what's been put into evidence as a
7 stipulation, State's Exhibit 47 and 48, does that appear --
8 that's the t-shirt that you did the examination on, ma'am?

9 A To my recollection, yes.

10 MR. BARNETTE: Your Honor, I'd ask to publish these
11 while she's looking for that, State's Exhibit 47s and 48.
12 That's what's entered into evidence through stipulation.

13 THE COURT: Okay.

14 Q Forty-seven was the front of the shirt and forty-eight
15 was the back of the shirt.

16 A This is the shirt that came in that was given a blood
17 request.

18 I visually examined the shirt to see if there was any
19 red-brown staining that's characteristic of blood. These
20 markings right here that actually made are the areas that I
21 swabbed and tested with a chemical. And the area that you
22 can see that's been cut out is the cutting that I made that
23 was then 4.1.

24 Q If you would, come down and let the jurors see back
25 here. And the red substance, the whiter-red substance, did

Jasmine Ruiz-Yi
Direct examination by Mr. Barnette

1 that test positive for blood?

2 A Yes, sir.

3 Q And where did you take the clipping out again?

4 A This area right here that's been labeled 4.1.

5 Q So that's this area right in here where --

6 A Yes.

7 Q -- it's whiter. Thank you. And then right here, was
8 that where you tested for blood also?

9 A Yes. That is a representative sample that I cut so
10 that there's still positive stains on that actually.

11 Q So, like I said, the items that you tested of those
12 stains did test positive for blood.

13 A Yes, sir.

14 MR. ABUSAFT: Objection, Your Honor. Leading.

15 THE COURT: Don't lead her.

16 Q Okay. And you did -- did you take a clipping from
17 that, ma'am?

18 A Yes, sir.

19 Q Okay. And let's go ahead and do that. If you want to
20 put that back, you can, ma'am.

21 Okay. It's been moved into evidence as 4.1, ma'am.

22 If you would, open that up and, if you would, let the jury
23 see what you cut out or was the cutting. Okay. If you
24 would, show the jury and explain what that is, ma'am.

25 A This is a coin envelope that I place the cutting that

Jasmine Ruiz-Yi
Direct examination by Mr. Barnette

1 I took from a shirt in. It's labeled with the lab number,
2 the item number and what it was examined for. It's also
3 sealed and initialed. And this is the cutting that was
4 taken from the shirt. And so once the cutting is made it
5 was sealed and --

6 MR. ABUSAFT: Your Honor, may I move over or can Mr.
7 Barnette move over? I can't see.

8 MR. BARNETTE: I can move over, Your Honor. I
9 apologize.

10 Q Thank you, ma'am.

11 If you want to put that back in, you can. You may
12 have a seat, please.

13 (whereupon, the witness returned to the stand.)

14 Q Did you generate a report concerning this, ma'am?

15 A Yes, sir, I did.

16 Q I let you look at State's Exhibit 75. Is that a copy
17 of your report, ma'am?

18 A Yes, sir, it is.

19 MR. BARNETTE: Your Honor, we'd like to move State's
20 Exhibit 75 into evidence at this time.

21 MR. ABUSAFT: No objection, Your Honor.

22 THE COURT: It's admitted.

23 (SLED Serology Analysis Report marked State's Exhibit
24 No. 75.)

25 MR. BARNETTE: Your Honor, I'd like permission to

Jasmine Ruiz-Yi
Cross-examination by Mr. Abusaft

1 publish this to the jury.

2 THE COURT: You may.

3 Q Is this -- if you would, explain what your report says
4 in this case, ma'am.

5 A So the cutting that I look from the rear lower back of
6 the t-shirt was positive for the presumptive test of blood.

7 Q And did you forward this to D.N.A. for D.N.A.
8 analysis?

9 A Yes, sir.

10 Q And was it sealed and sent to Agent Goodman in this
11 case?

12 A It was sealed and then placed into evidence control
13 where Goodman then received it.

14 Q That would have been sealed and reopened by her, is
15 that right?

16 A Yes, sir.

17 Q If you would, please answer any questions the defense
18 may have for you, ma'am.

19 CROSS-EXAMINATION

20 BY MR. ABUSAFT

21 Q The sample you took was from the back lower right part
22 of the shirt, is that correct?

23 A That's correct.

24 Q Okay. And from your testing there's no way to know
25 how that blood got on the shirt?

Sara Goodman
Direct examination by Mr. Barnette

1 A That is correct.

2 Q That blood could have got on from touching someone?

3 A It is a possibility.

4 Q Blood could also have got on there from sitting in a
5 seat where there had previously been blood.

6 A That could be possible. I don't know the
7 circumstances of the blood being on the shirt.

8 MR. ABUSAFT: I have no more questions of this
9 witness.

10 MR. BARNETTE: Your Honor, I have no more questions.
11 I'd ask that she be excused.

12 THE COURT: You may step down, ma'am.

13 (Whereupon, the witness was excused.)

14 MR. BARNETTE: Your Honor, I'd like to call Sara
15 Goodman to the stand please.

16 SARA GOODMAN, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. BARNETTE

19 Q If you would, ma'am, please state your full name for
20 the record.

21 A My name is Sara Goodman, G-O-O-D-M-A-N.

22 Q And where do you work at, ma'am?

23 A I work at the South Carolina Law Enforcement Division
24 in the D.N.A. casework department.

25 Q And what kind of work do you do there, ma'am?

Sara Goodman
Direct examination by Mr. Barnette

1 A I do D.N.A. analysis.

2 Q And how long have you been with SLED, ma'am?

3 A I've been there a little over three years.

4 Q What kind of training did you receive in D.N.A.
5 analysis?

6 A I received a bachelor of science and biology from
7 Erskine College and a master's of science in forensic
8 science from Arcadia University, which is in Pennsylvania.

9 Then upon employment at SLED I went through a training
10 program with another court qualified analyst for a little
11 over a year, which included classroom and laboratory
12 instruction. And then I successfully passed a series of
13 competency tests to become certified in D.N.A. analysis.

14 Q And how many samples have you dealt with in D.N.A.,
15 ma'am?

16 A Probably close to a thousand.

17 Q And how many times have you been qualified in court as
18 a D.N.A. analysis?

19 A Twice.

20 Q And that's in state court?

21 A Yes, both times.

22 MR. BARNETTE: Your Honor, I'd like to move her as an
23 expert in D.N.A. analysis at this time.

24 MR. ABUSAFT: Without objection.

25 THE COURT: She is so qualified.

Sara Goodman
Direct examination by Mr. Barnette

1 Q Let me ask you this question, ma'am. Let me show you
2 State's Exhibit 76. Is that a copy of the report, the
3 analysis that you did on this case, ma'am?

4 A Yes, it is.

5 MR. BARNETTE: Your Honor, I'd like to move State's
6 Exhibit 76 into evidence at this time.

7 THE COURT: Without objection?

8 MR. ABUSAFT: Without objection, Your Honor.

9 THE COURT: It's admitted.

10 (SLED D.N.A. analysis report marked state's Exhibit No.
11 76.)

12 MR. BARNETTE: May I publish it to the jury, Your
13 Honor?

14 THE COURT: You may.

15 Q Let me show you, ma'am. These have already been
16 entered into evidence. You may step down if you could.

17 (Whereupon, the witness left the stand.)

18 Q In this case you received State's Exhibit 9 and
19 State's Exhibit 6, which I believe matched up to your SLED
20 numbers. Was these the two buccal swabs, No. 6 being
21 Mr. Brewton's, which is the defendant's, and then the
22 victim's standard in this case? Look at them.

23 A Yes. Those are correct.

24 Q And then you received -- there was a t-shirt, I
25 believe, that was sent to SLED. And that was item four.

Sara Goodman
Direct examination by Mr. Barnette

1 That was the analysis from there. And that was actually
2 the t-shirt that's listed on the back here that came from
3 the defendant.

4 A I never -- I did not receive the t-shirt, but I
5 received a cutting from the t-shirt.

6 Q So you received a cutting once it was processed, is
7 that right, ma'am?

8 A Correct.

9 Q And this was the cutting that you received, 4.1.

10 A Correct.

11 Q And did you do a D.N.A. analysis on that?

12 A Yes, I did.

13 Q And once you got the D.N.A. analysis from the shirt
14 did you make a comparison to the two other samples you had,
15 the two known standards you had?

16 A I did.

17 Q And what did you find out, ma'am?

18 A The D.N.A. profile from the cutting from the shirt
19 matches the D.N.A. profile of Natalie Niemitalo, and the
20 probability of randomly selecting an unrelated individual
21 having a D.N.A. profile matching this item is approximately
22 one in 149 octillion.

23 Q How many zeros is that?

24 A That is nine sets of zeroes, so 27 zeroes followed by
25 the thousand.

Sara Goodman
Cross-examination by Mr. Abusaft

1 Q And how many people in the world today?

2 A There's 7 billion people in the world today. So
3 that's more than the world population.

4 Q How many times more than the world population?

5 A About sextillion times the world population.

6 Q So it's --

7 A Which is six sets of zeros.

8 Q So it's obviously, it's a lot larger than the people in
9 the world today.

10 A Correct.

11 Q So is this a match? This sample came from the victim
12 in this case, Natalie in this case?

13 A Yes. It did.

14 Q If you would, please have a seat.

15 (Whereupon, the witness returned to the stand.)

16 Q If you would, ma'am, please answer any questions the
17 defense may have for you.

18 A Sure.

19 CROSS-EXAMINATION

20 BY MR. ABUSAFT

21 Q Your test didn't say anything about how the blood
22 sample you got off -- the blood -- this blood sample got on
23 the back of this t-shirt.

24 A No. It did not.

25 Q And you, obviously, have no knowledge about the

Sara Goodman
Cross-examination by Mr. Abusaft

1 circumstances surrounding any firearms going off as
2 relating to this crime.

3 A No. I do not.

4 Q Relating to this incident. Excuse me.

5 MR. ABUSAFT: I have no more questions for this
6 witness.

7 THE COURT: You may step down.

8 MR. BARNETTE: We'd ask for the witness to be excused,
9 Your Honor.

10 THE COURT: She may be.

11 (Whereupon, the witness was excused.)

12 MR. BARNETTE: May we approach for a second, Your
13 Honor?

14 THE COURT: Sure.

15 (Bench conference held off the record in the presence
16 of the jury but out of the hearing of the jury.)

17 THE COURT: All right. Ladies and gentlemen, we've
18 got some witness issues. There are some witnesses, at
19 least one, that's in another county, had been subpoenaed
20 and testifying in another county, so can't be here until
21 tomorrow.

22 We also have an additional witness that could not be
23 here until tomorrow anyway based upon his professional
24 schedule.

25 So that's going to conclude the evidence for today.

1 We will resume in the morning at 9:30. So keep in mind the
2 caution I've previously given you. No discussions, no
3 media exposure, no research, no investigation of any type.

4 Have a good afternoon. Please report to your jury
5 room at 9:30 in the morning -- 9:30 in the morning.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: Court is in recess until 9:30 in the
9 morning.

10 END OF PROCEEDINGS AUGUST 21, 2018

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Chad Smith
Direct examination by Mr. Barnette

1 (Proceedings August 22, 2018)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Do we have any matters to address prior to
5 the jury being brought in?

6 MR. BARNETTE: None from the state, Your Honor.

7 MR. ABUSAFT: None from the defense, Your Honor.

8 THE COURT: Okay. Bring them in, please.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Good morning, ladies and gentlemen.

12 As you know, when we recessed yesterday the state was
13 still in the midst of their presentation of evidence. So
14 we'll continue with that presentation this morning.

15 solicitor.

16 MR. BARNETTE: Thank you, Your Honor. I would like to
17 call Chad Smith to the stand please.

18 CHAD SMITH, having been first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. BARNETTE

21 Q If you would, state your full name for the record,
22 please, sir.

23 A Chad Smith.

24 Q And where do you work at, sir?

25 A I work at the South Carolina Law Enforcement Division,

Chad Smith
Direct examination by Mr. Barnette

1 which is commonly known as SLED. Specifically, I work in
2 the firearms department at SLED's forensic services
3 laboratory in Columbia.

4 Q How many years have you been there, sir?

5 A It'll be ten years in November.

6 Q And you're a firearm examiner. Is that bullets, guns
7 and that sort of thing that you look at?

8 A Yes, sir.

9 Q And what kind of education have you received
10 concerning that, sir?

11 A I attended Clemson University where I earned a
12 bachelor of science degree in biological sciences.

13 Then when I came on board at SLED I began my training
14 as a firearm and toolmark examiner. This training program
15 lasts between three to five years. It is supervised by the
16 court-qualified examiners of the firearms department. It
17 involves extensive reading and studying, through multiple
18 examinations and practical tests given during this period.
19 I attended various seminars and classes.

20 Later in my training I was able to help the other
21 examiners prepare their own casework. At the end of the
22 training period I received my comprehensive multipart
23 examination, which I successfully passed. And then I began
24 to receive my own casework.

25 Q How many cases have you worked on, sir?

Chad Smith
Direct examination by Mr. Barnette

1 A Several hundred.

2 Q And how many times have you been qualified as a
3 firearms examiner in court?

4 A Forty-six times.

5 Q And that's been state court, is that right, sir?

6 A Yes, sir.

7 MR. BARNETTE: Your Honor, at this time I'd like to
8 move him as an expert in firearm examination.

9 MR. ABUSAFT: An expert in firearm examination, Your
10 Honor?

11 THE COURT: Yes, sir.

12 MR. BARNETTE: Or analysis.

13 MR. ABUSAFT: May we approach, Your Honor?

14 THE COURT: Okay.

15 (Bench conference held off the record in the presence
16 of the jury but out of the hearing of the jury.)

17 MR. ABUSAFT: Without objection, Your Honor.

18 THE COURT: All right. He is so qualified.

19 MR. BARNETTE: Yes, sir.

20 Q Did you receive some items of evidence in this case?

21 A Yes, sir, I did.

22 Q Let me let you look at these items that I believe you
23 received. Showing you State's Exhibit 7. Did you receive
24 that item, sir?

25 A Yes, sir. This is the firearm I received.

Chad Smith
Direct examination by Mr. Barnette

1 Q And did you receive a fired shell casing or cartridge
2 in this case? That's State's Exhibit 8.

3 A Yes, sir.

4 Q And did you receive a fired bullet in this case?

5 A Yes, sir.

6 Q And that's State's Exhibit No. 2. And did you do your
7 analysis on that, sir?

8 A I did.

9 Q And did you complete a report concerning that
10 analysis?

11 A Yes, sir, I did.

12 Q Let me show you what's been marked as State's
13 Exhibit 72 for I.D. at this time. Is that a copy of your
14 report, sir?

15 A Yes, sir.

16 MR. BARNETTE: Your Honor, I'd like to move this into
17 evidence at this time.

18 MR. ABUSAFT: Without objection.

19 THE COURT: It's admitted.

20 (SLED Firearm Report marked State's Exhibit No. 72.)

21 MR. BARNETTE: Your Honor, can we publish all four
22 items to the jury at this time?

23 THE COURT: You may.

24 Q Sir, if you would, come and bring those items with
25 you, if you would, the three items that you've got there.

Chad Smith
Direct examination by Mr. Barnette

1 And just bring them here. And you can set them here, and
2 then I want you to explain what these items are.

3 THE COURT: Let me remind the witness that -- of
4 course the jury has to hear what you have to say, but the
5 court reporter is behind you. So she's got to hear it too.

6 THE WITNESS: Yes, sir.

7 THE COURT: There is a microphone hanging from the
8 ceiling in front of that jury box. And if you'll stay
9 close to that and project your voice towards it that should
10 resolve any issue.

11 THE WITNESS: Okay.

12 Q If you would, sir, start with State's Exhibit 7. If
13 you would, describe what that weapon is. And if you would,
14 tell the jury about it.

15 A Ladies and gentlemen, I'll just remind you this
16 firearm is safe to handle. The wire --

17 Q Need you to talk a little bit louder.

18 THE COURT: Let's -- I think -- can you move that
19 machine?

20 MR. BARNETTE: Yes, sir. I can.

21 THE COURT: And I think you need to stand in that
22 position. And be sure you don't have your back to the
23 jurors on the end, but allow the court reporter to see your
24 profile at least.

25 A This firearm is --

Chad Smith
Direct examination by Mr. Barnette

1 MR. ABUSAFT: Your Honor --

2 A It has a wire piece that's going --

3 MR. ABUSAFT: Excuse me, Your Honor.

4 THE COURT: You can come over here.

5 A It has a wire safety lock going through the barrel, so
6 it's safe to handle. No cartridge -- a firearm of this
7 type --

8 THE COURT: Excuse me just a minute. You're going to
9 have to speak up a little louder there.

10 A This is the firearm that I received for examination.
11 It is a Kahr, K-A-H-R, is the manufacturer. The model is a
12 CM9. It is a 9mm Luger caliber. The serial number is
13 IQ0207. It is a semiautomatic pistol which requires a
14 magazine which I also received.

15 The cartridges go in the magazine. The magazine is
16 inserted into the pistol, the handle portion here. This is
17 the magwell area which receive the magazine. Magazine is
18 inserted. The slide is retracted and let go. There's a
19 spring in here that has spring tension on it.

20 What happens is the forward motion of this slide picks
21 up a cartridge from the magazine, inserts it into the
22 chamber and it is ready to fire at that time. So you pull
23 the trigger. It pulls back on the firing pin and releases
24 the firing pin.

25 There's also a safety inside of the slide which is a

Chad Smith
Direct examination by Mr. Barnette

1 firing pin lock which requires the pull of the trigger to
2 actually deactivate that safety.

3 Q If I can ask you, sir, how many pounds of pressure
4 does it take for that to pull that trigger?

5 A I measured the trigger pull to be five and a half
6 pounds. The way I measured it was at a slight angle. It
7 is a pivoting trigger. So if you place your finger towards
8 the end of the trigger you would measure that to where your
9 finger would normally be. So the trigger pull is measured
10 at a slide angle.

11 How we do that is we have a unit that's an L-shaped
12 bar. And what we can do is put the L protrusion onto the
13 trigger and we stack weights up on the trigger or the unit
14 itself. And then we just measure how many weight -- how
15 many pounds that it takes to fire the firearm.

16 Q And in relationship, tell the jury the five and a half
17 pounds. Relate that to something they would understand if
18 they could.

19 A A gallon of milk weighs about eight pounds. So it
20 would take approximately a little more than half of a
21 gallon of milk to equate the amount of weight on your
22 finger that would equal to -- to fire this firearm.

23 Q And you said there's an internal safety that has to --
24 before the trigger pulls that takes that safety away.

25 A Yes, sir. It is inside the slide here, and it's a

Chad Smith
Direct examination by Mr. Barnette

1 little plunger that when you pull the trigger it pushes up
2 on that plunger and it allows the firing pin to pass by the
3 breech face area here and fire the firearm.

4 Q And there's also a guard around the trigger too also.

5 A Yes, sir.

6 MR. ABUSAFT: Objection, Your Honor. Leading.

7 MR. BARNETTE: I'll rephrase the question.

8 THE COURT: Okay.

9 Q If you would, describe the gun around the trigger if
10 you would.

11 A This portion here is called a trigger guard. It is a
12 device or a portion of the frame that basically protects
13 that trigger from being caught on any item or to be
14 unintentionally discharged.

15 State's Exhibit 2 is the fired bullet that I received.
16 I was able to determine that it was a 9mm, consistent with
17 being a 9mm, caliber bullet.

18 State's Exhibit 8 is a fired 9mm Luger caliber
19 cartridge case.

20 So what I did during my examinations was test fire
21 this firearm, make sure it was in proper working order.
22 And then I collected those test fires and was able to
23 compare the test fires with each other and then compare
24 those test fires with the fired bullet and with the fired
25 cartridge case.

Chad Smith
Direct examination by Mr. Barnette

1 And how we do that is we have a piece of equipment
2 called a comparison microscope, which is basically two
3 microscopes that's connected by an optical bridge system.
4 So that if they went through this optical bridge, then we
5 can compare two samples simultaneously.

6 we're looking for markings that we believe are
7 individual in nature that were imparted from the firearm
8 onto the cartridge case and the bullet. So we're looking
9 for the markings that are on the cartridge case and bullet
10 we're test firing, and then we're looking at the markings
11 on the evidence bullet, as well as on the evidence
12 cartridge case.

13 We can compare those and then determine if those are
14 now matching individual markings to determine if a firearm
15 fired the evidence bullet and cartridge case.

16 Q Once you did your analysis, what did you find out,
17 sir?

18 A I was able to determine that the State's Exhibit 7
19 pistol did fire State's Exhibit 2 fired bullet, as well as
20 State's Exhibit 8 cartridge case.

21 Q So there's no question that bullet was fired by that
22 gun and of course that bullet was from that shell casing.

23 A Yes, sir.

24 Q Thank you, sir.

25 If you would, please, take that with you and have a

Chad Smith
Direct examination by Mr. Barnette

1 seat.

2 (Whereupon, the witness returned to the stand.)

3 Q And you put your findings in your Exhibit 72, your
4 actual report, is that right, sir?

5 A Correct.

6 Q I believe we can read on it there. In your report,
7 sir, if you would, just state what item two, item seven and
8 item 7.2 and 2.1, what you did, sir.

9 A Item two, again, is the fired bullet that I received.
10 Through my examinations, again, I was able to determine
11 that was most consistent with a bullet loaded into a 9mm
12 Luger caliber cartridge.

13 The bullet was microscopically compared with the test
14 fired bullets from the item seven pistol, and from those
15 comparisons I found enough matching individual
16 characteristics to determine that the item two bullet was
17 fired by the item seven pistol.

18 Item 2.1, which is inside this little container here,
19 this little box, is a swab of some material that I found on
20 the bullet, reddish-brown in color. But no analysis was
21 performed on that. That's basically up to the submitting
22 agency to submit back to SLED if they want further testing
23 done on that material.

24 Item seven, again, is the Kahr pistol, 9mm Luger
25 caliber. That pistol was, again, examined, found to be in

Chad Smith
Cross-examination by Mr. Abusoft

1 working order and test fired.

2 Item 7.2 are the test specimens that I created through
3 firing the firearm. That's what I use to compare to the
4 evidence bullet and evidence cartridge case.

5 And item eight is the fired 9mm Luger caliber
6 cartridge case that I received for examination. I compared
7 that with the test fires from item seven pistol. And,
8 again, through my comparisons I was able to determine that
9 that cartridge case was fired by the item seven pistol.

10 Q Thank you, sir.

11 MR. BARNETTE: Give me one second, Your Honor.

12 Q Please answer any questions the defense may have for
13 you.

14 A Yes, sir.

15 Q Thank you.

16 CROSS-EXAMINATION

17 BY MR. ABUSOFT

18 Q A moment ago you pulled back the slide and you said
19 that that was the way that the bullets get into the
20 chamber.

21 A Correct.

22 Q Right. But that doesn't have to be done right before
23 the gun discharges, correct?

24 A No, sir. It can be done at any time.

25 Q So if I do -- if this was a loaded weapon and this was

Chad Smith
Cross-examination by Mr. Abusaft

1 my --

2 THE COURT: Mr. Abusaft, don't point that gun at
3 anyone, even though it may not be loaded -- and it's not
4 loaded because it's been checked -- but it's still not to
5 be pointed at any person.

6 MR. ABUSAFT: Yes, Your Honor. I'll make sure not to
7 do that.

8 THE COURT: Okay.

9 Q But if I was to do that an hour later and this was a
10 loaded weapon -- an hour later that bullet would still be
11 in the chamber.

12 A Right. It could be fired at any time.

13 Q Okay. I just want to make sure of that.

14 Now, let me make sure I understood right. You said
15 that about a half a gallon of milk was the amount of
16 pressure it would take to pull this trigger.

17 A Yes. A gallon of milk weighs about eight pounds. And
18 so if you figure a half a gallon would be around four
19 pounds, the trigger pull was measured to be five and a half
20 pounds. So a little more than the weight of a half a
21 gallon on your finger would be what the pressure would be
22 to fire that weapon.

23 Q Okay. And you talked about this -- this as protection
24 for the trigger.

25 A Right. The trigger guard.

Chad Smith
Cross-examination by Mr. Abusaft

1 Q From things catching it.

2 A Yes, sir.

3 Q But you're not saying that this gun can't be fired
4 accidentally.

5 A If something were to -- to catch the trigger and,
6 basically, the trigger guard didn't catch the whatever it
7 was trying to get into the trigger, it could be fired if it
8 was snagged on something.

9 Q This is just a protective measure --

10 A Yes.

11 Q -- made by the manufacturer.

12 A Correct.

13 Q And could you -- I just want to -- I believe you told
14 the solicitor everything that you did. But if you didn't,
15 can you tell me an exhaustive -- exhaustively what you did
16 to this gun in the course of testing so that I make sure
17 that I understand all of it?

18 A Well, I would examine it to make sure there's no
19 obvious signs or defects in the firearm, make sure that the
20 firearm was in proper working order with ammunition.

21 So I would use unfired cartridges with this magazine,
22 insert it into the firearm, pull the slide back. And then
23 the cartridge would be fed into the chamber and ready for
24 firing. So that's how I test fired it. So I test fired it
25 several times and found no issues with the firearm.

Chad Smith
Cross-examination by Mr. Abusaft

1 Q Did you -- did you take the gun completely apart?

2 A Completely apart?

3 Q Yes.

4 A No, sir.

5 Q Okay. You test fired it to make sure it could fire
6 properly.

7 A Yes, sir.

8 Q I just want to know. Did you -- did you do any
9 research on if there's any potential recalls or anything on
10 this gun?

11 A To my knowledge there are no recalls on this firearm.

12 Q Well, I asked did you actually research that issue.

13 A No, sir.

14 Q Okay. Besides firing this firearm, did you go inside?
15 You spoke about a safety. Did you deconstruct it and
16 actually take a look at those parts of this, of the
17 mechanical interior of the firearm?

18 A The -- the actual firing pin block safety is right
19 here. And how we can check that is by depressing it and
20 pushing on the firing pin to see if the firing pin will
21 actually protrude past that firing pin safety. And I did
22 check to see if that firing pin block was in proper order,
23 and it was.

24 Q And when you say -- and when you say safety on the
25 inside, you do mean something different than this. This is

Chad Smith
Cross-examination by Mr. Abusoft

1 a safety also, is it not?

2 A No, sir. That's the magazine release.

3 Q Okay. So there's no -- there's no button or pin or
4 anything like on some firearms that you push that goes red
5 or something like that on this firearm.

6 A No, sir. It doesn't have any kind of external safety.
7 The firing pin block is an internal passive safety.

8 Q So this isn't one of the kind of firearms where to
9 shoot it you -- like you said, it has to have been
10 previously cocked. But then also you have -- you have to
11 do something with your hand on the exterior for the gun to
12 be able to fire.

13 A No, sir.

14 Q So when you say safety, what you mean is that at some
15 point as you're passing through this half of gallon worth
16 of milk -- milk-worth-of-pressure the safety will
17 disengage.

18 A Right. That firing pin block will disengage as the
19 trigger is pressed fully to the rear.

20 Q And I don't want to belabor a point, but just for lay
21 people, because I'm no firearms experts. So when I hear
22 you when you say safety, I think -- I think of the button
23 that goes red when it's ready to fire. This is just pull
24 the trigger and the gun goes off.

25 A Right. It's an internal safety to prevent forward

Chad Smith
Redirect examination by Mr. Barnette

1 motion of that firing pin unless the trigger is being
2 pulled.

3 Q And in the same way that you said a moment ago if
4 something -- if something were to happen, snag, catch the
5 trigger -- again, there's nothing else to stop the gun from
6 firing.

7 A Correct. If something were able to somehow get into
8 the area here where the trigger is and actually catch the
9 trigger and enough force is being generated against the
10 trigger, then it would fire.

11 Q Thank you.

12 MR. ABUSAFT: No further questions.

13 MR. BARNETTE: Just a couple on redirect, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. BARNETTE

16 Q I just want to make sure that it's clear.

17 You said five and a half pounds of pressure, is that
18 right?

19 A Yes, sir. That's what I measured it.

20 Q A half of milk only weighs four pounds, right?

21 A Correct.

22 Q So it's more than half a gallon of milk.

23 A Yes, sir.

24 MR. ABUSAFT: Leading, Your Honor.

25 THE COURT: Overruled.

Chad Smith
Redirect examination by Mr. Barnette

1 Q Just want to make sure that's clear for the jury from
2 that standpoint. I think they heard it before.

3 The other thing too, talking about catching or
4 whatever, that's what the guard is there for. Isn't it?

5 MR. ABUSAFT: Leading, Your Honor.

6 Q There is a guard there for that.

7 A Yes. The trigger --

8 MR. ABUSAFT: Leading, Your Honor.

9 THE COURT: Well --

10 Q Can you explain why the guard is there for, sir,
11 again?

12 A The trigger guard is here to do just that, to guard
13 that trigger from any kind of unintentional pressure
14 against the trigger. But I suppose if it were possible
15 something that could enter into the trigger guard, being
16 your finger or something else, and enough -- and if the
17 firearm was pushed against that object and enough
18 pressure -- again, I measure it to be about five and a half
19 pounds -- exerted on that trigger, then it could fire.

20 The trigger guard is there to prevent any sort of --
21 any kind of accidental entry into the trigger, but, you
22 know, it could be with a -- microphone could enter there.
23 If some sort of, you know, protrusion were entered into
24 the -- the trigger guard and then it possibly could fire.
25 But, again, the trigger guard is there to prevent that.

Chad Smith
Recross-examination by Mr. Abusaft

1 Q And I think you also -- he asked you the question
2 about the internal safety or whatever.

3 A Yes, sir.

4 Q That's also there because that -- to protect from
5 that.

6 A The trigger -- again, the firing pin block, which is
7 right here in the slide, is to prevent any sort of forward
8 motion of the firing pin unless the trigger is fully
9 depressed, and then that firing pin block is deactivated so
10 that the firing pin can pass by.

11 Q Thank you, sir. Please answer any questions the
12 defense may have.

13 A Yes, sir.

14 RECCROSS-EXAMINATION

15 BY MR. ABUSAFT

16 Q I don't want to want belabor the point, but it just
17 confuses me when you talk about the safety. Once five and
18 a half pounds of pressure is exerted the safety will not
19 stop this gun from firing.

20 A Right. Once the trigger is fully depressed that
21 firing pin block is disengaged. And so when the trigger is
22 fully depressed to the rear and the firing pin block is
23 disengaged and the firing pin is released, then it will
24 fire.

25 Q All right. So once the milk pressure is applied that

Dr. John David Wren
Direct examination by Ms. Wells

1 will not be an independent -- independently stop the gun
2 from firing.

3 A Correct. Once that pressure is fully depressing the
4 trigger.

5 Q Thank you.

6 MR. ABUSAFT: No further questions.

7 MR. BARNETTE: No further questions, Your Honor. We'd
8 ask the witness be excused.

9 THE COURT: You may step down. You may also be
10 excused. Thank you.

11 THE WITNESS: Thank you, Your Honor.

12 (Whereupon, the witness was excused.)

13 MR. BARNETTE: May I pick up the exhibits, Your Honor,
14 and put them back on the table?

15 (Pause.)

16 MR. BARNETTE: Thank you, Your Honor.

17 MS. WELLS: May it please the Court.

18 THE COURT: Yes, ma'am.

19 MS. WELLS: Your Honor, the state would then call
20 Dr. David Wren to the stand, please.

21 DR. JOHN DAVID WREN, having
22 been first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MS. WELLS

24 Q Dr. Wren, where are you employed?

25 A I work for Carolinas Pathology Group. I am stationed

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1 full time at Spartanburg Regional Medical Center. I'm
2 the -- a pathologist. And I actually basically run the
3 clinical laboratory and do autopsies for the coroner and
4 for the hospital.

5 Q And can you tell -- and how long have you been a
6 pathologist?

7 A I started my pathology training February the 1st,
8 1979. I did a combined clinical and anatomic --

9 MR. ABUSAFT: Your Honor, we stipulate to his
10 qualification as a forensic pathologist.

11 THE COURT: Okay.

12 MS. WELLS: Your Honor, at this time though we would
13 offer -- offer Dr. Wren as an expert in forensic pathology.

14 THE COURT: And he is so qualified.

15 MS. WELLS: Thank you, Your Honor.

16 Q And, Dr. Wren, in carrying out your duties as a
17 forensic pathologist with Spartanburg Regional did you have
18 an opportunity to examine the victim in this case, Natalie
19 Niemitalo?

20 A Yes, I did. I did a complete autopsy with external
21 examination on Natalie Niemitalo on September the 25th of
22 2017. I began that autopsy at approximately 8:35 a.m.

23 Q And can you tell these members of the jury, generally
24 speaking, how you perform autopsies? Is there a usual
25 manner in which you perform that work?

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1 A Well, routinely an autopsy on a medical-legal case,
2 encompassing getting some history so you'll have at least
3 some direction as to where you're going. I record that.
4 It's not absolute because it's done at the time from what
5 people know. It's just to refresh my memory of what I was
6 told. It's paraphrased, what I am told.

7 Then I -- then the -- if there's clothing or any other
8 external items on the body, that is examined, and even for
9 trace evidence, and that entered under the description of
10 clothing.

11 Then an external description of the body itself after
12 removal of all of those items has been done will be
13 performed and then a complete internal examination with
14 examination of the central nervous system, most of the time
15 just the head, but it can extend into the spinal cord if
16 it's necessary, is done with examination of all of the
17 organs.

18 And at that time the gross autopsy protocol is
19 finished. All of that's recorded. And then any tissues
20 that are taken or examined or any that's sent to various
21 other places that exam -- for instance, SLED in the case of
22 blood or bullet, if it were recovered, or any other
23 internal evidence is recorded, and those results are
24 usually waited upon for the results.

25 Usually in homicides we don't wait until the

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1 toxicology is finished because one can tell what caused the
2 death, even unless there's some kind of extenuating
3 circumstances that come from the toxicology. If there were
4 that is recorded as a supplemental report and the autopsy
5 is finished.

6 Q And you did -- you carried out this autopsy in that
7 manner?

8 A Yes, I did.

9 Q I want to direct you -- and you -- and you created a
10 report and you're reviewing that report as you testify here
11 today, is that correct?

12 A Yes, ma'am.

13 Q I want to direct you first to the description of
14 clothing in this case. Can you tell the members of the
15 jury about that?

16 A The clothing?

17 Q Yes, sir, Your Honor.

18 A When after I -- when I start -- when I looked at the
19 body there -- in cases where there are any deaths that are
20 investigated by the coroner's office the -- they are
21 instructed to leave the body as it was found and in as
22 similar condition as they have without removing anything
23 unless there are extenuating circumstances.

24 In this case the body was brought down from the
25 operating room from resuscitation attempts. She only had

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1 on a bloody green and white striped hospital gown, and it
2 had aqua colored geometric designs on the garment. It's a
3 standard hospital gown.

4 She had an oral tracheal tube that had been placed in
5 the left side of the mouth. She had a nasal cannula in
6 place in the nostril.

7 She had I.V.s in the left shoulder and right proximal
8 tibia, which is the shinbone.

9 She had E.K.G. patches present on the upper outer arms
10 bilaterally and abdomen bilaterally.

11 She had a blood pressure cup on the left upper arm.
12 She had I.V.s themselves.

13 The others were interosseous catheters where you
14 actually put the needle into the bone.

15 But she also had I.V.s in the left forearm on -- on
16 the volar surface, which is the front of the arm, and the
17 right radial wrist area in the area where a pulse is taken.

18 And she had an ace bandage around the proximal hand
19 and distal forearm.

20 And she had name tags present on the left ankle and
21 right wrist.

22 That's the way I saw the body.

23 Q And you testified previously that after you observed
24 the decedent in the clothing that they brought to you
25 from -- brought to you from the coroner you then remove all

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1 of those items and you conduct an external description of
2 the body, is that correct?

3 A That's correct.

4 Q And can you tell the members of the jury about that?

5 A Well, she was a normally developed thin, white female.
6 She looked a little bit younger than her stated age of 24.
7 She measured 5'3.5" inches in length, which may or may not
8 be exactly the standing height, but it is the length of the
9 body as measured. And she only weighed 103 pounds.

10 She had some rigor mortis. She had some insect bite
11 marks over the legs and body.

12 I described the eyes. She had what I thought was a
13 possible abrasion of the left bridge of the nose. It
14 looked like it might have been older than -- than acutely
15 inflicted. But it was only four and a half millimeters in
16 length, which is -- there's 25.4 millimeters in an inch.
17 So this was one-sixth of -- about one-sixth of an inch
18 long. So it was very small.

19 She had some what I call reddish-brown lesions along
20 the right side of the nose on the alar which is the outer
21 curve of the nose. I thought they were not inflicted
22 around the time of her death. I thought they were chronic
23 lesions.

24 And she had -- her right lower lip was slightly
25 bulging and distorted and had some hemorrhage there. And

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1 there were some chronic changes there too, more than
2 surrounding the time of death.

3 And then as I looked further there's some extraneous
4 things I saw, which were not important.

5 And she had a thoracotomy incision that extended from
6 the side of her breastplate all the way to her back axilla
7 on the left side.

8 And, unfortunately, most surgeons, and sometimes the
9 residents, make a mistake. For some reason people often
10 try to cut through the -- if there's a defect in the skin,
11 they'll cut through that in the interest of getting it done
12 quickly or getting into the chest plates, because they
13 thought, evidently, that she had significant internal
14 bleeding in her chest. And so I imagine that her heart had
15 probably -- was not doing well. So they wanted to massage
16 it. So they opened up her chest with a thoracotomy
17 incision through the wound.

18 Now, I could -- as I called the doctor, the residents,
19 and talked to them, I told them not to do that any more,
20 and I told them that if it was necessary when they did
21 things like that they'd have to come to court and testify
22 that they had done that. He didn't like that very much,
23 but I told him anyway.

24 Then she also had a thoracotomy incision on her right
25 side, which is usually maybe several inches long where they

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1 put a chest tube in. If you have a pneumothorax, which is
2 air in the chest cavity, it will evacuate that air to a
3 reservoir that's sealed against the outside air to evacuate
4 that. Or if it's a hemothorax, which means there's blood
5 there, it'll evacuate that so that lung can expand. Didn't
6 have a tube in there, so evidently when they were doing
7 this they didn't find any blood or air in the right pleural
8 cavity, so they didn't do any further there.

9 She had that gunshot wound, was in the left lateral
10 chest in the midaxillary line. Now, the axilla --
11 A-X-I-L-L-A -- is the medical term for the armpit.

12 If you draw three imaginary lines vertically from the
13 anterior surface of the armpit and the posterior surface,
14 those are called the -- the anterior axillary line and
15 posterior axillary line.

16 In this case the one from the middle is called the
17 midaxillary line, which is just a sight measurement really.
18 And that gunshot wound was there. It was in the
19 midaxillary line. It appeared 17 inches from the top of
20 the head and laterally on the body. It was -- I forget my
21 numbers -- five and a half inches to the left of her
22 midline, which is the imaginary line in the mid chest
23 vertically from -- divides a body in half.

24 Now, that wound measured 31 hundredths of an inch in
25 diameter, which is three-tenths of an inch in diameter.

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1 Now, when you measure wounds on a body it -- the
2 actual wound is when -- when the skin is relaxed. So,
3 generally speaking, if you measure something one inch in
4 diameter -- just for easier visualization, if you measure
5 something one inch in diameter because if the -- if the
6 skin had been relaxed when that happened, it can be larger.
7 If it was stretched when it happened, it can be smaller as
8 the body relaxes.

9 So, generally speaking, it can expand or contract from
10 the actual hole itself, or laceration or even incised
11 wound, about 25 percent.

12 So if you measure something one inch in diameter, it
13 could be 1.25 inches if it were one inch. It would be 1.25
14 inches when you -- when -- when that wound was inflicted.

15 On the other hand, it could be 75 hundredths of an
16 inch in diameter. It can vary by a quarter of an inch, one
17 inch. In this case it was 31 hundredths. Yeah. 31
18 hundredths or three-tenths.

19 So 25 percent of three-tenths is .075, which is .375
20 inches in diameter, will be the maximum. And .3 minus .075
21 is .225 -- 22 and a five -- 22 and half one hundredths of
22 an inch.

23 So when the wound was inflicted the skin could have
24 been in that -- that range of conditions from .225 -- 22
25 and five -- half one-hundredths -- up to 37 and a half

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1 one-hundredths. That's all you can say about it.

2 You don't know whether -- it can give you an
3 indication of whether the skin was stretched if you knew
4 what inflicted it or whether it was loose whether you
5 knew -- whether it was loose when it happened.

6 In this case I could speculate based on -- if I knew
7 what the size object inflicted it I could tell you whether
8 the skin was stretched or relaxed when it happened.

9 Now, in the back, in the right lower back, 26 and a
10 half inches -- and let me tell you about the wound first.
11 The wound had an abrasion border. An abrasion border is
12 where the skin is not directly flat or flat when it's
13 inflicted.

14 So if the abrasion border was, say, at 6:00 o'clock --
15 looking at a clock -- as if the skin were a clock -- if it
16 had an abrasion border at 6:00 o'clock, then you know the
17 bullet was going in or the object was going in at an angle
18 to 6:00 o'clock.

19 If it's at 12:00 o'clock, you know it was going into
20 the skin there. And if it was exactly round, then you
21 would know that it went straight into the skin.

22 So she had an abrasion border that was from
23 3:00 o'clock around to 6:00 to 9:00 o'clock. Now, it
24 varied -- but it measured seven one-hundredths of an inch
25 in maximum width.

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Direct examination by Ms. Wells

1 So the bullet in this case -- the wound was inflicted
2 with a bullet going not perpendicular to the skin but going
3 up into the skin with a leading edge at 6:00 o'clock,
4 because it was concentric around there as best I could
5 tell, because the wound was artifactually changed because
6 they had cut through that wound. But I got the resident to
7 come down and we went over it together.

8 Now, in the back 26 and a half inches from the top of
9 the head, which is nine and a half inches below where the
10 entrance wound was and four inches to the right of midline,
11 was an exit wound where it had tissue protruding.

12 Now, you can tell an entrance from an exit in bullet
13 wounds because of the fact that when a bullet goes into the
14 skin, unless it's contact or close contact -- and there are
15 no signs of that -- then the bullet actually bores. It's
16 spinning, so it bores itself into the skin and makes a hole
17 that you can't reapproximate.

18 As it comes out of the skin -- if it does come out --
19 then it tears itself out. It doesn't bore itself out. It
20 tears itself out by raising the skin up and then just
21 splits open. You can put it back together.

22 So she had an exit wound in the back nine and a half
23 inches down from the one that went into her left chest.
24 And it went through the left lower lobe of the lung; it
25 went through the diaphragm; it went through the stomach; it

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1 grazed the pancreas in the abdomen; and it missed the aorta
2 and it missed the inferior vena cava, but on its trajectory
3 out of the body it hit the renal artery as the vein and the
4 artery coming from the right kidney and lacerated those and
5 the person bled internally into her abdomen and into the
6 retroperitoneal tissue, which is the back side of the
7 abdominal cavity. It bled into there as she was bleeding
8 out.

9 She had no other injuries that I could tell except
10 those chronic lesions that were insect bites and that were
11 consistent with insect bites.

12 She had a very slight contusion between the P.I.P.
13 joint and the knuckle of the right little finger. The
14 P.I.P. joint is the proximal interphalangeal joint, is what
15 it stands for.

16 Our fingers have the knuckle and then the P.I.P.
17 joint, which is the one closest to the knuckle, and then
18 the D.I.P. joint, which is a distal interphalangeal joint
19 and then the tip of the finger.

20 So it was right on the back of the little finger of
21 the right hand. You know, it could have been when she
22 fell. It could have been when they were moving her. But
23 it was an abrasion there.

24 And she also had -- let's see. I said there was an
25 approximately five centimeter previously sutured, partially

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1 stretched healed laceration along the anterior medial right
2 mid thigh.

3 So she had a sutured laceration on her thigh. I don't
4 know when it occurred. It was recent because it still the
5 sutures in it. And it was partially stretched. No. I
6 said it was healed. I'm sorry. It was a healed laceration
7 that had -- the skin -- some people when they have a
8 laceration and they stitch it up or if you have surgery and
9 it stitches up, if there's tension on it it'll stretch and
10 make the skin look thinner there. It was slightly
11 stretched, but you could tell it was a sutured one because
12 you can see the suture marks, residually sometimes. So
13 that's what she had.

14 Q And, Dr. Wren, you described previously the injuries
15 that you observed when you conducted your internal
16 examination of Ms. Niemitalo, correct?

17 A Yes, yes. That's part of the internal exam.

18 What we do is we -- a complete autopsy is an
19 examination of all of the internal organs and tissues. I
20 take those out, usually one at a time. But we try to trace
21 paths of wounds, any kind there are.

22 And what else we found, we actually found she had
23 adhesions in both lungs. Right side, I think, was a little
24 bit more than the left if I recall correctly. And she had
25 some peritoneal adhesions too. Those are evidence of prior

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1 surgery or prior infectious processes.

2 For instance, if somebody has pneumonia and it gets
3 out into the pleural cavity, you can get adhesions from
4 that. If you have a little bit of bleeding at one time or
5 another or even inflammation, you can get a reaction to
6 that. And those are called adhesions.

7 Q And you said in this case that you saw that what you
8 previously testified as a through-and-through defect in the
9 stomach and then a grazing defect to the mid pancreas and
10 then a through-and-through defect to the transverse colon.

11 A Yes.

12 Q And then, as you stated, testified to previously, it
13 was -- it actually missed the aorta and the interior [sic]
14 vena cava, but it passed through and lacerated both of the
15 renal vessels of her right kidney, is that correct?

16 A That's correct.

17 Q And that -- and you testified that that was -- that
18 caused significant bleeding?

19 A Yes. It did.

20 Now, I couldn't tell how much was in her chest cavity
21 because it had been evacuated during the resuscitation
22 attempts.

23 She had a little bit left in there, but not very much,
24 after they'd opened the chest to try to see what was going
25 on.

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1 Unfortunately, the anatomy of the body confuses people
2 somewhat, and possibly they might not have seen the exit
3 but they were trying to -- they knew that the wound went
4 into her left chest. So they probably thought that it hit
5 the heart and they would try to do something there. But it
6 didn't. It went through the left lower lobe of the lung,
7 which in cowboy movies people survive those things. But it
8 depends on what it hits really.

9 Q Right. And then later in your report -- and I think
10 you've done this already -- you describe the gunshot wound.
11 But just to be clear...

12 MS. WELLS: May I approach, Your Honor?

13 THE COURT: You may.

14 Q You describe the gunshot wound as coming in -- I'll
15 use myself as an example.

16 A You can.

17 Q Through --

18 A Just hold your arm straight out.

19 Q Okay.

20 A The bottom of the axilla in the middle, if you come
21 straight down that wound was right in that area, say, like,
22 in this area here. It was going down and slightly
23 backward. Going down at 55 degrees, slightly backward. It
24 came out her back approximately here, nine inches below
25 where it went in as lying still.

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1 Now, if she were leaned over like this, when you
2 straighten back up it would have been lower. But if she
3 were this way it still went out. When she lie straight it
4 would have been higher. That's all you can say, is the way
5 it is on the body when you see it.

6 Q And so the projectile -- did you notice any sorts of
7 injuries to her left arm that were consistent with that?

8 A No. There was no injuries to her left arm.

9 Q Okay. What about -- oftentimes you hear -- and people
10 watch, you know, "N.C.I.S." or "C.S.I." I don't know what
11 the new show is. I haven't kept up. But you hear about
12 contact wounds or things like that.

13 Did you make any -- was there anything remarkable that
14 led you to an opinion about whether or not this was a
15 contact wound in this case?

16 A No. Generally speaking, wounds, inflicted wounds,
17 from gunshots are divided into basically four classes if
18 you want to.

19 There's distant gunshot wound, which means that you
20 see no evidence of how far the weapon that discharged may
21 have been from the body. Generally speaking, it depends on
22 the weapon.

23 For instance, if someone is shot with a shotgun,
24 you'll see a pattern if it was close enough, or either soot
25 could be deposited on an object or as the -- if it were

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1 pellets in there, if they come out of the barrel, most
2 people know that they start spreading out concentrically.
3 So you can see whether it was actually intermediate range,
4 which is -- means there's some -- you can see some evidence
5 that it was closer than distant but not contact.

6 Now, there are two types of contact wounds. There's
7 what's called tight contact and what's called loose
8 contact.

9 A tight contact wound is one in which you take a
10 weapon and you stick it up against and put tension on the
11 skin.

12 Now, when that happens soot-powder particles and gas
13 come out of the barrel. And when that happens it goes into
14 the body, and it naturally tries to find a way to escape.
15 So it tears the tissues around the barrel to get back out.
16 But you'll find soot and powder inside most of the time
17 depending on how big -- how big a weapon it is.

18 Then there's loose contact where it's right up against
19 it but doesn't have any tension on it and the gasses can
20 expand around it. So it may tear. It may tear a little
21 bit, not very much like a tight contact one does. And so
22 anywhere between contact and distance is called
23 intermediate.

24 Generally speaking, the smaller the weapon, the
25 smaller the caliber, the less that those gasses and soot

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1 and particles will come out of the barrel and be projected.

2 So if you had a .22 caliber weapon you might see no
3 evidence after three to four inches. With a larger caliber
4 one you might see it up to 12. And with a shotgun
5 sometimes up to close to 18 inches you'll see some evidence
6 that the -- that the pellets were expanding or that the
7 soot hit the skin.

8 In that case you take the weapon that you think it
9 was, inflicted it. And SLED does those things. They'll
10 take it, and they'll take a piece of white paper or
11 cardboard, and they'll go and they'll take the weapon and
12 put it up against there and shoot it, back it up, back it
13 up, back it up. But they're shooting against a flat
14 surface.

15 So they'll see -- the last thing they'll see as it
16 becomes distant -- they won't see -- it's a little bit
17 different with shotguns because those pellets keep
18 expanding. So you'll see them expanding for a long
19 distance as they make their pattern.

20 But with a handgun that shoots a single projectile you
21 can see the soot as it makes a circle or you can see the
22 powder. And when it hits the body the soot will just be
23 gray or dark black, whatever color the powder was. As it
24 burned it would be -- it would show that. But if it were
25 powder coming out when it hits the body, and it's burning

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1 powder, it causes little stipples, and that's called
2 tattooing. It actually burns the skin in little dots all
3 over the place. So you'll see that on the body if there
4 was nothing in the way.

5 In this case if a person was dressed you might not see
6 anything because -- particularly if it's dark clothing.
7 But if it's white clothing you can see the soot and you can
8 see the little stipple sometimes, usually not. You just
9 see the soot.

10 But, now, if the body were not straight, perpendicular
11 to the -- to the path of the projectile and it were curved
12 in any direction, then what you do is if you see the soot
13 deposition, you take the smallest dimension rather than the
14 largest, because if, let's say, the bullet went in right
15 here but it was like -- your skin was like this, it went in
16 right there, you'll see a larger pattern here because it
17 has further to go. Around here it'll just be starting to
18 spread. So you can tell how the body was situated if you
19 can find patterns on it. She had no patterns at all.

20 Q There was no patterns at all.

21 A I did not examine the clothing because they cut it all
22 off of her as they were trying to resuscitate her.

23 Q So you weren't able to make a determination because
24 you didn't have the clothing with you or available to you?

25 A No. well, I don't usually -- I let -- if I look at a

Dr. John David Wren
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1 dark piece of clothing I can't tell whether there's
2 something in there. So it'll have to be done under a
3 scanning mic -- microscope or electronic microscope where
4 they can see the metal -- metal particles or the powder.
5 So I don't do that.

6 It's delivered to the law enforcement, and they can do
7 what they want to with it. But in this case it was
8 definitely not contact. I can't tell whether it was
9 intermediate or not, but there was no evidence of
10 intermediate changes to the body itself.

11 Q It was not a contact wound based on your expert
12 opinion.

13 A Pardon?

14 Q Not a contact wound based on your expert opinion.

15 A No. It was not contact, no.

16 Q And, Dr. Wren, you -- when I approached you previously
17 you testified about where the entry went in and you had me
18 hold my arm out to the left, the left arm out. Would the
19 arm have to be --

20 A No. It could have been any -- anywhere. It could
21 have been. But it was not in the path of the bullet.

22 Q So not down because it was actually underneath the
23 arm.

24 A Yeah. It was under the arm. It would not be down.
25 It could be a little bit forward or could be a little bit

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1 backwards, or it could be way backwards or way forward.

2 But it was not straight down by her side.

3 Q Okay. Or up.

4 A It could be up -- it could be up. She could have had
5 a hand up in the air.

6 Q Okay.

7 A But it -- it wasn't down by her side where it would
8 block the bullet, which was in her chest, the lateral
9 chest, lateral back where the back and the chest come
10 together. Depends on what you want to call it. But it's
11 called midaxillary line.

12 And then it went into the chest cavity. So it was
13 relatively low. It was below the rib cage. And I think --
14 I usually tell what -- which it -- let me see here.

15 It went through the top of the sixth rib anterior
16 laterally. The sixth rib is really hard to tell, but you
17 can sort of feel them. The one, number one, is back behind
18 the collarbone. Number two then starts down. But the way
19 the ribs come in, they come in and go down in the body when
20 it's relaxed. But they're raised when you breath in. They
21 raise up like this. But it went through -- through the
22 sixth rib.

23 Q And during your internal examination of Natalie did --
24 was there anything else that was significant to your
25 eventual opinion about the cause of death in this case that

Dr. John David Wren
Direct examination by Ms. Wells

1 was significant to you other than what we talked about
2 previously?

3 A I don't think so.

4 I talked about the hemorrhage. She did have a little
5 area of perivascular hemorrhage along the mid left anterior
6 descending coronary artery, but I thought that was probably
7 from the resuscitation attempts. I couldn't tell what it
8 was because you don't bleed after you die. So I couldn't
9 tell where the blood was coming from. I just didn't see
10 any -- any holes there or anything like that. Could have
11 just been a little area of resuscitation, associated
12 hemorrhage as they were squeezing the heart or moving it
13 around and stuff.

14 Q Once you completed your examination of Natalie were
15 you able to form an opinion about the cause of death in her
16 case?

17 A Yes. Since I did this report without getting the
18 toxicology, I said because she had so much hemorrhage and
19 all that I could see, then I felt like she died as a result
20 of internal hemorrhage secondary to gunshot wound.

21 MS. WELLS: Your Honor, may I have a moment?

22 THE COURT: You may.

23 (Pause.)

24 MS. WELLS: Your Honor, those are all the questions I
25 have for Dr. Wren at this time.

Dr. John David Wren
Cross-examination by Mr. Abusaft

1 CROSS-EXAMINATION

2 BY MR. ABUSAFT

3 Q Doctor, did you -- after you finished the report did
4 you get a toxicology report later?

5 A I might have. I'm not sure. I don't put it with my
6 report. If I get a toxicology report I'll look at it and
7 send it with my comments, if any, to the coroner. Now, it
8 would be in his records. It's not in my records.

9 The only thing I have in my records, it is -- beside
10 the autopsy report -- we send him the original report and
11 we do what's called a worksheet. It is a 2-page worksheet
12 where we put the demographic information.

13 In this case I -- I put in the entrance and exit
14 gunshot wounds and hair color, eye color, how big the
15 pupils were, what I might have sampled in samples, and then
16 on the second page any information I want to reference and
17 most -- some of this is in my writing. Some of it's in
18 the -- the coroner comes and takes pictures, along with the
19 law enforcement, in cases in this -- in this county. And I
20 tell them what I want. We weigh the organ and I tell them
21 what weights to put down. That's not my writing. But I
22 don't have the toxicology report.

23 If you provide it to me, I can tell you whether I
24 looked at it from the coroner's records. I didn't think it
25 really mattered --

Dr. John David Wren
Cross-examination by Mr. Abusaft

1 Q I understand.

2 A -- what her toxicology showed. She died from
3 hemorrhage.

4 Q And before I hand you those documents, you said that
5 you could -- it is your expert opinion this was not a
6 contact wound.

7 A Yes, sir.

8 Q So -- and you, obviously, correct me if I'm -- correct
9 me if I'm wrong, but you describe a contact wound as when
10 you actually -- when -- when the firearm is actually
11 pressed to the skin.

12 A Either loose or tight, yes.

13 Q Okay. But beyond that you -- you didn't have the
14 information necessary to make a determination about where
15 the gun was besides that it wasn't pressed against the
16 skin.

17 A I couldn't tell whether it was a mile away or four
18 inches or two inches away. I couldn't -- I can't tell
19 that. I mean, I wasn't there when it was inflicted.
20 There's just no evidence that there was contact or even
21 intermediate as far as I could tell.

22 Q All right. If I submitted to you -- if I presented --
23 presented you -- if I submitted you -- if I presented to
24 you the coroner's report would you be able to recognize
25 those types of documents?

Dr. John David Wren
Cross-examination by Mr. Abusaft

1 A Yeah. I see them occasionally. I don't see them on
2 everybody. Those are -- those are dictated and entered in
3 the coroner's office.

4 In this case I don't know what time the incident
5 happened and I don't know when September the 25th was, but
6 I know I did this autopsy early, which I usually don't do
7 during the week because I'm usually in the laboratory most
8 of that time. So there may have been a pressing reason why
9 I was supposed to do it early, or it could have been on the
10 weekend. Sometimes I do start those earlier.

11 Q I did hear you correctly that that information would
12 be forwarded from your office to the coroner?

13 A What?

14 Q Toxicology.

15 A No, no.

16 Q No? That's not that you said?

17 A If it's sent to SLED, SLED only sends it to the
18 coroner's office. Well, they don't send it to them. They
19 enter it and somehow notify them that there is a toxicology
20 that's been finished, and then they will send it to me.
21 Usually now they send it all the time. But it's a lot of
22 times SLED does not do them timely fashioned. So
23 sometimes -- not in this case they -- I don't know what
24 they did in this case. They'll send them to a national
25 medical services which does toxicology.

Dr. John David Wren
Cross-examination by Mr. Abusaft

1 MS. WELLS: Your Honor, we can go ahead and approach
2 if it pleases the Court.

3 (Bench conference held off the record in the presence
4 of the jury but out of the hearing of the jury.)

5 Q Doctor, I'm going to present -- I'm going to present a
6 document to you and ask if you -- if you can recognize it.

7 A Well, this is a SLED report. It has nothing that I've
8 written on it. So it is a SLED report. I can tell you
9 what I can demise from this.

10 Q And what is that?

11 A Well, she had morphine. I don't know when she got it.
12 It's 51 nanograms her milliliter. They may have given it
13 to her when she -- during resuscitation. I cannot tell.
14 But it was 51 nanograms per milliliter. Therapeutic range
15 is from one to 200. So it was low therapeutic.

16 It actually gives some synonyms for morphine, which is
17 MS Contin, Astramorph, Duramorph. Those are the brands
18 names.

19 I'm doing some of this from memory. I usually have to
20 look it up. But toxic means that there's evidence, that it
21 can cause problems. Toxic in a -- in morphine is around
22 300.

23 Lethal can be from 200 to as high as it goes before
24 you die.

25 So this was only therapeutic. So it wouldn't -- would

Dr. John David Wren
Cross-examination by Mr. Abusoft

1 have made her drowsy or -- or would have cut pain down.

2 And then she had methamphetamine, which was 160
3 nanograms per milliliter.

4 That is above -- there are two types of
5 methamphetamine. There's what's generally called crystal
6 meth, which is the D isomer, which is manufactured. And
7 you can get some D isomer. It's in some drugs. But
8 usually the ones that you get over the counter or in drug
9 stores, prescribed type, is called the L isomer. It's the
10 basic -- the basic difference is the way the carbon atoms
11 and the other moieties on the methamphetamine molecule are
12 oriented spatially.

13 So if you just measure methamphetamine you can't tell
14 without further tests whether it's L isomer or the D
15 isomer.

16 The L isomer -- if you took something like vicks that
17 has methamphetamine in it, it'd be the L isomer. You have
18 to know which one it is.

19 That, generally speaking, the level is the -- the
20 therapeutic level is in real low numbers, like no more -- I
21 can't remember those offhand, but it is definitely less
22 than 160, because the D isomer therapeutic or nontoxic
23 is -- I think it's 20 to 70.

24 So this was above therapeutic. It was not lethal
25 dose, and it had some toxic effects. I can't tell you

Dr. John David Wren
Cross-examination by Mr. Abusaft

1 exactly all the toxic effects, but it will be irritability
2 and -- and the blood pressure will go up and things like
3 that. But I didn't interpret this.

4 But it doesn't matter what these are. She died of a
5 gunshot wound. It would have affected her mental capacity
6 and her -- the way she acted.

7 The morphine would have made her less aggressive and
8 more susceptible -- less susceptible to pain, whereas the
9 methamphetamine would -- tends to make people sort of
10 hyperactive. It raises the blood pressure a little bit and
11 makes them excitable. And the range of therapeutic varies.
12 For the L isomer it's much lower. She hadn't had it long
13 because they didn't say there was any amphetamine, which is
14 the metabolized methamphetamine. When you take
15 methamphetamine it's metabolized to amphetamines before
16 it's completely eliminated from the body.

17 They didn't find any, so this was around the time that
18 she passed away or was shot. So I can't tell you whether
19 it's D or L. It was one or the other.

20 Q And of course, Doctor, you -- it's your finding that
21 she died of a gunshot wound, but you -- you have no opinion
22 on how that happened.

23 A What do you mean?

24 Q You weren't there.

25 A Somebody shot her. She didn't do it herself.

Dr. John David Wren
Cross-examination by Mr. Abusoft

1 Q Okay. Fair enough, Doctor, but you weren't there at
2 the scene?

3 A No. I wasn't there. I can just tell you all of the
4 scenarios if you want -- what I think could have happened.

5 Q No, no.

6 A I mean, when you're shot in the head you can't tell
7 where the head was when you're shot. If somebody shot you
8 from the right side and you had your head to the -- all the
9 way --

10 Q Doctor, I want you to listen to my question. I'm
11 sorry. I don't want to --

12 A No. I wasn't there. I don't know the circumstances
13 that were there, but I can tell you if you give me a
14 scenario whether it's possible.

15 Q Okay. Thank you.

16 MR. ABUSAFT: I have no further questions.

17 MS. WELLS: Your Honor, I don't have any further
18 questions for Dr. Wren. May he be excused?

19 THE COURT: Thank you. You may step down. You may
20 also be excused. Thank you.

21 MS. WELLS: Thank you, Your Honor.

22 (Whereupon, the witness was excused.)

23 MR. BARNETTE: Your Honor, may we take a second just
24 to look and make sure we've got all the evidence and
25 everything?

1 excuse them for lunch.

2 MR. BARNETTE: Whatever you would like for us to do.

3 (The following takes place in the presence of the
4 jury.)

5 THE COURT: Thank you for your patience, ladies and
6 gentlemen.

7 I had some matters that I had to address, and it took
8 a little longer than I anticipated that it would, but,
9 nevertheless, it had to be addressed. So that's why you've
10 been patiently waiting for us to bring you back. So thank
11 you for that understanding.

12 All right. Does the state wish to introduce any
13 additional sentence?

14 MR. BARNETTE: No, sir. The state would rest at this
15 point.

16 THE COURT: All right. Ladies and gentlemen, that is
17 all of the testimony and evidence to be offered by the
18 state, at least in their case in chief.

19 Before we go further, it's a convenient time for us to
20 recess for lunch, so we're going to do that.

21 I'm going to ask you to continue to follow the
22 instruction not to discuss the case. You'll be asked to
23 report back this afternoon at 2:00 o'clock, at 2:00 o'clock
24 this afternoon, at which time we'll continue with the
25 trial.

1 Okay. Have a good lunch. I'll see you at
2 2:00 o'clock this afternoon.

3 (The following takes place outside the presence of the
4 jury.)

5 THE COURT: All right. Mr. Allen or Mr. Abusaft.

6 MR. ABUSAFT: At this point, Your Honor, in the light
7 most favorable to the state we do not believe there has
8 been sufficient evidence to go to the jury on the charge of
9 murder, Your Honor, specifically on the issue of malice;
10 therefore, I move for a directed verdict.

11 Your Honor, I also renew all my pretrial motions and
12 all my objections made during the trial.

13 THE COURT: All right. Mr. Barnette.

14 MR. ABUSAFT: That specifically entails flight and the
15 issue around the failure to stop for blue light.

16 THE COURT: Okay.

17 MR. BARNETTE: Your Honor, there's plenty of evidence
18 to support a malice charge -- the murder charge itself,
19 Your Honor.

20 Basically, he shoots Natalie, the victim in this case.
21 He actually takes her out the car that she has been
22 driving, actually leaves her, takes the gun with him,
23 actually goes on a 23-mile trip from that.

24 Never asked about her; never called 9-1-1; never
25 helped her in any way. Even had blood, her blood, on him

Lance Antonio Brewton (In-camera)
Direct examination by Mr. Abusaft

1 from this situation.

2 I think there's plenty of evidence here that supports
3 in the light most favorable to the state in this case. And
4 the murder charge was possession of a weapon during a
5 violent crime in this case.

6 THE COURT: All right. Considering the evidence in
7 the light most favorable to the state, as I must do on a
8 motion for a directed verdict, I do find that there is more
9 than sufficient evidence, both direct and substantial
10 circumstantial evidence, from which a jury could reasonably
11 infer that the defendant has committed the crime of murder,
12 that is he has killed someone unlawfully and with malice
13 aforethought; and therefore the motion for a directed
14 verdict is denied.

15 what else?

16 MR. ABUSAFT: Your Honor, at this point I believe we'd
17 like to move into the proffer.

18 THE COURT: Okay.

19 MR. ABUSAFT: The defense calls Lance Brewton.

20 LANCE ANTONIO BREWTON, having
21 been first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. ABUSAFT

23 Q Lance, will you state your full name for the judge?

24 A My name is Lance Antonio Brewton.

25 Q Lance, do you -- did you know Natalie Niemitalo?

Lance Antonio Brewton (In-camera)
Direct examination by Mr. Abusaft

1 A Yes.

2 Q Who was she to you?

3 A She was my girlfriend.

4 Q Do you remember what happened on September the 25th of
5 2017?

6 A Yes, sir.

7 Q What happened?

8 A Well, I got dropped off at Natalie's house like
9 4:00 o'clock, like 5:00 to 6:00 o'clock in the morning by
10 my homeboy that she had dropped me off over -- over at his
11 house later that night while she went home and changed
12 clothes.

13 But as I arrived to the house she still haven't
14 changed clothes yet. So I was going to the back room and
15 talking to her and her mother.

16 So she was going through her clothes getting ready to
17 take a shower. So her mother left the house. Know what
18 I'm saying? She went to the -- went to the store.

19 while she went to the store, like five or ten minutes
20 later, we got a call from her father saying that Natalie
21 needed to ride with her to the store.

22 Q Let me stop you there.

23 Lance, did you -- did you believe that Natalie's
24 mother had -- practices witchcraft?

25 A Yes, sir.

Lance Antonio Brewton (In-camera)
Direct examination by Mr. Abusoft

1 Q Tell me about that witchcraft.

2 A I asked her about it. I asked her about it and she --
3 she denied it, but she put it on her friend Aaron.

4 Q Hold on one second for me.

5 (Pause.)

6 Q And it was your understanding that she was a
7 practicing witch?

8 A Yes.

9 Q It was your understanding that Aaron was a practicing
10 witch?

11 A Yes, sir.

12 Q Or warlocker, the male version of a witch?

13 A Yes, sir.

14 Q Had you -- had you previously told other people about
15 your feeling that you were under a curse or a spell of some
16 sort?

17 A Yes, sir.

18 Q Okay. And so continue. You were telling me that you
19 were at the house with Natalie on the 25th.

20 A Can I go --

21 Q Yes. Go ahead.

22 A I even -- I even asked Natalie, and Natalie confirmed.
23 She said -- she said it. I asked her why I kept -- I was
24 the only one hearing the voices. And she was, like, you
25 gotta know the voices, it'll be -- if you beat into them,

Lance Antonio Brewton (In-camera)
Direct examination by Mr. Abusaft

1 it'll make them stronger. I didn't understand what she was
2 talking about though because I'm not experienced with
3 witchcraft.

4 Q So you think you were hearing voices inside your head
5 as a result of a spell from Natalie's mother or her friend
6 Aaron.

7 A Yes, sir.

8 Q And you brought that up with Natalie and she
9 confirmed, what you feel confirmed, that.

10 A She never -- she never stated immediately that her
11 mother was doing it, but she -- she stated that she was --

12 MR. BARNETTE: Your Honor, I'm want to just object.

13 A -- familiar with it.

14 MR. BARNETTE: Just object for the record. It's all
15 hearsay. I know it's being proffered just for the record.
16 Just note it, and I understand it's a proffer.

17 Q Okay. And about how long had you thought you were
18 under a spell?

19 A It was off and on for, like, eight months, eight or
20 ten months.

21 Q And what happened? Okay. So is there any other
22 background information you need to tell the court about the
23 witchcraft?

24 A No, not -- not besides what she had told me about the
25 voices.

Lance Antonio Brewton (In-camera)
Direct examination by Mr. Abusoft

1 Q That's what you just told us, right?

2 A Yes.

3 Q Okay. So on the 25th you're in the house with
4 Natalie. And tell me what happens next.

5 A I -- first, I confronted her mother about the
6 situation.

7 Q Let's -- I want you to talk -- just talk about -- talk
8 about at the point at which she was given a -- that Natalie
9 received a call from her father.

10 A Yeah. She received a call from her father saying that
11 they needed to go to the store, she needed to ride with her
12 to the store and pick her mama car up because her mama,
13 mother, had been arrested.

14 Q And did her father come over to the house?

15 A Yes, sir.

16 Q And what happened after that?

17 A They left to go to the store. I stayed at the house,
18 and she returned in, like, ten minutes, and she was upset
19 because her mother had got arrested and went to the store,
20 I mean, went to jail.

21 Q Okay. And what happened after that?

22 A She continued to go through her clothes, get ready to
23 get in the shower like she was doing before she left. And
24 she hopped -- she hopped -- went in the bathroom. So I
25 took the dog outside for a walk.

Lance Antonio Brewton (In-camera)
Direct examination by Mr. Abusaft

1 Q And what happened after that?

2 A I'm outside. I was -- I was just, like, experiencing
3 paranoia activity like someone was trying to kill me --
4 know what I'm saying -- so I was like looking through
5 construction sites out there -- know what I'm saying. Some
6 voices in my head was telling me that my family was being
7 murdered.

8 Q Okay. And so after you were -- were there a lot of
9 construction going on around Natalie's house?

10 A Yes. There's a lot of houses being built, and I was
11 walking with the dog looking for -- looking -- looking up
12 under houses, looking in the outhouses, trash cans looking
13 for my family.

14 Q And why were the construction sites the places you
15 were looking?

16 A Because what's what the voices was telling me.

17 Q All right. After you finished looking through the
18 construction sites, what happened next?

19 A Kevin Schuerman arrived at the residence, at the
20 house.

21 Q Kevin Schuerman. Is that the gentleman who testified
22 yesterday?

23 A Yes, sir.

24 Q All right. What happened after Kevin arrived?

25 A Well, I mean, he told me what's up. I told him what's

Lance Antonio Brewton (In-camera)
Direct examination by Mr. Abusaft

1 up. He confronted me. I mean, he asked me where Natalie
2 was. I said she in the house. He, like, asked me what was
3 wrong with me. And I was -- I told him that I think Brenda
4 put a curse on me because I keep experiencing all of these
5 crazy things, man.

6 So he kind of like ignored me and went in the house.
7 So I stayed outside with the dog. And I was out -- I was
8 outside with the dog for, like, another five or ten minutes
9 before I walked in the house and told him -- and when I
10 walked in the house Natalie was getting outta the shower.
11 And I confronted her about taking to the store, and I asked
12 her could you take me to the store to get cigarettes.

13 Q All right. When you say confronted, do you really --
14 do you mean you just talked to her?

15 A Yes. I just say, "Baby, you ready yet?" I said, "I
16 need to go to the store." And she was like give me a
17 minute.

18 Q All right. And did you guys decide to go to the
19 store?

20 A Yes, sir.

21 Q And how were you going to get to the store?

22 A In Natalie's mother's car.

23 Q And did you guys get in the car?

24 A Yes, sir.

25 Q Who all got in the car?

Lance Antonio Brewton (In-camera)
Direct examination by Mr. Abusaft

1 A I got in the back seat; she got -- she got in the
2 driver's seat; and Kevin got in the passenger seat.

3 The reason why I got in the back seat, because the
4 voices was telling me that people was trying to kill me,
5 and so I was paranoid.

6 Q Okay. One moment.

7 (Pause.)

8 Q Lance, I just want to check.

9 Did -- did voices have anything to do with the -- with
10 the gun going off with Natalie?

11 A No, sir.

12 Q Now, I'm going to ask you to fast forward past that
13 part of the story and --

14 MR. BARNETTE: Your Honor, I'm going to object. If
15 it's going to be a proffer, it needs to be a full proffer
16 since we went down this road.

17 MR. ABUSAFT: Your Honor --

18 THE COURT: Well, this is his proffer. I mean, it is
19 what it is.

20 Go ahead.

21 MR. ABUSAFT: Okay.

22 MR. BARNETTE: Yes, sir.

23 Q After the gun went off, you left the scene. You left
24 Natalie's house, is that right?

25 A Yes, sir.

Lance Antonio Brewton (In-camera)
Direct examination by Mr. Abusaft

1 Q why did you do that?

2 A The only reason I left the scene, because the voices
3 was telling me that cement truck that had just went down
4 the road was going to bury my family alive.

5 Q So you saw a cement truck at some point. Were you
6 outside?

7 A Yes, sir. When I was in the back seat of the car it
8 rolled. It rolled down the street.

9 Q And is that the reason you decided you wanted to
10 drive?

11 A Yes, yes, sir, because she was putting on her makeup
12 and she -- you know what I'm saying -- and she wasn't
13 moving fast enough, and I wanted to follow the truck.

14 Q Okay. So you're -- you've now gotten in the driver's
15 seat. You're chasing after the cement truck. What happens
16 next?

17 A I never saw cement truck. I rode on different
18 construction sites looking for it, but I never found it.

19 So I come back to the scene to check on her, and the
20 police was already there. And the only reason -- only
21 reason I didn't stop, because I had drugs on me.

22 Q Okay.

23 A When the police got behind me, that's why I ran. I
24 don't know. I was -- my mind was -- my mind was going. I
25 don't know if it's from the witchcraft, the lack of sleep,

Lance Antonio Brewton (In-camera)
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1 the use of narcotics. I don't know, sir. But I wasn't in
2 my right state of mind. And I wouldn't never left my
3 girlfriend there like that. I wouldn't never shot her on
4 purpose. Anybody will tell you that.

5 Q All right. Let's slow down, Lance.

6 All right. So when you got in the car you went to the
7 construction sites because -- because of the voices.

8 A Yes, sir.

9 Q Did you find the construction truck?

10 A I never -- I never found it.

11 Q Excuse me. The cement truck.

12 A No, sir.

13 Q So at some point did you give up on chasing the cement
14 truck?

15 A Yes, sir.

16 Q Okay. And the voices allowed you give to give up on
17 chasing the cement truck?

18 A They's -- they wasn't speaking to me at the time.

19 Q All right. At this point, is that when you were --
20 well, explain that in greater detail.

21 A It's like --

22 Q You went back past the house. Listen to my question.
23 You went back past the house twice.

24 A Yes, sir.

25 Q Tell me why you did that and what you were doing at

Lance Antonio Brewton (In-camera)
Direct examination by Mr. Abusoft

1 that point.

2 A The reason I went back twice, because the first time I
3 went by I saw that the ambulance was already there giving
4 her medical attention. So I circled back around the block
5 looking for the cement truck again. And then whenever I
6 couldn't find it again I came back to check on her. When I
7 came back to check it again the police was there. The
8 highway patrolman passed me and circled me around and put
9 lights on me.

10 Q Okay.

11 A And out of instinct, I didn't stop.

12 Q All right. Is there -- okay. Is there any -- let's
13 fast forward to when you get to your house.

14 was there anything -- any -- or any point -- tell me
15 the next point at which you're hearing voices.

16 A When I was on the -- when I was on the chase I wasn't
17 hearing nothing.

18 Q Okay. And when you got to your house did you hear any
19 voices?

20 A No, sir.

21 Q Is there anything you need to tell me about
22 witchcraft, black magic or voices? Anything else?

23 A I just experienced a lot of paranoia activity in the
24 last, like, eight months that I -- I hadn't never
25 experienced before in my life.

Lance Antonio Brewton (In-camera)
Direct examination by Mr. Abusaft

1 Q And you thought that was the result of black magic.

2 A Yes, sir. Some kind of magic.

3 Q That's it.

4 (Pause.)

5 Q Lance, I just want to make sure to be clear. You
6 passed by the police officer once.

7 A Yes, sir.

8 Q You're looking for the cement truck because the voices
9 tell you.

10 A Yes, sir.

11 Q When the police officer -- when you see the police
12 officer again he gets behind you, is that right?

13 A Yes, sir.

14 Q I just want to clarify. Did voices play any role in
15 you not stopping then?

16 A No, sir.

17 Q You need to speak up.

18 A No, sir.

19 MR. ABUSAFT: We don't have anything else, Your Honor.

20 Q Mr. Brewton, do you want to say something else?

21 A Yes. And another reason why I, like, confronted her
22 mother about it --

23 Q Well, Mr. Brewton, we need to talk about this.

24 MR. ABUSAFT: Your Honor, we don't have any -- we
25 don't have -- our proffer is over, Your Honor.

1 THE COURT: Okay. Step down.

2 State have an objection?

3 MR. BARNETTE: Yes, sir.

4 Your Honor, that's the reason I made the motion in
5 limine to start with.

6 There is no basis for any of this. He was examined by
7 a doctor after this event. The psychosis was drug related
8 from that standpoint or was a psychosis from that
9 standpoint.

10 He -- there's all kinds of hearsay in this. I mean,
11 that's the reason I objected, just the one time. I know
12 it's a proffer. I just wanted to put on the record. But
13 you've got numerous hearsays involved in this -- her
14 mother, the victim, everything. I mean, it's incredible
15 the amount of this.

16 It's not relevant, number one. If it is relevant,
17 it's highly prejudicial. There's hearsay all through it.
18 There is no exceptions to those hearsays, especially the
19 victim in this case and her mother. Neither one of them
20 testified from that standpoint. That's the majority of
21 it -- her father, calling the victim's father and talking
22 to him.

23 None of this is admissible from that standpoint
24 concerning the voices.

25 There's no medical evidence concerning that in this

1 case. I ask to keep that evidence out from the voices, as
2 well as any kind of hearsay in talking to any other
3 witnesses from that standpoint.

4 THE COURT: All right. Any reply?

5 MR. ABUSAFT: Yes, Your Honor.

6 I mean, obviously this was a proffer. So what is --
7 what is hearsay would not be deemed -- obviously, we would
8 comply with the rules of hearsay in front of the jury, Your
9 Honor, as far as the -- the father's conversation.

10 THE COURT: Well, let me ask you then.

11 Are you suggesting that what he testified to was
12 hearsay, you don't intend for him to testify to in front of
13 the jury? I thought that was the proffer.

14 MR. ABUSAFT: Well, no, Your Honor.

15 I mean, we were -- because of the unique situation
16 that we're in, Your Honor, we gave him more full recitation
17 because I just don't think the Court can get a context
18 without it.

19 No. I mean, you would not hear anything about the
20 mother at all, but I -- but I would -- but I just think I
21 allowed it to happen so that you can get an understanding
22 of where his testimony was coming from.

23 So, no. Obviously, we don't -- the major parts of
24 that is not hearsay. You know, we can do without all of
25 the hearsay, Your Honor.

1 Now, he heard himself the conversation with the
2 father. That's not hearsay. He -- at least there is an
3 exception. There are exceptions to that rule, Your Honor.
4 But that also can be used without. We can also go without
5 that evidence, Your Honor.

6 But, Your Honor, I would assert to you that he has an
7 absolute right to testify and it is -- there may be some --
8 some -- there may be some prejudice, but it's not
9 substantially outweighed, Your Honor, because this is what
10 happened.

11 All right. He has the absolute right to testify. He
12 has -- and he must testify truthfully. He can't make up
13 reasons that would be more convenient for the defense or
14 easier for the state, Your Honor. And so we think that
15 limiting his testimony, especially to these essential
16 factors, would be violating his due process rights and his
17 right to testify in his own trial.

18 Also, Your Honor, I don't believe the state gets to
19 have it both ways in that they are -- they have introduced
20 evidence that they didn't have to about flight, which is an
21 inference they want the state to draw. They want the jury
22 to draw that he was guilty because he had flight.

23 This gives an alternative reason for why he left the
24 scene. It is the reason that he left the scene. And so if
25 the -- since the state has went down that road, largely,

1 they have opened the door for this testimony.

2 THE COURT: Well, I'm somewhat confused about what his
3 position is, and I'm satisfied the jury would be too.

4 Now, from the get-go we have discussed the defendant's
5 mental health evaluation. And at the beginning of the
6 trial, as I understand it, y'all were all in agreement that
7 he was not asserting any defense of insanity, he was not
8 asserting any defense of guilty but mentally ill, he was
9 not asserting that he suffered from some mental defect or
10 illness that would prevent him from being able to conform
11 his conduct to the requirements of the law.

12 He pled guilty to the failing to stop and admitted
13 criminal responsibility without asserting any defense that
14 he was waiving.

15 He may have reasons as to why he did not stop and they
16 may relate to he -- him being fearful in some fashion. It
17 may be his instincts, maybe something within him told him
18 not to stop or to leave the scene, and/or not to stop, but
19 I will not permit him to testify about witchcrafts. Most
20 of that was all hearsay, as I understand it from his
21 testimony.

22 He also mentioned the fact that his issues that caused
23 him not to stop might have related to some narcotics use,
24 and he had narcotics on him.

25 I think we can all agree also that the voluntary use

1 of narcotics or any other intoxicating substance is not a
2 defense to a criminal offense; and therefore if his
3 testimony does not relate to a defense that he's
4 asserting -- and apparently it does not -- any testimony
5 regarding his belief about witchcraft and spells and cement
6 trucks running over his family would tend to appear to me
7 to reasonably -- to give rise to a reasonable inference in
8 the jury's mind that he must be suffering from some type of
9 mental illness or mental defect. And that's not being
10 asserted in the case.

11 And therefore while his explanation as to his reason
12 for leaving and not stopping might be relevant, in this
13 particular case what he's testifying to is based largely
14 upon hearsay, as well as the fact that it gives rise to --
15 appears to give rise to an assertion of a mental-illness
16 defense. And so that testimony would -- while it may be
17 relevant under 403, it does -- the probative value is
18 substantially outweighed by the danger of unfair prejudice
19 and confusion of issues and a misleading of the jury as to
20 his mental state at the time that these offenses are
21 alleged to have been committed.

22 So even if relevant it's -- any probative value would
23 be substantially outweighed by the danger of unfair
24 prejudice and confusion of the jury.

25 Now, I'm not stating that he cannot testify that he

1 was fearful and that he felt like he needed to leave. I'm
2 not limiting him in testifying that something within him or
3 his instincts, as he testified, told him to leave. But I
4 will not permit the testimony relating to witchcraft and
5 voices telling him that a cement truck was going to bury
6 his family, because I do believe that that would confuse
7 the jury in the sense they would believe he was asserting a
8 mental-illness defense to the charge. And therefore that
9 will not be permitted.

10 MR. ABUSAFT: Your Honor, only as a point of
11 clarification.

12 Your Honor, we don't think that the witchcraft
13 testimony necessarily is hearsay because it would have been
14 his -- him testifying that he had a spell cast on him. So
15 I don't believe that that was -- that's hearsay. I just
16 wanted to make that.

17 THE COURT: well, I understand, but he based that
18 upon -- I understood it that he based that upon what the
19 victim in this case told him about her mother --

20 MR. ABUSAFT: No.

21 THE COURT: -- or what somebody else told him about
22 her mother being a witch.

23 MR. ABUSAFT: No, Your Honor. That was his -- his
24 knowledge of her. She confirmed it for him, I think is his
25 testimony. And, obviously, I'm not trying to belabor this

1 point.

2 THE COURT: She told him she was a witch?

3 MR. ABUSAFT: She confirmed that it was a witch.

4 That's what that testimony -- he already knew that he had
5 been -- had a spell cast on him, Your Honor.

6 THE COURT: Well, I still think that's a derivation of
7 hearsay, so I'm going to exclude it.

8 MR. ABUSAFT: And I just want to clarify my position
9 on the -- on his right to testify, that this is not that
10 you are actually telling him he cannot get on the witness
11 stand but that by taking away -- by stopping him from
12 testifying to something that is so intermingled among his
13 testimony that it is in -- it is a de facto prevention of
14 his right to testify. Thank you, Your Honor.

15 THE COURT: Well, no. I am not in any way preventing
16 him from testifying. He can testify.

17 But any witness who is called to testify can only
18 testify to things that are relevant and probative on
19 various points. And in this case I've already addressed
20 the issue of 403, and that's why I've excluded some of it.
21 But all of it is not excluded. And he certainly can
22 testify about the event in question and the allegations
23 relating to his commission of the crime of murder. He
24 certainly has a right to testify about that.

25 I didn't hear much about that, so I don't know if --

1 and I think he said that there were no voices involved in
2 the actual conduct that resulted in the death of the
3 decedent. And he also said that there were no voices that
4 were influencing him so far as his failing to stop were
5 concerned.

6 Did I understand that correctly?

7 MR. ABUSAFT: Yes, Your Honor, I believe you do --
8 did.

9 THE COURT: Okay. What else do we need to address?

10 MR. ABUSAFT: At this time, Your Honor, I think we
11 need a short recess to be -- to discuss with our client
12 whether he's going to decide to assert his right to
13 testify.

14 THE COURT: Okay. Well, we've got until 2:00 o'clock.
15 So I'm going to recess until 2:00 o'clock.

16 But I need to see the lawyers in chambers just a
17 minute.

18 (Whereupon, a recess was taken.)

19 THE COURT: All right. Mr. Abusaft, have you and
20 Mr. Allen had sufficient time to talk to Mr. Brewton about
21 his decision to testify or not?

22 MR. ABUSAFT: Mr. Brewton just whispered something in
23 my ear, Your Honor. I'm going to need another second to
24 talk to him.

25 THE COURT: Okay.

1 (Pause.)

2 MR. ABUSAFT: We're ready to proceed, Your Honor.

3 THE COURT: Okay. Have you talked to Mr. Brewton
4 about his right to testify, as well as not testify?

5 MR. ABUSAFT: Yes, Your Honor.

6 THE COURT: And does he indicate to you a preference?

7 MR. ABUSAFT: Yes, Your Honor. He has told me he
8 intends to testify.

9 THE COURT: Okay. Mr. Brewton, do you understand that
10 when you're charged with a crime, as you are right now,
11 that you always have an absolute right to remain silent?
12 And that means nobody can make you take the witness stand
13 and testify; nobody can require that you make any
14 statement; nobody can require that you respond to any
15 questions that relate to the charges that have been brought
16 against you.

17 So you have an absolute right to remain silent and to
18 require the state to come into court with sufficient
19 evidence to establish your guilt to the satisfaction of a
20 jury beyond a reasonable doubt. And you never have to
21 assist them in their efforts to prove you guilty by you
22 providing evidence of your own guilt.

23 Now, if you wish to testify, you certainly have that
24 right.

25 If you take the witness stand and testify you have to

1 answer not only your lawyer's questions, but you have to
2 answer the questions asked of the prosecutor to the extent
3 that they're relevant even if the responses to those
4 questions might tend to prove you guilty of the crime they
5 claim you committed.

6 Do you understand you have a right to testify?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand you have a right not to
9 testify?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand it's your choice, nobody
12 else can make that decision for you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you discussed with your lawyers that
15 right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And have they explained to you the
18 advantages and disadvantages of testifying, as well as not
19 testifying?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And do you appreciate what those
22 advantages and disadvantages are?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you understand that if you choose
25 not to testify I will instruct the jury they can't hold

1 that against you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And if you do testify you've got to answer
4 all of the questions asked of you.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Have you had time to reflect upon your
7 decision?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Have you reached a decision?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: What is it?

12 THE DEFENDANT: I will not testify.

13 THE COURT: Is that a decision that you've made of
14 your own free will and accord?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You've had time to reflect upon it?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: To seek counsel about it?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you're satisfied with it?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Thank you.

23 As to the -- you can have a seat.

24 As to the issue of any prior convictions that might be
25 used for purposes of impeachment, as I understand it the

1 state has indicated its intent to ask Mr. Brewton about
2 a two thousand -- excuse me -- about a 1999 conviction for
3 common-law robbery and a 2008 conviction for common-law
4 robbery.

5 The 1999 conviction, as I understand it, the sentence
6 was or the effects of the sentence expired in 2004, four
7 years later.

8 Mr. Brewton was again convicted of common-law robbery.
9 The affects of that sentence lasted until -- well, not
10 before 2011, as I believe, if I'm not mistaken.

11 And so based upon the continuous course of conduct and
12 based upon there has not been a passage of ten years in
13 between the date of today at which he will testify and the
14 time that those convictions took place, I find that the
15 circumstances relating to each of those convictions and the
16 effects of those sentences make those convictions not too
17 remote for the jury's consideration as to -- as it relates
18 to the issue of his credibility as a witness.

19 So my determination is they're not too remote. But if
20 they are the probative value substantially outweighs any
21 danger of unfair prejudice.

22 Do we need to address anything else about the
23 convictions?

24 MR. ABUSAFT: Your Honor, just our position is that
25 the rules of evidence -- they are remote. I'm not -- I

1 don't believe that -- just to be, first of all, clear,
2 these are two different -- these are two different charges,
3 one which ended, and then a period of time passed, and then
4 he was charged with another crime, another common-law
5 robbery, and was then convicted for those. It wasn't --
6 for that.

7 There was a time -- so there was a time in between.
8 These are not somehow one crime. I don't believe the rules
9 of evidence contemplate somehow connecting the two under a
10 course of conduct. So for that reason, Your Honor, we
11 object to that.

12 THE COURT: Now, I'm not suggesting they're the same
13 course of conduct. I'm just suggesting they're similar
14 offenses that all have occurred without a passage of ten
15 years having occurred in between the one and the other and
16 the effects of the sentence.

17 MR. ABUSAFT: Yes, sir.

18 THE COURT: In other words, a continuous criminal
19 history is what I'm saying.

20 MR. ABUSAFT: Your Honor -- excuse me. I'm sorry.

21 THE COURT: Without ten years having passed.

22 MR. ABUSAFT: Your Honor, my only position is that one
23 started in '99, ended, the complete effects of it ended, in
24 2004. We are now in 2018. That is over a 10-year period;
25 and therefore I believe that they're remote. I believe

1 that they're -- or it is our position that they're remote.

2 Our position is also that the prejudice is
3 substantially outweighed -- excuse me -- the probative --
4 the probative value is substantially outweighed by the
5 prejudice, Your Honor, being that there is a limited --
6 there's limited value to the credibility, to the attack on
7 his credibility from -- from these crimes, Your Honor. And
8 they were so long ago. So that's our position on that.

9 THE COURT: Okay.

10 MR. ALLEN: May I speak?

11 THE COURT: Sure.

12 MR. ALLEN: Thank you, Your Honor.

13 Is the Court going to allow the state to impeach on
14 the actual name of the crime or are we going to just refer
15 to it as a crime involving dishonesty?

16 THE COURT: What's the state's position on that?

17 MR. BARNETTE: I'll be glad to if it would help from
18 the Court's standpoint and their standpoint, just ask him
19 if he's been convicted of a crime of dishonesty.

20 THE COURT: I don't think I could necessarily require
21 it, but I would strongly suggest that it simply be referred
22 to as crimes of dishonesty as opposed to actual crimes so
23 that it's not too confusing or prejudicial to the jury and
24 they understand the purpose of the admission of the
25 convictions.

1 MR. ALLEN: Thank you, Your Honor.

2 THE COURT: All right. So that'll be referred to as
3 two convictions for crimes of dishonesty.

4 MR. BARNETTE: There's two other things for the
5 record, your Honor.

6 One thing, I'm probably going to ask him -- he's not
7 entitled to possess a weapon. I'm probably going to ask
8 him that question. And I just want to sure that's clear
9 with the Court. And I know we discussed it in chambers.

10 THE COURT: All right. Well, let's address that. Is
11 there going to be an issue about the prosecution asking
12 Mr. Brewton about his proficiency and familiarity with
13 firearms?

14 MR. ABUSAFT: No, Your Honor.

15 THE COURT: Okay. And they will be permitted to ask
16 him, I assume without the necessity of asking about any
17 prior convictions, if he understands and he understood at
18 the time of this event that he was not lawfully able to
19 possess a firearm.

20 MR. ABUSAFT: We have no problem with that, Your
21 Honor.

22 THE COURT: Okay. Does that satisfy your concern?

23 MR. BARNETTE: Yes, sir. I just wanted to do that
24 before we got into the actual testimony.

25 Another thing, Your Honor. I'm assuming they've

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1 THE COURT: Okay. Bring them in.

2 (The following takes place in the presence of the
3 jury.)

4 THE COURT: Good afternoon, ladies and gentlemen.

5 As you know, when we recessed for lunch the state had
6 concluded with their presentation of evidence. So we're
7 now going to proceed with any to be offered by the defense.

8 Mr. Abusaft.

9 MR. ABUSAFT: The defense calls Lance Antonio Brewton.

10 LANCE ANTONIO BREWTON, having
11 been first duly sworn, testified as follows:

12 MR. ABUSAFT: May it please the Court.

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION BY MR. ABUSAFT

15 Q Lance, can you tell the ladies and gentlemen of the
16 jury your full name, please?

17 A Yes. My name is Lance Antonio Brewton.

18 THE COURT: when you speak, be sure you speak directly
19 towards that black microphone.

20 THE WITNESS: This one.

21 Q And, Lance, where did you grow up at?

22 A Union, South Carolina.

23 Q And where do you live now?

24 A In Greenville, South Carolina.

25 Q Where did you go to high school at?

Lance Antonio Brewton
Direct examination by Mr. Abusoft

- 1 A In Union, South Carolina.
- 2 Q Did you play ball?
- 3 A Yes. I played baseball.
- 4 Q What position did you play?
- 5 A Every position.
- 6 Q Every position.
- 7 Okay. And did you know Natalie Niemitalo?
- 8 A Yes. She was my girlfriend.
- 9 Q And how long had you guys dated?
- 10 A Off and on for two years.
- 11 Q And were you with her on September the 25th of 2017?
- 12 A Yes, sir.
- 13 Q Before we get to that day, were you guys together the
- 14 days preceding that?
- 15 A We's together -- we's together every day.
- 16 Q Okay. And what had you guys been doing in the days
- 17 leading up to the 25th?
- 18 A Hanging out, socializing with different friends,
- 19 partying.
- 20 Q And when you say partying, what does that mean?
- 21 A We was -- we was using drugs.
- 22 Q Is that -- was that a regular part of your
- 23 relationship?
- 24 A Yes, sir.
- 25 Q Okay. And were you using drugs on the morning of the

Lance Antonio Brewton
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1 25th?

2 A Yes, sir.

3 Q On the morning of the 25th, what happened?

4 A Well, I arrived at the residence, I mean, the house
5 that morning.

6 Natalie -- Natalie and her mother was in the house in
7 the back room, and Natalie was going through her clothes
8 getting ready to take a shower. And I was just sitting
9 there on the bed listening to them talk until she got up.
10 And when she got up, her mother got up to go to the store.
11 And me and Natalie sat there and talked for a minute.

12 Q Okay. And after you guys got done talking, what
13 happened next?

14 A Natalie got a phone call.

15 MR. BARNETTE: Objection, Your Honor.

16 MR. ABUSAFT: Nothing improper about that, Your Honor.

17 THE COURT: Sir?

18 MR. ABUSAFT: Nothing improper about that.

19 THE COURT: Not about that, no. Are you going to ask
20 what the phone call -- who was on the line?

21 MR. ABUSAFT: Yes, Your Honor.

22 MR. BARNETTE: That's hearsay.

23 THE COURT: Wouldn't that be hearsay information?

24 MR. ABUSAFT: Your Honor, may we approach?

25 THE COURT: Yes.

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Direct examination by Mr. Abusaft

1 MR. ABUSAFT: Actually, I'll --

2 THE COURT: Okay.

3 Q Lance, after Natalie got the phone call, just tell me.
4 what did she do? Don't tell me what -- anything you may
5 have heard.

6 A She -- she continued to play, go through her clothes
7 like she was getting ready to take a shower.

8 Q Did -- did someone ever -- did someone else come to
9 the -- come to Natalie's home after she got that phone
10 call?

11 A Yes.

12 Q who was that?

13 A Her father.

14 Q And after her father arrived at the house, what
15 happened next?

16 A Natalie got -- she grabbed her pocketbook and said she
17 would be back, she had to go get the car from the store
18 from her mother, because her mother had got -- had got
19 arrested.

20 Q All right. And after she left, what happened?

21 MR. BARNETTE: Your Honor, may we approach, Your
22 Honor?

23 THE COURT: Okay.

24 (Bench conference held off the record in the presence
25 of the jury but out of the hearing of the jury.)

Lance Antonio Brewton
Direct examination by Mr. Abusaft

1 Q All right. So Natalie went and got the car and
2 returned to the house.

3 A Yes, sir.

4 Q Is that what you are telling me?

5 A Yes, sir.

6 Q And after Natalie returned to the house, what happened
7 next?

8 A She continued doing, getting her clothes, getting
9 ready to take a shower.

10 so once she finally did walk into -- in the bathroom I
11 grabbed the dog and took him outside for a walk.

12 Q And when you went outside with the dog, what happened
13 next?

14 A I was just outside with the dog until Kevin Schuerman
15 arrived to the house.

16 Q And after Kevin arrived at the house -- when you say
17 Kevin Schuerman are you talking about the gentleman who
18 testified yesterday?

19 A Yes, sir.

20 Q Okay. And after Kevin got to the house, what happened
21 next?

22 A He asked me what was up. I told him what was up. And
23 he asked me where Natalie was. I told him she was in the
24 house taking a shower. So he stepped in the house. I
25 continued to stay outside.

Lance Antonio Brewton
Direct examination by Mr. Abusaft

1 Q Okay. After Kevin went in the house, what happened
2 next?

3 A Like five or ten minutes later I walked into the house
4 and to see was Natalie done yet to ask her to take me to
5 the store to get some cigarettes.

6 Q And did you guys decide to go to the store?

7 A Yes, sir.

8 Q And how were you going to get to the store?

9 A She was going to drive her mother's car.

10 Q Can you describe that car for me?

11 A It was a small Honda VTEC 2-door coup setting low to
12 the ground.

13 Q Okay. And so did you -- did you all get into that
14 vehicle?

15 A Yes, sir.

16 Q And where did you sit?

17 A Well, I got -- I got in the back seat. Kevin got in
18 the front -- front passenger seat and Natalie was in the
19 driver's seat.

20 Q Okay. And so after you guys got situated in the car,
21 what happened?

22 A We sat there for like five minutes because Natalie --
23 she was putting on her makeup like she do normally. And we
24 got impatient sitting there. So I asked her could I drive,
25 and she -- she didn't give me no answer. So I told Kevin

Lance Antonio Brewton
Direct examination by Mr. Abusaft

1 let me out, and Kevin let me out. As I was getting outta
2 the car I --

3 Q Hold on one second. When you say that Kevin let you
4 out, describe what that -- what that was like.

5 A He scooted the seat up. He scooted the seat up, like,
6 towards the dashboard and let me out.

7 Q All right. And after he scooted the seat up, what
8 happened next?

9 A I had a -- I had a firearm in my right-hand pocket. I
10 had on baggy pants. So when I -- when I gotta out -- got
11 outta the car the firearm fell outta my pants. So I looked
12 back and saw it on the seat. So I reached up and picked it
13 up.

14 Q why did you have a firearm?

15 A Because I always carry a firearm.

16 Q why do you always carry a firearm?

17 A Because I'm involved in drug activities.

18 Q what do you mean by that?

19 A Meaning I be around a lot of dangerous people.

20 Q when you say you're involved in drug activity, what
21 does that mean?

22 A That means like I'm a petty hustler because I -- I'm
23 addict at the same time. I hustle to support my habit.

24 Q So you -- you use drugs. Is that what you mean by
25 being an addict?

Lance Antonio Brewton
Direct examination by Mr. Abusaft

1 A Yes, sir.

2 Q And you support that habit by sometimes selling drugs.

3 A Yes, sir.

4 Q And why does that -- so why -- how does that relate to
5 you having a firearm?

6 A Because in the areas I be in, I never know what's
7 going to happen.

8 Q All right. So your gun fell out in the back seat.
9 You -- you picked it up. And what do you do next?

10 A I walk around to the driver's side.

11 Q Mr. Brewton, did you put it back in your pocket?

12 A No, sir, I didn't. I didn't -- I didn't put it back
13 in my pocket because I assumed that Natalie's going to let
14 me drive. And when I ride, I always put it in -- put it in
15 the console in the middle, in a dash in a car so I can
16 easily get to it.

17 Q Was that a mistake, you not putting that gun back in
18 your pocket?

19 A Sir, I regretted it every day.

20 Q All right. So you had the gun in your hand. And you
21 walk around to the driver's side. And what happens next?

22 A I reach over. I see Natalie. She's still in -- in --
23 in the mirror doing her makeup. So I reached to grab the
24 keys. When I reached to grab the keys she forced my hand
25 back, and that's when the gun went off.

Lance Antonio Brewton
Direct examination by Mr. Abusaft

1 Q Lance, now, this is vitally important. Did you mean
2 to kill Natalie?

3 A No, sir.

4 Q How were you feeling at the time that you walked over
5 to the driver's side? Were you angry?

6 A No, sir.

7 Q Well, how were you feeling?

8 A I was just frustrated, ready to leave.

9 Q Did her -- did her putting on her makeup, taking that
10 time, put you in a violent rage?

11 A No, sir.

12 Q Even a little bit? Did you get so mad that you wanted
13 to hurt her even a little bit?

14 A Never.

15 Q Tell me. Tell the ladies and gentlemen of the jury
16 about your relationship with Natalie.

17 A Well, me and Natalie -- it was like a normal
18 relationship with us, but we argued about petty things
19 often. It was nothing normal -- it was nothing irregular,
20 like, this happened often. And I didn't -- I didn't
21 never -- never mean to kill my girlfriend. I had no reason
22 to.

23 I regret this every day, but it's something I can't
24 take back. I'm sorry for the family. I really am. But I
25 did not mean to kill my girlfriend, honestly.

Lance Antonio Brewton
Direct examination by Mr. Abusaft

1 Q Did -- did you guys fuss a lot?

2 A Yes, sir.

3 Q Is that the way y'all communicated?

4 A My best friend told me that.

5 Q All right. So after the firearm -- I just want to be
6 clear. Did you -- did you -- did you mean for that gun to
7 go off?

8 A No, sir, no.

9 Q Was it intentional?

10 A No, sir.

11 Q After it went off, what happened next?

12 A I was -- I was in a -- in a state of mind where I
13 didn't know what to do. So my first thing was I left the
14 scene. When I had got outta the car, and that's when
15 carried Kevin first.

16 Q All right. Let's slow down.

17 The gun goes off. What does Kevin do?

18 A Kevin jumps outta the car. He runs around to the
19 front of the garage.

20 Q Okay. And what does Natalie do?

21 A She jumps into the middle of the car, like, where the
22 console is.

23 Q Okay.

24 A And, like, she was trying to get to the other side of
25 the car. But she was -- she was -- she was screaming

Lance Antonio Brewton
Direct examination by Mr. Abusaft

1 saying that I'm shot, I'm shot. But/and I -- I went around
2 to the other side of the car and I helped her out.

3 Q Take a moment to compose yourself.

4 A Okay. I helped her outta the car.

5 Q Lance, take a moment to compose yourself.

6 A I didn't mean to leave her. I didn't mean -- I didn't
7 mean to leave her. My sister can tell you. I done raised
8 my --

9 Q Mr. Brewton, all right.

10 Kevin has went over to the garage. Natalie has moved
11 to the center console. What happens next?

12 A I went around to the other side so I could help her
13 outta the car, and I laid -- I laid her on the ground and I
14 looked Kevin in his eyes. And then I shut the door and got
15 in the car and left.

16 Q Okay. Lance, later on -- later on, Lance, law
17 enforcement got behind you.

18 A Yes, sir.

19 Q And they signaled you with their blue lights.

20 A Yes, sir.

21 Q At that point did you stop?

22 A No, sir.

23 Q And why didn't you do that?

24 A Because I panicked, sir. One -- one reason why, I had
25 drugs on me.

Lance Antonio Brewton
Direct examination by Mr. Abusoft

1 Q Okay.

2 A And I was scared. I was scared. I was scared that
3 they was going to shoot me. That's why -- that's why I
4 drove all the way to my residence and crashed the car, so
5 my family can come outside.

6 Q Hold on, Mr. Brewton.

7 All right. So you got -- law enforcement signaled
8 you. You didn't stop for them, is that right?

9 A No, sir.

10 Q And that's because you had drugs on you.

11 A Yes, sir. It was part of the reason, yes.

12 Q Okay. And that drive, that long drive that we saw
13 yesterday, that was to get back to your house.

14 A Yes, sir.

15 Q Did you feel that that was a place of safety?

16 A Yes, sir, at the moment.

17 Q And now do you -- do you regret doing that?

18 A Yes, sir, every day. I didn't mean to.

19 Q Mr. Brewton, I just -- I want you -- I want to be
20 clear. You knew you couldn't have a gun.

21 A Yes, sir.

22 Q But you did it anyway.

23 A Yes, sir.

24 Q And, Mr. Brewton, as I said in opening, this isn't
25 your first time being in trouble.

Lance Antonio Brewton
Cross-examination by Mr. Barnette

- 1 A No, sir.
- 2 Q You've been -- you have two convictions for crimes of
3 dishonesty, is that correct?
- 4 A Yes, sir.
- 5 Q Are you being honest today?
- 6 A Yes, sir.
- 7 Q Did you ever have the intention to hurt Natalie?
- 8 A No, sir.
- 9 Q I have no more questions. Please answer the questions
10 of the solicitor.
- 11 MR. BARNETTE: May it please the Court, Your Honor.
- 12 CROSS-EXAMINATION
- 13 BY MR. BARNETTE
- 14 Q Mr. Brewton, you said there was no argument between
15 you and Natalie at the car?
- 16 A There wasn't. It wasn't no loud verbal argument, no.
17 It was just we was, like, going back and forth about who
18 going to drive. It wasn't no -- no angry argument.
- 19 Q You argued all of the time.
- 20 A Yes, sir.
- 21 Q And your testimony is here today you wasn't arguing
22 with her.
- 23 A Yes, sir.
- 24 Q Okay.
- 25 A No. I -- I'm saying I was arguing with her, but it

Lance Antonio Brewton
Cross-examination by Mr. Barnette

1 wasn't -- you know, it wasn't outrageous, angry --
2 outrageous, angry argument, no. It wasn't. Well, yes, we
3 was arguing on who was going to drive.

4 Q So y'all argued often then.

5 A Yes, sir.

6 Q Okay. And then your testimony is you ran to the other
7 side of the car after you shot her?

8 A Yes, sir.

9 Q And you took her out of the passenger-side door?

10 A Yes, sir.

11 Q Okay. And where did you lay her once you took her out
12 of the passenger-side door?

13 A I laid her on the ground right there in the driveway.

14 Q And you left.

15 A Yes, sir.

16 Q Took her car.

17 A Yes, sir.

18 MR. BARNETTE: Your Honor, I'd like to approach the
19 witness. This is actually a toy gun. I'd like to use it
20 for demonstration purposes, Your Honor, instead of the real
21 gun.

22 THE COURT: You may.

23 Q Sir, when you picked up the gun -- you said you
24 dropped it in the back seat?

25 A Yes, sir.

Lance Antonio Brewton
Cross-examination by Mr. Barnette

1 Q Show me how you was holding it once you picked it up.

2 A Like this.

3 Q You was holding it like that. Okay. And --

4 MR. ABUSAFT: Excuse me, Your Honor. Mr. Barnette is
5 blocking.

6 MR. BARNETTE: I apologize.

7 MR. ABUSAFT: If he can move.

8 Q If you would, let the jury see how you were holding
9 it.

10 A I was holding it down by my side like that.

11 Q Okay. So you're right handed, right?

12 A Yes, sir.

13 Q Okay. And you went around. You went for her keys.

14 A Yes, sir.

15 Q And you went to take the keys out of the console, is
16 that right, or rather the key thing?

17 A Yes, sir.

18 Q And where was your hand with that gun when you went to
19 reach to get the keys?

20 A It was, like, in the middle of my body right here. I
21 was reaching over -- I was reaching over.

22 Q Okay. So you reached over. You're down here, and
23 you're reaching over. You reached across her, obviously,
24 to get the keys.

25 A Yes, sir.

Lance Antonio Brewton
Cross-examination by Mr. Barnette

- 1 Q Did you get the keys?
- 2 A No, sir.
- 3 Q Okay. And -- and where was the gun on your body? If
4 you would, stand up and show the jury. Show them where it
5 was.
- 6 A I had the gun right like this.
- 7 Q You had the gun just like that.
- 8 A Yes, sir.
- 9 Q Okay. And it was right there beside your level, right
10 there.
- 11 A Yes, sir.
- 12 Q Okay. You can't possess a weapon, can you, sir?
- 13 A No, sir.
- 14 Q Legally you cannot possess one.
- 15 A No, sir.
- 16 Q Where did you get your gun from?
- 17 A I bought it from a friend.
- 18 Q You don't have a C.W.P.
- 19 A No, sir.
- 20 Q Did you go through a background check for that gun?
- 21 A No, sir.
- 22 Q Where did you get your bullets from?
- 23 A It was already in the gun.
- 24 Q Okay. And, obviously, you loaded the gun.
- 25 A That gun was already loaded.

Lance Antonio Brewton
Cross-examination by Mr. Barnette

1 Q Okay. So your testimony is it was already loaded.

2 You never loaded the gun?

3 A No, sir.

4 Q You never took the magazine out?

5 A I took the magazine out, yes, sir.

6 Q Okay. And you put the magazine back in.

7 A Yes, sir.

8 Q And you racked the gun, the bullet in the chamber,
9 didn't you?

10 A No.

11 Q Okay. So you -- your testimony is you didn't rack the
12 chamber, put the bullet in the chambers?

13 A No, sir.

14 Q How long did you have this gun?

15 A It's, like, 24 hours.

16 Q So you just had the gun for 24 hours?

17 A Yes, sir, because I just had got the money to buy it.

18 Q How much did you pay for this gun?

19 A Like, \$150.

20 Q And where did you purchase it at?

21 MR. ABUSAFT: Objection, Your Honor. Relevancy.

22 THE COURT: Overruled.

23 A From a friend.

24 Q Where at?

25 A In my neighborhood.

Lance Antonio Brewton
Cross-examination by Mr. Barnette

- 1 Q who's the friend's name?
2 MR. ABUSAFT: Objection, Your Honor. Relevancy.
3 THE COURT: Overruled.
4 Q what's the friend's name, sir?
5 A Curtis.
6 Q Curtis what?
7 A I don't know his last name.
8 Q But he's a friend of yours?
9 A Yes, sir. In my neighborhood we go by nicknames --
10 Curt. We don't give out no full names.
11 Q Where does he live in your neighborhood?
12 A He stay in the neighborhood in Greer.
13 Q what's his address?
14 A I don't know.
15 MR. ABUSAFT: Relevancy, Your Honor.
16 THE COURT: Overruled.
17 Q what road does he live on?
18 A I do not know.
19 Q what block does he live on?
20 A He stays in Greer.
21 Q He stays in Greer. Where did you meet him in Greer?
22 A He normally deals with me often on drug sales.
23 Q So you get drugs from him too?
24 A No, sir.
25 Q You supply drugs to him?

Lance Antonio Brewton
Cross-examination by Mr. Barnette

- 1 A Often.
- 2 Q So you often supply drugs to your source for this gun.
- 3 A No, sir.
- 4 Q Okay. I'm confused.
- 5 A Yeah, you confused.
- 6 Q Okay. Let me make sure we're straight about this.
- 7 This guy Curtis is your friend.
- 8 A Yes.
- 9 Q You don't know where he lives at.
- 10 A He stays in Greer.
- 11 Q He stays in Greer. You bought the gun from him.
- 12 A Yes, sir.
- 13 Q But you know him through drug transactions.
- 14 A Yes, sir.
- 15 Q Which way does the drugs go? Do you sell them to him
- 16 or does he sell them to you?
- 17 A It go.
- 18 Q Or do you all sell them for each other?
- 19 A It goes back and forth.
- 20 Q Goes back. What kind of drugs are we talking about?
- 21 A Heroin.
- 22 Q Any other drugs?
- 23 A No, sir.
- 24 Q What other drugs do you deal in?
- 25 A Methamphetamines.

Lance Antonio Brewton
Cross-examination by Mr. Barnette

- 1 Q So you deal in heroin and methamphetamine.
- 2 A Yes, sir.
- 3 Q Okay. And you buy them and sell them, is that right?
- 4 A I buy them, sell them and use them.
- 5 Q Okay. Was you using that day?
- 6 A Yes, sir.
- 7 Q Was you using the day before?
- 8 A Yes.
- 9 Q Was you using the day before that?
- 10 A Yes.
- 11 Q How long had you and Natalie been together?
- 12 A Me and Natalie been together off and on two years.
- 13 Q You said you were with her every day prior to this.
- 14 A Oh, yes. We was -- we stayed in a hotel room that
- 15 prior week.
- 16 Q Okay. So how long was y'all together before this
- 17 happened? I mean, together -- I mean, I'm assuming y'all
- 18 were together the whole time.
- 19 A Yes.
- 20 Q For how long?
- 21 A We was together the whole week.
- 22 Q For that whole week?
- 23 A Yes.
- 24 Q And y'all had been to a hotel, you said.
- 25 A Yes.

Lance Antonio Brewton
Cross-examination by Mr. Barnette

- 1 Q And you're using meth and heroin, is that right?
- 2 A Yes, sir.
- 3 Q Was you supplying meth and heroin to Natalie?
- 4 A No, no. I shared it with her, but I didn't supply it
5 to her.
- 6 Q But you shared it with her.
- 7 A Yes, sir.
- 8 Q You gave it to her.
- 9 A Yes, sir.
- 10 Q And how old are you?
- 11 A Thirty-nine.
- 12 Q How old was Natalie when she died?
- 13 A She was 24.
- 14 Q And the reason why you keep a gun on you all of the
15 time -- how long have you kept a gun with you at all times?
- 16 A Often. I keep it often.
- 17 Q Okay. But you only had this gun for 24 hours.
- 18 A Yes.
- 19 Q So you've had other guns that you kept, obviously, you
20 keep with you all of the time.
- 21 A No, sir. I didn't have no other gun at the time.
- 22 Q No. But you only had this for 24 hours, you testified
23 earlier.
- 24 A Yes. When I located it and had to give the money.
- 25 Q Okay. So, but you keep a gun with you all of the time

Lance Antonio Brewton
Cross-examination by Mr. Barnette

- 1 because of the business you do.
- 2 A Yes, sir.
- 3 Q And you said you ran because you had drugs on you, is
4 the reason why you ran from the police.
- 5 A Yes.
- 6 Q Okay. And what kind of drugs was it?
- 7 A Methamphetamines.
- 8 Q where were they in the car?
- 9 A where were they?
- 10 Q Yes, sir.
- 11 A It was in my pocket.
- 12 Q It was in your pocket?
- 13 A Yes, sir.
- 14 Q Okay. And your pocket -- weren't you wearing a pair
15 of Dickies with a couple of pair of shorts underneath them?
- 16 A Yes, sir.
- 17 Q So you was wearing these Dicky pants, and then you had
18 the two pairs of shorts underneath them, is that right?
- 19 A Yes, sir.
- 20 Q why did you do that?
- 21 A Because that's what I do to make my pants fit.
- 22 Q Okay. So you -- you put extra shorts underneath them
23 to make them fit.
- 24 A Yes, sir.
- 25 Q And these Dickies was just, I mean, they're blue,

Lance Antonio Brewton
Cross-examination by Mr. Barnette

1 pockets front and back, is that right?

2 A Yes, sir.

3 Q And you were wearing them that day.

4 A Yes, sir.

5 Q And the gun was in which pocket, again?

6 A My right pocket.

7 Q And how was it in your right pocket?

8 A It was placed in my pocket like a -- like you put a --
9 put your phone in your pocket.

10 Q Okay. Can you show us how that gun -- in your pocket
11 right now if you stand up and show us how that gun was in
12 your pocket?

13 MR. ABUSAFT: Objection, Your Honor. May we approach?

14 (Bench conference held off the record in the presence
15 of the jury but out of the hearing of the jury.)

16 MR. BARNETTE: Your Honor, with the Court's
17 permission. Yes, sir. I'll let you see it.

18 (Pause.)

19 THE COURT: Bring that other one over here.

20 MR. BARNETTE: Yes, sir.

21 (Bench conference held off the record in the presence
22 of the jury but out of the hearing of the jury.)

23 MR. BARNETTE: Your Honor, permission to approach the
24 witness with State's Exhibit 7.

25 THE COURT: You may.

Lance Antonio Brewton
Cross-examination by Mr. Barnette

1 Q Okay. Mr. Brewton, do not point this gun at anybody.
2 okay?

3 A I don't -- I don't want to touch that gun, period.

4 Q Well, I'm going to -- there was an objection. They
5 want you to use the actual gun.

6 A I don't want to touch that gun, period.

7 MR. ABUSAFT: Your Honor, may we approach?

8 THE COURT: You're going to need to -- you're going to
9 need to.

10 MR. ABUSAFT: Your Honor, may we approach?

11 THE COURT: Sure.

12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)

14 Q Okay. I guess the objection's been removed at this
15 time. So, if you would, use this, like I said, the toy
16 representation. If you would, just show the jury where --
17 how you put it in your pocket and everything, if you would,
18 sir. I realize it's bigger than that.

19 Okay. If you would, come out here so they can it.

20 (Whereupon, the witness left the stand.)

21 Q If you would, sir, please remove your coat so they can
22 see.

23 So the gun was in the pocket like this right here, and
24 the handle is, I guess, right there, is that right, sir?
25 And that's the way it was in your pocket.

Lance Antonio Brewton
Cross-examination by Mr. Barnette

- 1 A Yes.
- 2 Q Thank you, sir.
- 3 (Whereupon, the witness returned to the stand.)
- 4 Q You can remove that if you'd like to. Thank you.
- 5 (Pause.)
- 6 Q So you had the bullet and the gun all the way in your
7 pocket.
- 8 A Yes, sir.
- 9 Q Okay. And where did you place the gun? You pulled
10 Natalie -- you pulled Natalie out of the car.
- 11 A Yes, sir.
- 12 Q You left her in another man's arms.
- 13 A Yes, sir.
- 14 Q And you left, and you had the gun. Where did you
15 place the gun at?
- 16 A I laid it on the seat. I laid it on the driver's
17 seat --
- 18 Q Okay.
- 19 A -- when I went around the car.
- 20 Q When you got back in the car, what did you do with it?
- 21 A I put it right in front of the gear shift.
- 22 Q And did you have blood on the back of your shirt?
- 23 A They say I did, but I didn't see it.
- 24 Q And you realize that blood was Natalie's blood.
- 25 A Now I know.

Lance Antonio Brewton
Cross-examination by Mr. Barnette

1 Q Okay. And the gun you had actually in the center
2 console. You've seen the pictures we showed to the jury.

3 A Yes, sir.

4 Q And that gun was loaded.

5 A Yes, sir.

6 Q There was another bullet in the chamber, is that
7 right?

8 A Yes, sir.

9 Q And there was at least four more bullets in that
10 magazine, is that right?

11 A Yes, sir.

12 Q You placed it right there where it could easily be
13 reached.

14 A Yes, sir.

15 Q With a highway patrolman chasing you 23 miles.

16 A Yes, sir.

17 Q And you ran because you had drugs on you.

18 A Yes, sir.

19 MR. BARNETTE: One moment, Your Honor.

20 (Pause.)

21 Q And these drugs, you said, how much drugs did you have
22 on you, sir?

23 A Maybe a gram or two -- gram.

24 Q Okay. Where was the rest of your drugs?

25 A I didn't have no rest of my drugs. I didn't have no

Lance Antonio Brewton
Cross-examination by Mr. Barnette

1 more.

2 Q So your testimony is you had no other drugs in the
3 house or anywhere else?

4 A No, sir.

5 Q And you said before you only had this gun for 24
6 hours.

7 A Yes, sir.

8 Q Why did you have to buy another gun?

9 A To protect myself.

10 Q Okay. But you always carried the gun with you. For
11 how long? How long have you been dealing in drugs?

12 A For the last two years, three years.

13 Q So you've had a gun with you at all times during that
14 time.

15 A Off and on.

16 Q Yes, sir. As a matter of fact, you had been off and
17 on with Natalie too, is that right?

18 A Yes, sir.

19 Q So y'all would separate at times and got back
20 together.

21 A Yes, sir.

22 Q And you're the one that shared your drugs with her.

23 A The only reason I shared drugs with her, because I
24 didn't want her doing that -- doing things that, you know
25 what I'm saying, normal girls do for drugs. I never meant

Lance Antonio Brewton
Cross-examination by Mr. Barnette

1 to hurt her.

2 Q Oh, I understand. But you was under the influence of
3 those drugs that day, weren't you?

4 A Yes, I was.

5 Q When was the last time you used meth that day?

6 A I used -- I used that morning.

7 Q When was the last time you used heroin?

8 A That night.

9 Q Okay. So, obviously, you was feeling the effects of
10 those drugs.

11 A Nah. I wasn't because I had been up days. It was
12 just keeping me going.

13 Q Well, how long had you been up?

14 A About three days.

15 Q So you'd been up three days straight.

16 A Yeah. We both have.

17 Q No sleep.

18 A No, sir.

19 Q So you're on a meth binge, basically.

20 A Yes, sir.

21 Q And you're handling a gun?

22 A Yes, sir.

23 Q And your testimony is you had this gun held the way
24 you showed it to them when you went reaching for the keys.

25 A Yes, sir.

Lance Antonio Brewton
Redirect examination by Mr. Abusaft

1 Q And you had it down on your side like this.

2 A I didn't have it. I had it in my hand.

3 Q In your hand. I want to make sure I say it right. In
4 your hand.

5 A Yes, sir.

6 Q Like this, is that right, sir?

7 A Yes, sir.

8 MR. BARNETTE: One moment, Your Honor, please.

9 (Pause.)

10 Q Please answer any questions your lawyer may have for
11 you.

12 REDIRECT EXAMINATION

13 BY MR. ABUSAFT

14 Q You said -- you said you had -- the solicitor went
15 through a long series of questions about Curtis. Was he
16 like an associate of yours?

17 A Yes, sir.

18 Q He wasn't a close personal friend?

19 A No, sir.

20 Q That's why you don't know all of that information
21 about him?

22 A Yes, sir.

23 Q You just know him in passing.

24 A Yes, sir.

25 Q solicitor got you up moving around. So, now, the

Lance Antonio Brewton
Redirect examination by Mr. Abusaft

1 solicitor had you stand up, and he talked about when you
2 were reaching for the keys and how you were holding the
3 gun.

4 A Yes, sir.

5 Q And he had you kinda do -- had it at your side.

6 A Yes, sir.

7 Q But when you were reaching --

8 MR. BARNETTE: Your Honor, I'm going to object to
9 that. He's leading him, and that only goes to my
10 representation of my question to him. I let him answer the
11 questions.

12 MR. ABUSAFT: I don't believe that's true, Your Honor.

13 THE COURT: Don't lead him.

14 Q To reach inside the car what -- what angle was your
15 body in?

16 A It's like in a left -- left degree angle.

17 Q Just -- just show us how you had to reach into the
18 car.

19 A This.

20 Q And you were reaching for the keys?

21 A Yes, sir.

22 Q So you had to -- had to flip your hand?

23 A Yes, sir, yes, sir.

24 Q And which hand was the firearm in?

25 A It was in my right hand.

Lance Antonio Brewton
Redirect examination by Mr. Abusaft

1 Q So you weren't sitting -- you weren't standing
2 vertically.

3 A No, sir.

4 Q It was in your hand as your body was something like
5 this.

6 A Yes, sir.

7 Q Okay. I -- I allowed the solicitor to hand you
8 this -- this gun because you were uncomfortable. This gun
9 is substantially larger than the gun that you actually had
10 that day, right?

11 A Yes, sir.

12 Q Okay. And describe -- describe the -- and you didn't
13 have on dress pants that day like you did today.

14 A I had on baggy Dickies.

15 Q Dickies. What kind of pants are Dickies?

16 A They khaki pants.

17 Q Are they -- are they sometimes used -- are they work
18 pants?

19 A Yes, sir.

20 Q Okay. But they're not similar to what you're wearing
21 right now.

22 A No.

23 Q Mr. Brewton, are you some drug kingpin?

24 A No, sir.

25 Q Is your drug -- is your drug sales the product of your

Lance Antonio Brewton
Redirect examination by Mr. Abusaft

1 drug addiction?

2 A Excuse me?

3 Q Are your drug sales to further your drug addiction?

4 A Yes.

5 Q Did you introduce Natalie to drugs?

6 A No, sir.

7 Q When you met Natalie was she already using drugs?

8 A Yes, sir.

9 Q And so you were two addicts in a relationship
10 together.

11 A Basically.

12 Q And you said you -- what was the reason why you shared
13 drugs with Natalie?

14 A Because I know what some girls do for drugs, and I was
15 always protective of Natalie.

16 When we first met it wasn't -- it wasn't on a
17 relationship things. I was, like, trying to guide her to
18 get her to go to rehab and stuff.

19 Q Mr. Brewton, tell me. So, Mr. Brewton, did you -- so
20 you thought if you didn't share your drugs with Natalie
21 that she would find them some other kind of way.

22 MR. BARNETTE: Objection, Your Honor. Speculation.

23 THE COURT: Well, he can say what he was thinking but
24 not what she was thinking.

25 MR. ABUSAFT: Thank you, Your Honor.

Lance Antonio Brewton
Recross-examination by Mr. Barnette

1 Q Did you think she would find them some kind of other
2 way?

3 A Yes.

4 Q Okay. Lance, did you love Natalie?

5 A Of course.

6 Q Did you want her to die that day?

7 A No, sir.

8 Q Would you ever have purposefully tried to be violent
9 with her?

10 A No, sir.

11 Q Thank you.

12 MR. BARNETTE: May it please the Court, Your Honor. A
13 few on redirect.

14 RE-CROSS-EXAMINATION

15 BY MR. BARNETTE

16 Q You was afraid if you didn't give her drugs she'd
17 leave you?

18 A No, sir.

19 Q Okay. But you felt like she'd go somewhere else?

20 A No, sir. I felt like she was like she might do
21 something that she might not be proud of, and I didn't -- I
22 didn't want that.

23 Q You tried to help her to rehab?

24 A Yes. That's mainly -- mainly -- most -- came over.

25 Me and her father was trying to get her to go. I always

Lance Antonio Brewton
Recross-examination by Mr. Barnette

1 told her that if she didn't go it would fall back on me and
2 she...

3 Q But you shared your drugs with her. How is that going
4 to help her rehab?

5 A I -- because she -- if you know Natalie like I know
6 Natalie, she going to do -- she going to do what Natalie's
7 going to do, no matter what who -- what who say.

8 Q And your testimony is these Dickies were baggy pants?

9 A Yes, sir.

10 Q And it was the blue Dickies or whatever.

11 A Yes, sir.

12 Q And the drugs you used for three days y'all was up?

13 A Sir? Excuse me?

14 Q The drugs that y'all used that kept y'all up for three
15 days you was talking about came from you, right?

16 A Yes, sir. But she had her own drugs too. I don't
17 know where she got them from. That's irrelevant.

18 Q But you're telling this jury that you remember
19 everything perfectly clear after you had three days of
20 drugs.

21 A Yes.

22 Q Thank you, sir, for answering my questions.

23 MR. ABUSAFT: Nothing further, Your Honor.

24 THE COURT: You may step down.

25 MR. ABUSAFT: At this point, Your Honor, the defense

1 rests.

2 THE COURT: Any reply?

3 MR. BARNETTE: May we have a moment, Your Honor, to
4 consult and see if we will have any reply or not?

5 THE COURT: Okay. Let me ask the jury to please go to
6 your jury room.

7 Don't begin discussions of the case. I'll bring you
8 back shortly.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: Do y'all need more time?

12 MR. BARNETTE: She is getting the witnesses off. I do
13 want -- may we approach the bench?

14 (Bench conference held off the record.)

15 THE COURT: Let's take ten minutes.

16 (Whereupon, a recess was taken.)

17 THE COURT: All right. Let's address the instruction
18 requests. Does the state have any?

19 MR. BARNETTE: Your Honor, we'd like involuntary
20 intoxication -- voluntary intoxication, a charge on that,
21 Your Honor.

22 THE COURT: All right. Any objection to that from the
23 defense?

24 MR. ABUSAFT: No, Your Honor.

25 THE COURT: All right. Any others from the state?

1 MR. BARNETTE: Will you be charging concerning the
2 crimes of dishonesty?

3 THE COURT: I am.

4 MR. BARNETTE: Yes, sir.

5 THE COURT: All right. Mr. Abusaft.

6 MR. ABUSAFT: Your Honor, we'd ask the state -- we'd
7 ask the Court to charge accident, involuntary manslaughter,
8 Your Honor.

9 THE COURT: All right. What's the state's position?

10 MR. BARNETTE: Your Honor, we'd ask you deny that
11 request on both counts.

12 He is not legally able to possess that weapon. He's
13 done an unlawful act with it, Your Honor; therefore
14 accident can't apply.

15 And it was not for self-defense reasons. Therefore, I
16 have State vs. Gibson. Involuntary manslaughter does not
17 apply also in this case. In that case, State vs. Gibson,
18 390, South Carolina 347, 701 S.E. 2nd, 766, is a Court of
19 Appeals case from 2010. It's still good law at this time,
20 Your Honor.

21 May I approach the bench?

22 Therefore I don't think he's entitled on either, count
23 two, accident or the involuntary manslaughter charges in
24 this case, Your Honor.

25 THE COURT: Mr. Abusaft.

1 MR. BARNETTE: Your Honor, basically that case says --
2 the case had a right -- when -- whenever the defendant had
3 a right to be armed for purposes, whether he was engaged in
4 a lawful act, whereas, he was lawfully armed or not,
5 whether he acted in self-defense for shooting Irby. He
6 wasn't likely in there and, obviously, he was acting
7 recklessly with the weapon also, Your Honor.

8 THE COURT: Mr. Abusaft.

9 MR. ABUSAFT: Your Honor, I'm not -- obviously, I
10 guess -- I guess the solicitor is using this case for its
11 factual pattern.

12 I would point to -- for the position -- objecting to
13 the state's position on this I'd point the Court to State
14 vs. Goodson and State vs. Burris. Specifically, out of
15 Goodson, footnote No. 1 -- that's on No. 3. You can look
16 at the -- the numbers in the top right, page three.

17 "We reject the state's claim that because Goodson
18 unlawfully possessed a firearm the defense of accident is
19 precluded. Rather, the burden rests upon the state to
20 prove beyond a reasonable doubt that the unlawful act in
21 which the accused was engaged was at least the proximate
22 cause of the homicide."

23 Your Honor, they state the proposition of State vs.
24 Brown. This case does -- its factual scenario may deal
25 with self-defense, Your Honor, but the Court has made a --

1 is making a broader position of law. It -- it explicitly
2 rejects that position, Your Honor.

3 I'd also point you to State vs. Burris, and that's
4 number -- that'd be -- if you look at the top numbers
5 that's No. 10, Your Honor. I'm sorry that the pages are a
6 little bit faint.

7 There the Court says, "We found Goodson was not
8 entitled to a charge of accident because he was acting --
9 he was not acting lawfully when the shooting occurred.
10 However, we base this determination solely on the lack of
11 evidence going with Goodson was acting in self-defense. We
12 specifically rejected the state's claim that because
13 Goodson unlawfully possessed a firearm the defense of
14 accident is precluded. Rather, the burden rests upon the
15 state to prove beyond a reasonable doubt that the unlawful
16 act in which the accused was engaged was at least the
17 proximate cause."

18 Your Honor, so in that particular case they -- they
19 had an independent ground. They had this other ground for
20 rejecting the accident charge. But they, again, took the
21 time to reject the position of the state.

22 And I would -- I would also point to the Court that
23 these cases -- and I would -- these cases apply to
24 involuntary manslaughter as much as they do accident, Your
25 Honor.

1 I can cite to you specific language if you need me to
2 do -- need me to say that, to show you that, Your Honor,
3 that the -- the accident case law is connected with
4 involuntary case law in this particular state.

5 Your Honor, I would then direct you to State vs.
6 Slater for what it looks like for a gun to be the proximate
7 cause of a crime.

8 In State vs. Slater, Your Honor, the Court
9 basically -- the Court held -- I just want to point to
10 this, and you can follow along as I talk. That'd be on
11 page six of the numbered pages, Your Honor.

12 Basically, the Court found that because -- because an
13 individual -- Mr. Slater in this particular case -- had the
14 gun unlawfully and brought it to the situation his
15 possession of the gun actually escalated the situation to a
16 point where the victim got shot.

17 So the gun was not just there, Your Honor. The gun
18 escalated the situation where other people who are armed
19 weren't going to use guns before, but because he brought a
20 gun he caused them to start shooting at him, which
21 ultimately resulted in the victim being shot, Your Honor.

22 And so that's what -- that's the best example I've
23 been able to find in case law of what a gun being there is
24 a proximate cause.

25 It can't just -- in all of these cases, Your Honor,

1 when somebody gets shot by accident or because somebody's
2 not using due care, the gun's going to be there. It's
3 going to be a but-for cause. But for proximate causation
4 the presence of the gun in and of itself has to escalate a
5 situation.

6 For those reasons I ask for an involuntary --
7 involuntary manslaughter charge.

8 THE COURT: Is the -- is it the defense's position
9 that the defendant was exercising reasonable and due care
10 in the handling of the firearm?

11 MR. ABUSAFT: For the purpose of accident, Your Honor?

12 THE COURT: Well, for any purpose.

13 MR. ABUSAFT: All right. Well, Your Honor, I have not
14 been able to see in the case law what due care -- what the
15 Supreme Court believes is due care.

16 He was -- at some point -- I guess the short answer is
17 yes, Your Honor, because at some point anybody with a gun
18 that goes off and hits another person is not exercising the
19 care that they should have.

20 But if we took that position there would be no such
21 thing as accident with a gun. If somebody's in their
22 living room cleaning a gun and it goes off and hits
23 somebody, they're not exercising the care necessary because
24 their gun is never supposed to be aimed in a way that it
25 could ever hit anybody else.

1 So, Your Honor, him just holding the gun and doing --
2 not swinging it around, not playing with it, not trying to
3 intimidate anyone, I don't believe, rises to the legal
4 definition of not due care.

5 THE COURT: Okay.

6 MR. ABUSAFT: But, obviously, that doesn't apply for
7 involuntary manslaughter, Your Honor.

8 THE COURT: Well, as I think we can all agree, in
9 order for the defendant to be entitled to a charge as to
10 the defense of accident there have to be three things or
11 evidence relating to three particular elements.

12 One is that the death was -- occurred -- did occur and
13 it was unintentional; secondly, the defendant had to have
14 been acting lawfully; and, thirdly, the defendant had to be
15 exercising reasonable care in the handling of the handgun.

16 With respect to involuntary manslaughter, as I
17 understand it, the defendant takes the position that he was
18 acting lawfully?

19 MR. ABUSAFT: Well, Your Honor, he was in unlawful
20 possession of a weapon, but that unlawful possession must
21 be the proximate cause.

22 THE COURT: I understand it.

23 MR. ABUSAFT: So, yes, Your Honor.

24 THE COURT: In order to be entitled to an instruction
25 on the lesser included offense of involuntary manslaughter

1 the evidence has to support a finding that the killing was
2 unintentional, without malice, but either while engaged in
3 an unlawful activity, not naturally tending to cause death
4 or result in great bodily injury, or an unintentional
5 killing without malice while engaged in a lawful activity
6 with a reckless disregard for the safety of others.

7 From my review of the evidence that's presented I
8 don't think it can be reasonably disputed that the
9 defendant was acting unlawfully in possessing a firearm
10 that he was prohibited by law from possessing, that he
11 wielded that firearm in the absence of the exercise of
12 reasonable and due care and he was not acting in
13 self-defense.

14 Now, he wielded that firearm while he was in the
15 process of arguing or bickering with the decedent, which
16 sort of fits under the Slater case, I think, that you
17 mentioned; and while he was in the process of arguing and
18 bickering with the decedent that he got out of the vehicle
19 with a loaded firearm in his hand and attempted to either
20 remove the decedent from the vehicle or attempted to take
21 control of her vehicle when he had no ownership interest or
22 possessory interest in the vehicle.

23 I think that to be unlawful conduct. Attempting to
24 remove an occupant, a lawful occupant in the driver's seat
25 of a vehicle or attempting to take control of a vehicle

1 that does not belong to you and for which you have no
2 ownership or possessory interest, and doing so while
3 handling a loaded firearm, is activity that naturally tends
4 to result in death or results in great bodily injury to
5 someone.

6 That is certainly reasonably foreseeable if you
7 attempt to commandeer a vehicle that's not yours and you
8 have a loaded handgun somebody resists that it could result
9 in death or great bodily injury.

10 So based upon the fact the defendant was acting
11 unlawfully I find that -- and that he was not exercising
12 reasonable care in the handling of a firearm -- I find that
13 the defense of accident as well as the offense of -- lesser
14 offense of involuntary manslaughter is not applicable under
15 the law and evidence relating to this case. So those
16 requests are declined.

17 Are there others?

18 MR. ABUSAFT: No, Your Honor.

19 THE COURT: All right. Are we ready to proceed?

20 MR. BARNETTE: Your Honor, we do have one matter.

21 Defense had shared with us that he has a presentation,
22 and I'd like the Court to observe that. There's some
23 pictures they put in. I know he says they're for
24 demonstrative purposes, but I have concerns about it. It's
25 a girl putting her makeup on and things like that.

1 We have evidence here. I understand they're
2 demonstrative, but I think power point's not part of that,
3 and I'd ask the Court to review those pictures.

4 THE COURT: Are these photographs of the decedent?

5 MR. ABUSAFT: No.

6 THE COURT: No. Okay.

7 (Bench conference held off the record.)

8 THE COURT: All right. Are we ready for the jury?

9 MR. BARNETTE: The state's ready, Your Honor.

10 MR. ABUSAFT: Your Honor, I just want to put on the
11 record that we ask that the state comply with State vs.
12 Beatty.

13 THE COURT: They will.

14 MR. BARNETTE: I'm ready to open fully, Your Honor,
15 and then reply.

16 THE COURT: Okay. Bring the jury in, please.

17 MR. ABUSAFT: Oh, Your Honor, at this point we renew
18 our motion for a directed verdict.

19 THE COURT: All right. Those motions have been heard,
20 and they are denied.

21 MR. ABUSAFT: And we renew all of our objections.

22 (The following takes place in the presence of the
23 jury.)

24 THE COURT: All right. Any additional evidence to be
25 received?

Closing arguments

1 MR. BARNETTE: None from the state, Your Honor.

2 MR. ABUSAFT: None from the defense.

3 THE COURT: All right. Ladies and gentlemen, that is
4 all of the testimony or evidence to be offered in the case.
5 What remains to be done are the lawyers' final
6 summations, after which I'll instruct you on the law.

7 So please give the lawyers your attention now as they
8 give you their final summations.

9 The way that's accomplished, the state has the burden
10 of proof. They go forward first, followed by the defense,
11 and then the state gets to make a brief reply argument to
12 the defense's position.

13 Solicitor Barnette.

14 MR. BARNETTE: May it please the Court, Your Honor.

15 Mr. Foreman, ladies and gentlemen of the jury, you
16 heard Ms. Wells talk to you earlier in opening about the
17 one thing you bring to this courtroom and decide what's the
18 evidence in this case, the facts in this case and the
19 verdict in this case, is your common sense, your everyday
20 common sense, what you do in your everyday lives.

21 In this case that's all I ask you to do. You're going
22 to have the evidence with you. You heard the testimony.

23 What I'm going to do is kinda start backwards with
24 you. Let's start with the defendant's own testimony.

25 It couldn't have happened the way he said it happened.

Closing arguments

1 And how we know that is you have the evidence in front of
2 you from that standpoint.

3 You remember I told you that if he came in and he said
4 he had the gun -- and I know this is just a representation
5 or whatever -- but he said he had it all the way in his
6 pocket. You saw where he had it at. He had it all the way
7 in there. I wanted to make sure I pointed it out. It's
8 all way in his pocket from that standpoint.

9 He says it falls out. And he says I picked it up
10 afterwards. And he's got his finger in there holding it
11 like this. And he says we weren't arguing. Like I said,
12 you've got other testimony in this case. And you've got to
13 decide what's credible and what's not credible.

14 You heard Kevin Schuerman basically at the beginning
15 there saying he saw them arguing like they argue all of the
16 time. He said, well, I went around. I didn't argue with
17 him. And I reached like this to go get it. I wanted to
18 make sure of that. You're going to reach for the keys and
19 go underneath there and keep the gun down here?

20 You heard Dr. Wren's testimony. The shot's here,
21 well, actually on the left side. Apologize. The left
22 side, coming down here to the 50 wren [sic]. There's no
23 way that could have happened that way.

24 Then he says after he shot her he goes to the
25 passenger side and pulls her out. well, ladies and

Closing arguments

1 gentlemen -- and you remember Kevin Schuerman's testimony.
2 You remember what he told the officers right there on the
3 scene. You're going to have the body cam video back there
4 and everything.

5 Where is all of the stuff at? It's on the side Kevin
6 Schuerman talked about. You'll have these diagrams; you'll
7 have the pictures. Where are things at? It's on the side
8 Kevin talks about. It's on the driver's side. It's not on
9 the passenger side. Everything.

10 The blood is right on the edge where all of the
11 materials are found. There's no blood on the other side of
12 the driveway. There's no items on the other side of the
13 driveway. And you'll have pictures showing that to you.
14 There's no way it happened that way.

15 He pulls her out or takes her out of the driver's seat
16 just like Kevin Schuerman said. He lays her, puts her
17 down, because you can see her shoes is over in the bushes,
18 a woman's shoe.

19 And then he says I run because I had drugs on me. He
20 leaves her in another man's arms. He tried to tell you how
21 much he loved her. That's one thing. You weigh
22 credibility of witnesses. He's up here crying when he's
23 first talking. He just stops.

24 He's putting a show on for you, ladies and gentlemen.
25 He's hoping you'll hook, line and sinker accept it.

Closing arguments

1 Like he was telling you, he drove away 23 miles
2 because he some drugs in his car. He said I only had this
3 gun -- and you'll have the gun back with you -- for 24
4 hours. I got it from this friend of mine. Don't know
5 where he lives. Don't know anything. This happened 24
6 hours.

7 What's kind of funny, if you've been on a binge for
8 three days, you've been with her for three days, how did
9 you just get this gun for 24 hours? It didn't happen that
10 way, ladies and gentlemen. That goes to his credibility.
11 All of the evidence shows it that way.

12 And he says he pulled her over. You'll see. You're
13 going to have the pictures from inside of the car. There's
14 bottles. There's a Sprite bottle and there's a clear
15 bottle right there. If he would have pulled her over, then
16 they sure wouldn't have been standing like that. It didn't
17 happen that way.

18 And here's a man that's been convicted of dishonesty
19 twice, crimes of dishonesty. And you'll hear the judge do
20 that. That could be used to weigh his credibility as a
21 witness.

22 One other thing. He talked about the gunshot. And,
23 like I said, there's no way it could have happened the way
24 he's holding that gun. And remember. It takes five and a
25 half pounds of pressure to pull this. He had his finger in

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1 it, because I asked him that. So he pulled the trigger,
2 the man that on meth, heroin, shared it with Natalie. The
3 man that pulled the trigger to this gun, it wasn't
4 accidentally pulled, it wasn't pulling three things like
5 that. He pulled the five and a half pounds of pressure,
6 and it wasn't down here when he shot it. And you talk
7 about contact wound. It wasn't a contact wound.

8 Also, the other things you'll have back there, you'll
9 have the shirts that she was wearing. You'll see where it
10 went in, entranceway. You have the gray shirt she was
11 wearing, as well as her tank top. And you'll have the back
12 where the exit wound was. Look where those are. And
13 you'll have the actual shirts back there with you. Please
14 take a look at everything. And you'll see there's nothing
15 on them -- no gunpowder, no stippling, nothing, no burn
16 marks. Just a hole.

17 So he was a distance away, because he says he did it
18 the way he did it, he had to literally be against her if
19 he's reaching in there.

20 And the other thing too, her arm couldn't have been
21 there. There's not a gun wound to her arm. Remember it
22 happened around the armpit. So her arm had to be out of
23 the way. So it had to be front, back or up. It couldn't
24 have been by her side. Couldn't have been like this or
25 like this because the gun was shot through the arm or hit

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1 the arm.

2 There's no question he fired this weapon, no question
3 the bullet was found by E.M.T., which you saw. And she's
4 lying and dying as he's driving away but he loved her so
5 much. Dying in the arms of another man.

6 And wrecking his car there. And you see where the gun
7 is. It's right there. It has one chamber, a bullet in the
8 chamber that was placed by him and in the floor.

9 And what was interesting, he only owned this gun for
10 24 hours. He at least pulled the cartridge out because it
11 has his fingerprint on it, or his thumbprint if you
12 remember the testimony right from the SLED agent.

13 After he takes her outta the car he even sits down.
14 You'll see. You'll have the actual t-shirt back with you.
15 You've got the pictures. The blood is from the back side.
16 He sits in the seat where she had bled, and you will see
17 it. He sits in her own blood.

18 I don't see how he's credible with anybody, ladies and
19 gentlemen. This did not happen this way. The man on meth,
20 heroin, he can't tell you where he got the stuff, can't
21 tell you where he got the gun, can't tell you this and
22 that. That goes to credibility.

23 Kevin Schuerman. And you saw him immediately
24 afterwards. You saw him describe what happened. He's got
25 no dog in this fight. He stayed with her. He called

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1 9-1-1. You'll have the actual 9-1-1 call where you hear
2 Natalie on the phone. You see Natalie on the body cam
3 video.

4 This man left her to die. He was running as fast as
5 he could. You saw the chase. This was no accident. This
6 is what it actually is.

7 And murder. Malice can happen that quick. The judge
8 will charge you that basically it can be just in an instant
9 second. That's how long it takes.

10 And that argument, him on meth, him on the heroin,
11 losing his temper with her, wanting her to get out of that
12 seat. He didn't reach in. He just told her to get out and
13 shot the gun. She didn't get out. And I submit to you she
14 was trying to get away from him some way. Unfortunately,
15 she didn't get away.

16 And that's when Kevin ran out. He thought he'd
17 actually got shot. That's how close it was, the ringing
18 and everything.

19 Another thing the judge will charge you is on
20 reasonable doubt. He charges you the two parts of it.
21 He'll charge you about hesitate to act. He'll also charge
22 you about firmly convinced.

23 This evidence, ladies and gentlemen, has got to leave
24 you firmly convinced. The evidence shows here. Kevin
25 Schuerman told you what happened. If this evidence makes

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1 you firmly convinced, then I ask you to return a verdict of
2 guilty because that's what the standard is. It's a
3 situation where you weigh the credibility of the evidence.
4 All of the evidence, every piece of the evidence, points to
5 one conclusion. And there's no question about this. This
6 man shot that day. We have the actual gun; we have the
7 G.S.R.; you have his t-shirt where he has her blood on it.

8 All of the evidence is clear, ladies and gentlemen.
9 It's murder. And, like I said, it happened this quick. If
10 he loved her that much, why do you leave her, why do you
11 run?

12 You'll see the tapes. He said I ran because I had
13 drugs on me. He knew he wasn't entitled to possess a
14 weapon. He knew that. But he kept one all of the time
15 because that's his business. That's what he does. That
16 lead to the death of a beautiful woman.

17 Like I said, you'll have her picture back there with
18 you. She didn't deserve this. She didn't deserve to die
19 the way she did.

20 What I'm going to ask you to do, ladies and gentlemen,
21 is hold him responsible for his actions for what he did
22 that day and ask you to return a guilty on both counts --
23 guilty of possession of a weapon during a violent crime, a
24 weapon that he's not entitled to have -- and for the
25 murder, the malice, the killing. Thank you very much.

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1 Thank you, Your Honor.

2 MR. ABUSAFT: Ladies and gentlemen of the jury, I told
3 you we'd speak again.

4 At the beginning of this trial I told you that this
5 case was a puzzle with missing pieces. And those pieces
6 weren't just any pieces. They weren't on the corners; they
7 weren't on the sides. They were right in the center. They
8 couldn't be colored in. They couldn't be hidden by a
9 frame.

10 And at the end of this trial I told you I was going to
11 ask you to go to the box, turn it over, read the words at
12 the very bottom and send it back. We've come to that
13 point.

14 Let's talk about those missing pieces. First thing,
15 it's always difficult for an attorney when you come in
16 closing and you lay out your case and you say there's
17 missing pieces. You're always scared that the state's
18 going to throughout the course of the trial fill in those
19 pieces, they're going to make it clear. You're scared of
20 that.

21 So I was wondering how the state would potentially do
22 that, and I found out that they really never tried. What
23 they instead did was added more pieces.

24 Over the last couple of days these cases, this case,
25 has been very serious. It has weighed heavily on me. I

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1 haven't had much of a good time. But I did have one time
2 where I had a chuckle, I had a laugh to myself. It's when
3 the state -- and I don't -- it's not right here in front of
4 me. But the state brought in -- I think you may have
5 noticed it, because I jumped up and said we'll stipulate.
6 The state brought in a fingerprint off of the gas tank of
7 the car.

8 Now, we'd already seen a video of Lance driving --
9 driving the car. In my opening statement I told you what
10 basically came out during the trial.

11 But the state introduced a -- a fingerprint card and
12 was bringing someone in here with fingerprint analysis to
13 tell you that he touched the gas tank.

14 Ladies and gentlemen, I don't want you to be fooled by
15 them just doing stuff to do stuff. Right. I'm going to
16 bring -- I'm going to show you that I'm going to bring up
17 that there was blood on the back of his shirt. Well, there
18 was blood on the back of the shirt. He admitted that he
19 sat in the seat. He never saw the blood. But he's going
20 to tell you about it. The state's going to talk about it.
21 The state's going to make a big deal. The state's going to
22 bring in an expert.

23 Don't let activity fool you. This case is not about
24 whether Lance -- where Lance got with the gun from. This
25 case isn't about did Lance drive away from law enforcement.

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1 This case is about the moments between Lance getting
2 in the car, Lance and Natalie talking and the gun going
3 off.

4 The only person besides Lance who could speak to that
5 was Kevin, and Kevin didn't say any of what the solicitor
6 talked about, tempers and flaring and all of those things.

7 So instead of dealing with that time space where
8 everything matters, where malice aforethought literally
9 lives, right, they want you to look at everything else.
10 They want to just bring more and more things that do not
11 matter.

12 Let's talk about what matters. Kevin Schuerman. What
13 did he say? Clearly, unequivocally Lance wasn't angry.
14 Natalie wasn't angry. Lance wasn't raging. There was no
15 violent temper, no exploding. There's none of this. He
16 said what he saw was money dangling regularly, a couple
17 bickering.

18 Now, I hear. I see the solicitor. He's being cute
19 with the word argument. Argument, bicker, fussing. What
20 did Lance say? Only person there, their witness. They
21 called him to the stand. He didn't give you any of that.
22 He didn't give you any of that.

23 This is an argument over who's going to drive. This
24 is some bickering about who's going to drive and Natalie
25 putting on makeup.

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1 want to talk about common sense. People don't murder
2 other people about this stuff. Ultimately, you're going to
3 have to decide about the context around how this happened.

4 This is not something that someone would kill another
5 person with malice aforethought about it. How many couples
6 fight over this? I mean, this is sitcom where you watch
7 "Seinfeld and Friends". You're going to see something
8 about a girlfriend or wife taking too long with her makeup
9 and her husband bickering with her about it. This is
10 regular.

11 And that's what Kevin said. He said he had seen this
12 so much that he'd almost developed a little process.
13 Right. He ignored them so that he didn't feed into it. He
14 ignored them. He looked out the window, looked on his
15 phone, did anything else. They did it all of the time.
16 And he had seen way worse arguments before, and he had
17 never seen anything get violent. He had never seen that.
18 Kevin Schuerman, the person that was in the car.

19 And let's talk about him being a foot away from her.
20 If she was in danger, he was in danger. His own
21 self-preservation would have kicked in. But what did he
22 say? I wasn't scared. I wasn't scared. Didn't expect
23 that to happen.

24 What did the firearms expert tell you? This gun has
25 no external safety. Right. There is no -- no button to

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1 push that goes red that says this is about to fire. Once
2 you pull the trigger, that's it. It has an internal
3 safety. But once the trigger is pulled, it's depressed,
4 the gun goes off. And he told you that this gun can fire
5 unintentionally. It can do that. Their expert. And that
6 trigger can go off by being caught on something. And
7 there's a mechanism to stop that, but it can still happen.
8 That's what he said.

9 Ladies and gentlemen, he told you that half a gallon
10 to three-fourths of a gallon is the type of pressure.

11 Now, you're going to have this gun in the back. I
12 know some of you are going to be squeamish about touching
13 it. But you will have it in the back, and you can put your
14 finger on it and see what kind of pressure. But let me
15 show you something. Give me one second.

16 MR. BARNETTE: Your Honor, I'm going to object at that
17 point.

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 MR. ABUSAFT: One second, ladies and gentlemen.

21 (Whereupon, Mr. Abusaft left the courtroom and returned
22 with a bag of groceries.)

23 MR. ABUSAFT: Ladies and gentlemen, you ever been to
24 the grocery -- been back from the grocery store and coming
25 in the house and did this? Y'all ever done this? well,

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1 you ever seen somebody do this? This is a full gallon of
2 milk, not the half or sort of half, half to three-fourths
3 that he talked about.

4 You don't want to touch that gun, remember, if you've
5 ever seen this, this is that amount of pressure.

6 MR. BARNETTE: Your Honor, I want to object. That's
7 misrepresentation.

8 MR. ABUSAFT: Your Honor, he wants to -- let's talk at
9 the bench.

10 (Bench conference held off the record in the presence
11 of the jury but out of the hearing of the jury.)

12 MR. ABUSAFT: Ladies and gentlemen, that's the amount
13 of pressure if you don't want to touch that gun yourself.

14 Let's talk about what the doctor said. Recently-used
15 meth in Natalie's system. It hadn't metabolized.

16 Now, I want to clear. In no way do I want to -- and
17 has anything we've attempted to do been used to disparage
18 Natalie, but I have got to demonstrate what type of
19 lifestyle they lived. It may not be your lifestyle. It's
20 certainly not my lifestyle. But this is the lifestyle that
21 they lived.

22 It wouldn't be the first addict to find solace in
23 another addict. I'm not asking you to accept their
24 lifestyle. I'm just asking you to find that that's their
25 lifestyle. And what was normal to them may not and is

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1 probably not normal to you.

2 The gunshot was in her side with her arm out of the
3 way.

4 Now, Lance was sitting in this courtroom the entire
5 time. He heard all the testimony that you heard. He saw
6 everything. Lance could have easily synced completely up
7 his testimony to the doctor's, but he didn't. He told you
8 what he had remembered from a year ago. And he wasn't
9 giving you -- he's not a -- he wasn't giving you some
10 "C.S.I.", let's make sure every part of the frame fits just
11 right. He was just telling you what he remembered.

12 He said that he reached over for the keys, had the gun
13 in his hand and it went off. And he didn't say at what
14 moment he was moving back, what moment he was going
15 forward, where in that. He just gave it to you as he
16 remembered. He wasn't trying to make something up for the
17 solicitor to say, oh, because of the way he described
18 doesn't fit exactly the way he thinks it should be.

19 And I heard the solicitor make the -- well, he just
20 said it. He said she was trying to get away from him. Did
21 Kevin say that? Did Kevin, who was sitting right next to
22 her, say any of that, that she was trying to get away, that
23 she was in some type of distress? No.

24 Remember the solicitor wasn't there. And while I'm on
25 that point, in the opening the solicitor said that Lance

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1 tossed her, tossed Natalie on the ground. We found out
2 that Kevin's view was obstructed. He didn't see how that
3 happened. And we know she wasn't there. So that's just
4 not true, or at least that's not in evidence.

5 Now, you heard from Lance, the only other person
6 there. He told you why he didn't stop for police. Lance
7 has shown you -- and he's been naked, naked for you, ladies
8 and gentlemen. He's shown you all of the warts in his
9 life. He didn't have to tell that story, but that's the
10 truth, so he told it to you.

11 Lance, again, has not always lived positively. Lance
12 is not somebody that I would always choose to be around. I
13 don't like the choices that he's made. I'm sure you don't
14 like the choices that he's made in his life. But that
15 doesn't make him a murderer. That does not make him a
16 murderer.

17 So he didn't stop. He left Natalie with a friend,
18 someone he knew she would get help from. But he panicked.
19 He had drugs. He's been in trouble with the law before.
20 He made a bad choice. But he's not -- that doesn't make
21 him a murderer and don't make him a murderer for that
22 choice.

23 He told you that he loved Natalie; he told you he
24 didn't intend to shoot her; he told you he did not murder
25 her. And they have no one. They have presented no

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1 evidence that can say differently, because Kevin didn't say
2 it, and he was there. And Lance was only, else, person
3 there. And Natalie, tragically, is not here. They did not
4 present anything to contradict that point.

5 I want to talk to you about the elephant in the room.
6 I knew this. This is what has sat in the back of my head
7 since I knew I would be standing before you.

8 You have -- we have a young woman, a lovely, beautiful
9 young woman, who's dead, and she shouldn't be. Lance is
10 standing here before you, and you have one -- one charge to
11 hold him responsible for. And that's murder.

12 And so what the state is hoping you'll say is that
13 something went wrong and there needs to be some type of
14 punishment for it. And since the only thing I can do is
15 find him guilty of murder, that's what I'm going to do.

16 Lance shouldn't have been handling the gun the way he
17 handled it. He shouldn't have had the gun at all. He
18 shouldn't have been using drugs. Natalie shouldn't have
19 been using drugs. I wish he would have never been engaged
20 in any of that conduct. But that's not murder.

21 Those crimes all have individual punishments for them.
22 You've been asked to do one thing, decide if he killed her
23 with malice aforethought. And if you find that on some
24 emotional ground or some feeling of wanting to provide
25 retribution, that is against your oath.

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1 The only way that you can find him guilty is that
2 there was evidence to prove beyond a reasonable doubt that
3 he killed her with malice aforethought. That's the
4 elephant in the room. Don't allow the state's choice to
5 give you only one. Don't let them give you one choice so
6 that's the choice that you make.

7 Now, before I move on to the propositions of law I'd
8 talk to you about a few things that the state talked about.
9 They talked about the car and what side all of the material
10 was on. But did they ask Kevin which direction the car was
11 parked? Did that come up? Did they say which -- was the
12 car facing out so that the driver's side would be on the
13 left? Was the car backed? Was the car facing -- the
14 vehicle -- was the car facing the house as if it was backed
15 out of the carport?

16 If that evidence is not -- if that is not in evidence,
17 if they didn't bring out that testimony, you hold it
18 against them.

19 So if you don't -- if that's not in evidence, then you
20 don't know which way the car was parked, and therefore
21 don't know his argument about where the stuff is at is
22 right or not. And if Lance was lying, he heard all the
23 testimony. He could fix any lie that he wanted to. He
24 just told you what he remembered.

25 The state talked about if she moved over there would

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1 be bottles and things. Look at the condition of that car.
2 Things are moved all over the place. Maybe things were
3 moved later. I don't know. But the state just saying it
4 doesn't make it, so doesn't make it not possible. A
5 bottle? Maybe it was not that way. Doesn't matter.

6 He talked about Lance crying and putting on a show.
7 There have been people in this audience that have been
8 crying for three days straight about this. There are going
9 to be a lot more tears spent on this case long after you're
10 gone. Everybody involved in this case will be doing some
11 crying. A young woman was lost that everyone loved, that
12 Lance loved. Don't let him -- don't let his callous view
13 of Lance affect you.

14 I want to talk about where he got the gun from.
15 Again, doesn't matter. Doesn't matter. But do you think
16 he got all of the pertinent information of the person that
17 he got the gun from a year ago? Do you think he remembers
18 those things? That has nothing to do with his credibility
19 about this case.

20 I just want to remind you once again. I saw the
21 solicitor begin talking about losing his temper. But I
22 want you -- I want you to remember there's not an ounce of
23 evidence about Lance losing his temper. None at all.

24 Now, you'll remember this from earlier, from a couple
25 of days ago. Excuse me. The presumption of innocence.

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1 Even as we stand right now Lance is presumed innocent.
2 It's not just the right that protects him but everyone in
3 this country.

4 And because it's almost impossible for somebody,
5 especially a year, two years later, to fill in the details
6 of everything, to say exactly where your hand was and
7 exactly where your shoulder was and exactly what was said,
8 we forced the state to prove you guilty, because for most
9 of us and for most of life it would be impossible to prove
10 yourself innocent. So we make the state.

11 Reasonable doubt, a reasonable hesitation -- a
12 reasonable hesitation. I like to describe it as is there
13 an alternative way that this could have reasonably
14 happened.

15 If, when you're describing this case down the road
16 somewhere in your lives and you're free to talk about it,
17 and you're going through this case and you can imagine
18 someone saying, well, what. well, could it have been an
19 accident? And if you can't reasonably rule that out, if
20 right now you're saying reasonably -- reasonably I just
21 can't rule that out, I may not be convinced that it was
22 accident, but I can't reasonably rule it out, then you have
23 to find Lance not guilty.

24 It is a high standard for the state to meet. It is
25 the highest in all of our justice systems, but it is the

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1 requirements of our constitution and it is what you have to
2 hold them to today.

3 Ladies and gentlemen, I don't get to talk again. The
4 state's going to be able to come back one more time and try
5 to convince you.

6 I just ask that when Mr. Barnette begins to speak that
7 you think about the things that I've said, that if he
8 starts talking about the corners of the puzzle that he may
9 have that you remember that this is about the very center,
10 the very heart of this puzzle, those moments when Lance got
11 out of the car and began to talk to Natalie.

12 I want you to know Natalie matters to us. Her life
13 mattered. She -- the solicitor is right on the point that
14 she didn't deserve to die. We believe that as much as he
15 believes that. But this was not a murder. This was not a
16 killing with malice aforethought. And they haven't
17 provided you that part of this puzzle. And when the main
18 pieces are missing, you have to send it back. Thank you.

19 MR. BARNETTE: May it please the Court, Your Honor.

20 THE COURT: Mr. Barnette.

21 MR. BARNETTE: Ladies and gentlemen, there's nothing
22 funny about this. I've never thought anything funny about
23 this. These victim family members have never thought of
24 anything funny about this. They've been here for three
25 days.

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1 It's a case where a young lady was killed. She didn't
2 deserve that. By a man that should never have had that gun
3 in the first place, should never have been handling it in
4 the first place. The use of a weapon and the way he used
5 it is dangerous if you take his scenario. It shouldn't
6 never happened. But thanks to his judgment and his actions
7 and everything, it did.

8 The thing I want you to remember is it's not the law
9 the way I state it; it's not the law the way the defense
10 states it. It's the way this gentleman right here, the
11 judge, states it to you.

12 If you noticed on the thing, on the reasonable doubt
13 charges, the bottom paragraph, the judge will tell you
14 about firmly convinced.

15 He complains about, you know, pieces of evidence.
16 Ladies and gentlemen, this is a serious case. A young lady
17 died that didn't deserve it.

18 Our job is to bring every piece of evidence to you
19 that we can -- fingerprints, D.N.A., ballistics, G.S.R.,
20 videos, body cam videos we now have thanks to the sheriff's
21 department, law enforcement, to show you what they see.

22 We're going to bring you everything. I'm not going to
23 apologize for it. He says it's irrelevant. If we don't
24 bring it to you, guess what you're going to hear? You're
25 going to hear the complaints about why didn't the state

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1 give that to you, why didn't the state bring that. Well,
2 I'm going to bring everything I can to this jury so you can
3 see it. I am tickled to death we have body cams now; I am
4 tickled to death we have car videos; I'm tickled to death
5 that we have the items to help prove this case to you.

6 The judge ain't going -- he's not going to charge you
7 have you to stream or anything like that. He's going to
8 charge you the law. He's going to charge you about malice,
9 how it can be inferred, how it can be expressed, how to be
10 talked about.

11 The use of that weapon the way he used it alone could
12 be malice in this case, I submit to you. But you have so
13 much more. You have his actions during, before and during,
14 and after, what he did and everything involved with that.

15 He was paranoid. What he's saying doesn't fit in this
16 case. I mean, he's on drugs, he said, for three days.
17 Meth and heroin. He expects to tell you the story.

18 And the reason why he can't make it fit, it can't fit
19 any scenario he comes up with. How you can you explain how
20 she was shot? You can't. And especially not the way he
21 explained it.

22 He shouldn't have had the gun; he shouldn't have had
23 the drugs; he shouldn't have left her. He could have
24 easily put her, said, oh, my God, take her, drive her to
25 the hospital or do whatever.

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1 He didn't called 9-1-1. Kevin Schuerman did that. In
2 questioning him about a guy that he had bought drugs off
3 for a long time or whatever, he just didn't want to turn
4 his source in. He didn't want to turn his source in so law
5 enforcement would know about them. He didn't want to
6 testify to you and tell you the truth on that.

7 The defense can argue the way he thinks the law should
8 be or the way the facts should be. But, ladies and
9 gentlemen, like I said before, you bring your common sense
10 here.

11 You have heard the evidence in this case. You'll have
12 it with you. You'll have that, the pictures. Everything
13 points to that.

14 He keeps talking about a puzzle. And I'll be honest
15 with you. The first time I heard this argument I was
16 actually sitting where Ms. wells is sitting at. I was
17 working for Solicitor Trey Gowdy, and he brought up an
18 argument I'll never forget. He talked about a puzzle.

19 And, to be honest with you, I'm old enough to remember
20 when we had puzzles. It's hard to find puzzles now, the
21 old jigsaw puzzles, because of all of the modern things
22 we've got. But he looked up, and he says, you know, you
23 can have pieces out of that puzzle missing and still see
24 what this is. And I can take even more pieces out of that
25 puzzle. There's enough pieces in this puzzle to tell

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1 exactly what this is. And you can take more out, but you
2 know what this is.

3 And you know what this case is about, ladies and
4 gentlemen. There's a man that took the life of a beautiful
5 woman. This man took her life and left her laying on the
6 ground.

7 I'm not going to get to speak to you again, but I
8 think you understand how serious this case is to us, to me,
9 to the people presenting this case, the officers, the
10 witnesses that testified, the family members.

11 Listen to what the judge tells you. And you're going
12 to have two choices, murder or not guilty. That's going to
13 be your two murder choices in this case.

14 He caused her death, and I ask you to hold him
15 responsible for that, because you're the people of
16 Spartanburg County, and you're the representation that we
17 get and you're as any jury that can consider it. I ask you
18 to make on behalf of this lady and her family and on behalf
19 of us. Thank you very much.

20 Thank you, Your Honor.

21 THE COURT: Turn that off.

22 MR. BARNETTE: Yes, sir.

23 (Pause.)

24

25

Jury charge

1 THE COURT: Ladies and gentlemen, you have heard and
2 seen all of the evidence to be presented in the trial of
3 this case, and you've now heard the final summations of the
4 lawyers; and therefore it now becomes my duty and
5 obligation to instruct you on the law that's applicable in
6 the case.

7 Then you'll be asked to go back and to begin with your
8 deliberations, and through that process you'll examine the
9 evidence, decide the facts, apply the law and arrive at a
10 fair and just decision, whatever that decision might be,
11 one that's based solely upon the evidence presented and the
12 law that's applicable as I will have provided it to you.

13 It is your exclusive prerogative to determine what the
14 facts are. You do that through own common sense
15 examination and evaluation of all of the testimony and
16 other evidence received during the course of the trial.

17 You 12 jurors alone will decide what weight, value and
18 effect to give to any particular witness' testimony or
19 other evidence in the case.

20 Again, your sole objective is to render a fair and
21 impartial decision based upon the evidence, the
22 determination of the facts as you find them to be related
23 to the allegations made, and then your application of the
24 law as I will have provided it to you in order to arrive at
25 your decision.

Jury charge

1 In this case, as you know, the state through the
2 prosecutor by way of this indictment has charged the
3 defendant, Lance Antonio Brewton, with the crimes of murder
4 and possession of a firearm during the commission of that
5 violent crime.

6 As to the allegations contained in that indictment and
7 as to those charges he has entered a plea of not guilty,
8 and, as I told you, that plea of not guilty has placed upon
9 the state the burden of proving the allegations that they
10 have made by way of the indictment, the burden of proving
11 each of the essential elements of the crimes alleged
12 against the defendant; and therefore the burden is upon the
13 state to establish his guilt to the satisfaction of you 12
14 jurors beyond a reasonable doubt before any verdict of
15 guilty could be returned.

16 A person charged with a crime is never under any
17 obligation to prove that they're not guilty or to prove
18 that they're innocent, and that's because in some cases
19 that might not be possible.

20 The burden is always upon the state because they made
21 the accusation, they brought the charge, to establish the
22 accused's guilt beyond a reasonable doubt.

23 I instruct you further, and I emphasize to you, that
24 the -- it is a vital, important and cardinal rule of law
25 that every defendant in a criminal trial -- and it does not

Jury charge

1 matter how serious the offense might be for which that
2 person stands charged -- that person shall always be
3 presumed innocent of that charge.

4 That presumption of innocence remains with every
5 defendant, as it does with this defendant, from the time
6 that he is placed under arrest and throughout the course of
7 the criminal process and even throughout the course of the
8 actual trial in the case.

9 And, as I've stated, that presumption of innocence
10 will be with Mr. Brewton even as you go back into your room
11 to begin with your deliberations at this trial's
12 conclusion.

13 That presumption of innocence will be with him in the
14 jury room, and it'll be with him forever unless you 12
15 jurors determine that he's no longer entitled to the
16 presumption of innocence.

17 In other words, after you have carefully considered
18 all of the evidence in the case, and where you have been
19 able to determine the facts as they relate to the
20 allegations made based upon your consideration of the
21 evidence, and upon determining the facts you apply the law
22 that I will have provided it to you, if you 12 jurors
23 unanimously determine that his guilt has been proven beyond
24 a reasonable doubt, then he would no longer be entitled to
25 that presumption of innocence. But it is only if, unless

Jury charge

1 and until you are satisfied of his guilt beyond a
2 reasonable doubt that the presumption of innocence would no
3 longer be applicable.

4 Now, the state does have the burden of proving the
5 defendant's guilt to your satisfaction beyond a reasonable
6 doubt.

7 That does not mean that the state has to prove his
8 guilt beyond all doubt or beyond any possible doubt, but it
9 does require the state to prove his guilt to your
10 satisfaction beyond a reasonable doubt.

11 The term reasonable doubt should be given its plain
12 and ordinary meaning. A reasonable doubt is the kind of
13 doubt that would cause a reasonable person after giving
14 appropriate deliberation and consideration to all of the
15 information provided to hesitate to act upon that
16 information.

17 A defendant is entitled to any reasonable doubt that
18 arises from the evidence or lack of evidence in a case, and
19 if, upon any factual issue essential to a finding of a
20 verdict of guilty, you have some reasonable doubt as to how
21 that issue should be resolved, it would be your duty to
22 resolve that reasonable doubt in favor of the defendant.

23 Now, while there are various forms of evidence such as
24 testimony, photographs, documents, charts and other types
25 of physical exhibits, there are really only two types of

Jury charge

1 evidence. Either or both of those types of evidence may be
2 used to prove any fact in issue. Those types of evidence
3 may be used independently or in conjunction one with the
4 other in order to establish a fact. But the two types of
5 evidence are direct evidence and circumstantial evidence.

6 Direct evidence is the testimony of a person who
7 testifies from actual knowledge of that fact. It is
8 testimony by a person who has perceived the existence of
9 some fact by means of his or her senses, and then they come
10 into court and they testify as to what they have previously
11 perceived.

12 Direct evidence proves the existence of a fact
13 directly and does not require any deduction or inference in
14 order to establish that fact.

15 Circumstantial evidence, on the other hand, is proof
16 of some other fact or set of facts which taken either
17 singly or collectively may prove the existence of a fact in
18 question as a necessary consequence, that is through a
19 deduction or inference. And an inference is simply a
20 deduction of fact that may logically and reasonably be
21 drawn from the proof of some other fact or set of facts.

22 In other words, it's not a fact that is proven by the
23 direct testimony of a witness based upon their personal
24 perception, but it is a conclusion which might reasonably
25 be drawn from the proof of other facts.

Jury charge

1 In other words, you may infer that a particular event
2 occurred or that a particular fact exists based upon the
3 proof of sufficient factual circumstances which would
4 reasonably warrant your arriving at a particular
5 conclusion.

6 The commission of a crime and any particular element
7 necessary to prove a crime may be proven by direct evidence
8 or by circumstantial evidence or by a combination of both
9 types of evidence.

10 The law makes no distinction between the weight or
11 value to be given to direct evidence or to circumstantial
12 evidence. However, to the extent that the state relies
13 upon circumstantial evidence in order to establish the
14 commission of a crime, all of the circumstances proven must
15 be consistent with each other and when taken together point
16 conclusively to the guilt of the accused beyond a
17 reasonable doubt. If those circumstances merely portray
18 the defendant's behavior as suspicious, then that proof is
19 insufficient and fails.

20 The burden rests with the state to prove the
21 defendant's guilt beyond a reasonable doubt regardless of
22 whether the state relies upon direct evidence or
23 circumstantial evidence or a combination of the two types
24 of evidence in order to establish that fact.

25 Proof beyond a reasonable doubt is proof that leaves

Jury charge

1 you firmly convinced of the defendant's guilt. There are
2 very few things in the world that we know with absolute
3 certainty. And in criminal cases the law does not require
4 proof that overcomes every possible doubt. Based upon your
5 consideration of the evidence in the case if you are firmly
6 convinced that the defendant is guilty of the crime for
7 which he now stands charged and stands trial, you must find
8 the defendant guilty of that crime.

9 If, on the other hand, you think there's a real
10 possibility that the defendant is not guilty of a crime for
11 which he now stands charged, then you must give him the
12 benefit of that doubt and return a verdict of not guilty.

13 The same law that provides that you are the judges of
14 the facts also provides that I am the judge of the law.
15 And that simply means that nobody's going to tell you how
16 to arrive at your determination of fact in this case. You
17 do that, as I've already stated, through the exercise of
18 good judgment and common sense conscientiously applied to
19 the testimony and evidence in the case.

20 You must however under your oath as a juror accept the
21 law as I provide it to you as being the law that you are to
22 apply in the case. In other words, you're never to concern
23 yourself with what you thought the law was before you came
24 to serve as a juror this week, nor are you to consider what
25 you think the law ought to be.

Jury charge

1 Under your oath as a juror you must simply accept the
2 law as I provide it to you as being the law that you are to
3 apply in the case and you -- then you take that law and you
4 apply it to the facts as you 12 jurors determine those
5 facts to be based upon your evaluation of all of the
6 evidence received during the trial.

7 Now, because you are the sole judges and finders of
8 the fact in this case you are therefore necessarily the
9 sole judges of the credibility and the believability of
10 each witness that has testified during the course of the
11 trial.

12 There are a number of factors which you should
13 consider in arriving at your assessment or your evaluation
14 as to a particular witness' credibility, and I'm going to
15 list those factors for you.

16 You should consider the demeanor of the witness, that
17 is how the witness appeared to you while the witness was
18 testifying on the witness stand. Was the witness
19 straightforward in responding to questions, or was the
20 witness hesitant or evasive in responding to questions that
21 were asked of the witness.

22 simply put, did the witness appear to you to be
23 telling the truth and to have knowledge of the facts to
24 which that witness has testified.

25 You should also consider whether or not the testimony

Jury charge

1 of a witness is consistent, or is it inconsistent with that
2 witness' own testimony or with other testimony or other
3 evidence received during the course of the trial.

4 You should also consider how the witness come to know
5 the facts to which a witness has testified. In other
6 words, what was that particular witness' opportunity and
7 ability to perceive the existence of those facts to which
8 that witness has testified by having previously used his or
9 her senses, and then what is that witness' ability to be
10 able to come into court and to accurately recollect to you
11 as to what they have previously perceived.

12 You should also consider any bias or prejudice or
13 interest that a witness might have with regard to the case.
14 In other words, do you find some reason that a particular
15 witness would come into court and testify one way or
16 another to help or hurt one side or the other. And you may
17 consider any interest that a witness might have in the
18 outcome of the case if you determinate that that witness
19 does have such an interest and you find that that interest
20 would bear upon that particular witness' credibility.

21 Now, during the course of the trial of this case you
22 have heard certain evidence relating to one or more of the
23 witnesses, including the defendant, having a prior
24 conviction or convictions for certain types of criminal
25 offenses which have an element of dishonesty.

Jury charge

1 Ordinarily, evidence of prior convictions is not
2 admissible during the trial of a case because such evidence
3 is not relevant to any issue that the jury has to decide.

4 However, where a witness takes the witness stand to
5 testify and that witness has a prior conviction or
6 convictions for crimes involving an element of dishonesty,
7 then such convictions may be introduced during the course
8 of that witness' testimony, but it's admitted and allowed
9 for a very limited purpose, and that is for the purpose of
10 impeaching or attacking the credibility or the
11 believability of that witness and his or her testimony.

12 And therefore you may consider such testimony as it
13 may relate to the issue of the witness' credibility if you
14 determine that that evidence is probative on that point,
15 but you may not consider such evidence for any other
16 purpose.

17 That evidence is not being offered as evidence of the
18 defendant's guilt as to the crime for which he now stands
19 trial, and you may not consider such evidence as evidence
20 of guilt, but you may only consider it as it relates to the
21 issue of the credibility of the witness' testimony in the
22 event you find such evidence probative on that particular
23 point.

24 Now, you as the finders of the facts and you as the
25 judges of the credibility of each witness that has

Jury charge

1 testified during this trial are permitted to believe as
2 much or as little of what a witness has testified to as you
3 deem is appropriate; and therefore you may believe
4 everything that a witness testified to. You may choose to
5 believe none of it. You may believe one portion of a
6 witness' testimony and reject some other portion of that
7 witness' testimony.

8 You may believe one witness as opposed to several, or
9 several as opposed to one. But whatever your good judgment
10 and common sense tells you is the most believable and
11 credible testimony is the testimony that you should accept.
12 And you should reject any other testimony or evidence that
13 you find not to be credible or believable.

14 Again, your sole objective in the case and your
15 obligation as a juror is to render a fair and impartial
16 trial based upon the evidence and the law.

17 Now, in this case, as you know, the defendant has been
18 accused of the crime of murder. Murder is a statutory
19 offense set forth in 16-3-20.

20 He's also charged in count two, possession of a
21 firearm during the commission of a violent crime, the
22 violent crime being the crime of murder. And that's a
23 violation of section 16-23-490 of the Code of Laws of South
24 Carolina.

25 I'm going to instruct you on the law as it relates to

Jury charge

1 the crime of murder. Then I'll instruct you on the law as
2 it relates to the crime of possession a firearm during the
3 commission of a violent crime.

4 Murder is defined in Section 16-3-10 of the Code of
5 Laws of South Carolina as the killing of any person with
6 malice aforethought either expressed or implied. It is the
7 killing of any person with malice aforethought either
8 expressed or implied.

9 So, in order for you to find the defendant guilty of
10 the crime of murder it would be necessary that the evidence
11 in this case has established to your satisfaction beyond a
12 reasonable doubt that the defendant did commit some act or
13 acts which proximately caused the death of Natalie
14 Niemitalo and that that killing was done with malice
15 aforethought.

16 So what is malice aforethought? Well, malice as an
17 essential element of the crime of murder is a state of mind
18 connoting an ill will and having an intent to do harm. And
19 intent refers to the state of a person's mind which directs
20 his actions towards a specific object or goal. And intent
21 would include those consequences which represent the very
22 purpose for which an act is done, as well as those
23 consequences which are known to be substantially certain to
24 result whether actually intended or not.

25 Malice is a technical term importing wickedness and

Jury charge

1 excluding just cause or legal excuse. It is something
2 which springs from depravity, from a heart devoid of social
3 duty and fatally bent on mischief. It is a state of mind
4 indicating an extreme disregard for or an extreme
5 indifference to human life.

6 Malice may be likewise defined as a state of mind
7 which indicates a formed purpose and design to do a
8 wrongful act under circumstances that exclude any legal
9 right to do it.

10 Malice as an essential element of the crime of murder
11 may be expressed or it may be implied. Those words,
12 expressed and implied, do not mean different kinds of
13 malice but merely the manner in which malice may be shown
14 to have existed, that is to say proof by direct evidence or
15 by circumstantial evidence from which you might imply or
16 infer the existence of malice.

17 Malice may be expressed as where there is an expressed
18 threat to kill or a lying in wait or where the
19 circumstances show directly that the intent to kill was
20 entertained by the killer.

21 Malice may be inferred, though no expressed intent to
22 kill is proven by direct evidence, where the facts and
23 circumstances which have been proven by the evidence in the
24 case satisfy you beyond a reasonable doubt that malice was
25 present in the mind of the killer at the time any homicide

Jury charge

1 took place.

2 The existence of malice may be inferred from acts,
3 declarations and conduct of the killer, as well as from any
4 other circumstances shown to have existed at the time of
5 the event from which you might reasonably infer the
6 existence of malice, as often the state of a person's mind
7 can only be proven by circumstantial evidence.

8 Malice as an essential element of the crime of murder
9 does not require proof of an ill will or a hatred towards
10 the particular individual who was killed, nor does it
11 require proof of an actual or a specific intent to take
12 human life. But rather it means the existence of a state
13 of mind accompanying conduct signifying a general malignant
14 recklessness and an extreme disregard for or an extreme
15 indifference to human life.

16 Even if the facts proven aren't sufficient to give
17 rise to an inference of malice, such an inference is simply
18 an evidentiary fact to be taken into consideration by you
19 jurors along with all of the other evidence received during
20 the course of the trial, and you may give such weight, if
21 any, to those inferences that you determine they should
22 receive, if any.

23 The state is required to prove malice, just as it must
24 prove any other essential element of the crime, and it is
25 for you 12 jurors to determine whether or not the evidence

Jury charge

1 in this case does establish malice beyond a reasonable
2 doubt.

3 It is also essential that there exist not only malice
4 but malice aforethought. The law does not require that
5 malice must exist for any appreciable length of time before
6 the commission of some act or acts proximately causing the
7 fatal result. Indeed, it may be conceived at the very
8 moment that the fatal act is committed. It is sufficient
9 in the law so long as the state does prove beyond a
10 reasonable doubt both the existence of malice and the
11 commission of an act or acts by the defendant which
12 proximately caused the fatal result.

13 You must determine whether or not malice aforethought
14 existed based upon your consideration of all of the
15 evidence introduced during the trial of the case and any
16 reasonable inferences that might be derived from that
17 evidence.

18 Now, while the state must prove beyond a reasonable
19 doubt that a killing did occur, that that killing was
20 accompanied by the element of malice aforethought, in order
21 to establish the crime of murder it is not necessary that
22 the state prove any motive for the killing. Motive is not
23 an essential element of the crime of murder which must be
24 proven, although on some occasions there may be evidence
25 relating to that fact introduced during the trial of the

Jury charge

1 case.

2 Count two of the indictment charges the defendant with
3 possession of a firearm during the commission of a violent
4 crime.

5 That is a violation of section 16-23-490 of the Code
6 of Laws. And that particular code section provides that it
7 shall be an additional criminal offense if a person is in
8 possession of a firearm or visibly displays what appears to
9 be a firearm during the commission of a violent crime and
10 is convicted of committing a violent crime as defined in
11 Section 16-1-60. And 16-1-60 does include in the
12 definition of violent crime the crime of murder.

13 So in order for the defendant to be found guilty of a
14 violation of this particular statute it would be necessary
15 that the jury has found the defendant to have been guilty
16 of a violent crime -- in this case the crime of murder --
17 and that during the commission of that crime the defendant
18 possessed or visibly displayed a firearm.

19 You are further instructed that the voluntary
20 consumption by a person of any type of an intoxicating or
21 mind-altering substance affecting his mental faculties or
22 cognitive function is not an excuse or a defense to the
23 commission of a crime for which that person would otherwise
24 be responsible if committed while the person was not under
25 the influence of any intoxicating or mind-altering

Jury charge

1 substance.

2 In other words, any person voluntarily consuming an
3 intoxicating or mind-altering substance is just as
4 responsible for any act committed while under the influence
5 of that substance as he would be if the act was committed
6 while his mental faculties or cognitive function was not
7 impaired by the use of any intoxicating or mind-altering
8 substance.

9 Now, ladies and gentlemen, I am not in any way
10 concerned with what your decisions are, but you are
11 instructed that the verdicts have to be unanimous. All 12
12 must be in agreement before any verdict can be rendered and
13 returned to the Court.

14 Mr. Foreman, as you know, you are going to be called
15 upon to preside over jury deliberations in the jury room
16 simply to ensure that those deliberations are carried out
17 in some orderly fashion. But all jurors are expected to
18 participate in the deliberations, because, as I've stated,
19 the verdict and the decision of the jury is the unanimous
20 consensus opinion of all 12 jurors, and all must be in
21 agreement before any verdict may be rendered.

22 Now, during the course of the deliberations there may
23 come a time where you have some question about the facts of
24 the matter or some type of evidence. And you might even
25 think there might be something else out there that would

Jury charge

1 help you and so you want me to see if it exists and if it
2 does can you have it.

3 well, you can't. No additional evidence can be
4 introduced now that the case is closed and you're getting
5 ready to go back to begin deliberations. So if something
6 was not introduced as evidence during the course of the
7 trial, it cannot be introduced now even if it does exist
8 and even if you think it would be helpful. No additional
9 evidence can be received.

10 Also, I am never permitted to comment upon the facts
11 of the matter or upon the evidence that's been introduced
12 during the trial.

13 However, should you have a question that can be
14 answered by having a witness' testimony reheard or replayed
15 in whole or in part, I do not have transcripts of a
16 witness' testimony, but I am permitted to bring you back
17 into the courtroom to have a witness' testimony replayed if
18 that would assist you in resolving some questions about the
19 testimony or facts of the matter.

20 So if you have a question about that, you need to have
21 it replayed, you'll have to let me know and we'll bring you
22 back.

23 If you ever a question about the law that's
24 applicable, I am permitted to answer those questions. And
25 so if you need for me to provide you with a reinstruction

Jury charge

1 or you need an additional explanation or clarification of
2 the law that I provided you, I'll be happy to provide you
3 with that reinstruction, additional explanation or
4 clarification of any point of law that you need assistance
5 with.

6 If we have smokers on the jury, you can smoke, but you
7 have to go outside. You can't smoke in the courthouse. So
8 if you need to smoke tell the bailiff. They'll take you
9 outside.

10 But please understand and know that if any juror is
11 absent for any authorized purpose the deliberations have to
12 stop, and deliberations may only resume when all 12 jurors
13 are present in the courtroom so that -- excuse me -- in the
14 jury room so that all jurors may participate in those
15 deliberations.

16 So far as any videos that have been introduced during
17 the trial, there will be a computer sent back for your
18 benefit to look at those again should you need to. If, for
19 some reason, you can't get the computer to work, let me
20 know. We'll assist you with that. But I'm guessing with
21 all 12 of you in there somebody can figure it out if you
22 have any issue with it. But let me know if you can't.

23 Mr. Foreman, during deliberations if there ever comes
24 a time where you need to address some issue or question to
25 me, if you'll write it on a piece of paper, provide it to

Jury charge

1 the bailiff, he or she will provide it to me, and I'll
2 respond to any issue or question that might come up that I
3 can assist you with.

4 After you have -- the jurors have arrived at a
5 unanimous decision, Mr. Foreman, you're going to be asked
6 to indicate that decision. You'll do that on the back of
7 the indictment.

8 As you know, there are two counts in the indictment.
9 Count one is the crime of murder; count two is the crime of
10 possession of a firearm during the commission of a violent
11 crime.

12 On the back of the indictment, lower left-hand corner,
13 you'll see the word verdict. It's beneath that word that
14 you're going to indicate the jury's unanimous decision when
15 you arrive at that decision.

16 I will write in count one and count two. So you'll
17 respond as to each of those separate counts. There are two
18 separate decisions.

19 You have two potential verdict forms. Those two
20 potential verdict forms are guilty and not guilty. Please
21 understand, as I say, you may not find the defendant guilty
22 of count two unless you have found the defendant guilty of
23 count one, because count two requires the defendant to have
24 been found guilty of a violent crime, and the violent crime
25 in this case is that set forth in count one, which is the

Jury charge

1 crime of murder.

2 Once you and your jurors have arrived at your
3 decisions and you've indicated those decisions on the back
4 of the indictment as requested, you'll sign your name as
5 the foreperson. You're the only juror that has to sign the
6 verdict form. You'll also place the appropriate date on
7 it, which today is August the 22nd. Notify the bailiff
8 that you've arrived at your decision, and we'll bring you
9 back to receive the verdict.

10 Now, when you reach your decision and you notify the
11 bailiff that you have, you may give the bailiff all of the
12 exhibits which have been introduced and that you've looked
13 at. But you will hold on to the verdict form. I'll
14 receive the verdict form from you, Mr. Foreman, after you
15 and your fellow jurors return to the courtroom for us to
16 receive your decision. So you'll hold on to the verdict
17 form until I take it from you in the courtroom, but you may
18 give the bailiff the evidence to bring back to the
19 courtroom once you've reached your decision.

20 I think that covers everything, but if it doesn't I'm
21 certain one of these lawyers will remind me that I should
22 have given you some additional information. And if I agree
23 with that I'll bring you back to provide you with that
24 additional information. And if I don't need to bring you
25 back, I'll simply send word by way of the bailiff that you

Jury charge

1 may begin with your deliberations. In that event he'll
2 bring to the jury room all of the exhibits which have been
3 introduced.

4 And to you, Mr. Foreman, he'll also bring the
5 indictment which serves solely as the verdict form.

6 So I'm to ask the original 12 jurors to please retire
7 to your jury room, but don't begin deliberations until I
8 send you word to do so.

9 (Whereupon, the jury retired to deliberate at
10 5:05 p.m.)

11 THE COURT: I need the alternates to stay in the
12 courtroom, please.

13 (Whereupon, the alternate jurors were excused from the
14 courtroom but remained in the courthouse.)

15 THE COURT: Are there any exceptions taken to the
16 instruction or requests for additions to the instruction by
17 the state?

18 MR. BARNETTE: None from the state, Your Honor.

19 THE COURT: By the defendant?

20 MR. ABUSAFT: None from the defense, Your Honor.

21 THE COURT: Let me ask y'all to verify all of the
22 exhibits, please, before they go back.

23 MR. ABUSAFT: Renew, obviously. I renew, Your Honor,
24 my requests for charge.

25 THE COURT: For involuntary manslaughter and accident?

Jury charge

1 MR. ABUSAFT: Yes, Your Honor.

2 THE COURT: All right. Those are declined.

3 (Pause.)

4 THE COURT: All right. All exhibits are accounted
5 for?

6 MR. ALLEN: Yes, sir, Your Honor.

7 MS. WELLS: Yes, sir.

8 THE COURT: Send the exhibits back, and the verdict
9 form. Tell the jury to begin deliberations and notify us
10 when they have concluded.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Bring the jury back in,
13 please, sir, and bring the alternates too.

14 (Whereupon, the jury returned to the courtroom at
15 5:40 p.m.)

16 THE COURT: All right. Mr. Foreman, I have your
17 request that the jurors wish for me to define the term
18 malice again.

19 All right. Malice as an essential element of the
20 crime of murder is a state of mind connoting an ill will
21 and having the intent to do harm.

22 Intent would include those consequences which
23 represent the very purpose for which an act is done, as
24 well as those consequences which are known to be
25 substantially certain to result, whether actually intended

Jury charge

1 or not.

2 Malice is a technical term importing wickedness and
3 excluding just cause or legal excuse. It is something
4 which springs from depravity, from a heart devoid of social
5 duty and fatally bent on mischief. It is a state of mind
6 indicating an extreme disregard for or an extreme
7 indifference to human life.

8 Malice may be likewise defined as a state of mind
9 which indicates a formed purpose and design to do a
10 wrongful act under circumstances that exclude any legal
11 right to do it.

12 Malice as an essential element of the crime of murder
13 may be expressed or implied. The words expressed or
14 implied malice do not mean different kinds of malice but
15 merely the manner in which malice may be shown to have
16 existed. That is to say by either direct evidence proving
17 malice or by circumstantial evidence implying or inferring
18 the existence of malice.

19 Malice may be expressed as where there is an expressed
20 threat to kill or a lying in wait or where the
21 circumstances show directly that the intent to kill was
22 entertained by the killer.

23 Malice may be inferred, though no expressed intent to
24 kill is proven by direct evidence, where the facts and
25 circumstances which have been proven by the evidence in the

Jury charge

1 case satisfy you beyond a reasonable doubt that malice was
2 present in the mind of the killer at the time any homicide
3 took place.

4 The existence of malice may be inferred from acts,
5 declarations and conduct of the killer, as well as from any
6 other circumstances shown to have existed at the time of
7 the event from which you might reasonably infer the
8 existence of malice, as often the state of a person's mind
9 can only be proven by circumstantial evidence.

10 Malice as an essential element of the crime of murder
11 does not require proof of an ill will or a hatred towards
12 the particular individual who is killed, nor does it
13 require proof of an actual or specific intent to take human
14 life, but rather it means the existence of a state of mind
15 accompanying conduct signifying a general malignant
16 recklessness and an extreme disregard for or an extreme
17 indifference to human life.

18 It's also essential that there exist not only malice
19 but that it be malice aforethought. The law does not
20 require malice must exist for any appreciable length of
21 time before the commission of an act proximately causing a
22 fatal result. Indeed, it may be conceived at the very
23 moment that the fatal act is committed.

24 It is sufficient in the law so long as the state does
25 prove beyond a reasonable doubt both the existence of

Verdict

1 malice and the commission of an act or acts by the
2 defendant which proximately caused the fatal result.

3 All right. Please retire to your jury room and
4 continue with your deliberations. Notify us when you've
5 concluded or if you need additional clarifications.

6 (Whereupon, the jury retired to deliberate at
7 5:46 p.m.)

8 (Question from the jury marked Court's Exhibit No. 8.)

9 THE COURT: Are there any exceptions taken to that
10 instruction or requests for additions?

11 MR. BARNETTE: None from the state, Your Honor.

12 MR. ABUSAFT: None from the defense.

13 THE COURT: All right. We'll be at ease while the
14 jury continues to deliberate.

15 (Whereupon, a recess was taken.)

16 (Question from the jury and response submitted to the
17 jury marked Court's Exhibit No. 9.)

18 THE COURT: Okay. I am told the jury has reached a
19 decision. Are we ready to receive it?

20 MR. BARNETTE: The state's ready, Your Honor.

21 MR. ABUSAFT: The defense is ready, Your Honor.

22 THE COURT: All right. Bring them in, please.

23 (Whereupon, the jury returned to the courtroom at
24 7:00 p.m. to report its verdict.)

25 THE COURT: Mr. Foreman, have you and your fellow

Verdict

1 jurors reached a unanimous decision?

2 THE FOREMAN: Yes, sir.

3 THE COURT: And have you indicated those decisions on
4 the back of the indictment as requested?

5 THE FOREMAN: Yes, sir.

6 THE COURT: Did you sign your name as the foreperson
7 and date it?

8 THE FOREMAN: I didn't sign it.

9 (Pause for foreperson to sign the verdict form.)

10 THE FOREMAN: Yes, sir.

11 THE COURT: If you will, please hand that verdict form
12 up by way of the bailiff.

13 You may publish the verdicts.

14 THE CLERK: State of South Carolina, County of
15 Spartanburg, Indictment No. 2017-GS-42-5579, the State vs.
16 Lance Antonio Brewton, indictment for murder and possession
17 of a firearm during the commission of a violent crime, we,
18 the jury, find the defendant as to count one guilty; we,
19 the jury, find the defendant as to count two guilty.

20 Signed by the foreperson, Barney Jones, on
21 August 22nd of 2018.

22 Ladies and gentlemen of the jury, if this is your
23 verdict and still your verdict, please raise your right
24 hand.

25 (Whereupon, all jurors responded in the affirmative.)

Verdict

1 THE CLERK: So say you all.

2 THE COURT: Does the defendant wish to have the jury
3 polled?

4 MR. ABUSAFT: Yes, Your Honor.

5 THE COURT: All right. Poll the jury, please, ma'am.

6 THE CLERK: Ladies and gentlemen of the jury, I will
7 pose a question to you after which I will ask you to stand
8 individually and respond to my question, the question being
9 is this your verdict and still your verdict.

10 Juror No. 162, Junior Sang.

11 Is this your verdict and still your verdict?

12 THE JUROR: Sang?

13 THE CLERK: Yes.

14 THE JUROR: Yes.

15 THE CLERK: Juror No. 166, Amy Schuster.

16 Is this your verdict and still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror No. 203, Cari Spanton.

19 Is this your verdict and still your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror No. 93, Barney Lewis.

22 Is this your verdict and still your verdict?

23 THE JUROR: Yes.

24 THE COURT: That's Barney Lewis Jones.

25 THE CLERK: I'm sorry. Barney Lewis Jones.

Verdict

1 Juror No. 69, McKenzie Glasgow.

2 Is this your verdict and still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Juror No. 49, Benjamin Dismukes.

5 THE JUROR: Yes, ma'am.

6 THE CLERK: Juror 198, Judy Wilson.

7 THE JUROR: Yes.

8 THE CLERK: Juror No. 46, Stephanie Degraffinreid.

9 THE JUROR: Yes.

10 THE CLERK: Juror No. 17, Tony Brockman.

11 THE JUROR: Yes.

12 THE CLERK: Juror No. 79, Keashia Hearst.

13 THE JUROR: Yes.

14 THE CLERK: Juror No. 59, Selcuk Filiz.

15 THE JUROR: Yes.

16 THE CLERK: Juror No. 192, Adam Webb.

17 THE JUROR: Yes.

18 THE CLERK: Your Honor, the jury has been polled.

19 THE COURT: Are there any other matters to be
20 addressed with the jury present?

21 THE DEFENDANT: None from the state, Your Honor.

22 MR. ABUSAFT: None from the defense.

23 THE COURT: All right. Thank you, ladies and
24 gentlemen, for your participation in the trial of this
25 case.

Sentence

1 I'm sorry that we took you so late in the day, but we
2 do appreciate your willingness to stay and work.

3 You will be excused for tomorrow. If you'll call back
4 tomorrow evening after 6:00 o'clock you'll receive further
5 reporting information.

6 Now, as far as the student goes, you will not need to
7 report back because you've been excused for the balance of
8 the week.

9 So thank you again for your participation. Call back
10 after 6:00 o'clock tomorrow evening to find out about
11 further reporting. Okay. Thank you again for your
12 participation. Have a good evening.

13 There'll be a deputy to take you all to the parking
14 lot.

15 (Whereupon, the trial jury was excused.)

16 THE COURT: Any other matters to be addressed prior to
17 the imposition of sentence?

18 MR. BARNETTE: None from the state, Your Honor.

19 MR. ABUSAFT: Yes, Your Honor.

20 At this point we ask for a new trial based upon our
21 objections and failure to charge involuntary manslaughter,
22 like, our previous -- also charge accident. And our
23 previous objections, Your Honor.

24 THE COURT: All right. That motion is denied.

25 MR. ABUSAFT: Yes. Also, Your Honor, we renew all

Sentence

1 objections but also include the limitations on his
2 testimony.

3 THE COURT: All right. Anything else to be presented
4 by with the state?

5 MR. BARNETTE: Your Honor, the family's here. They do
6 not want to address the Court, but them being here is to
7 give support to the victim in this case. We appreciate
8 them being here. And you know the prior record, Your
9 Honor. The court exhibits contain those, and I know the
10 Court will take notice of that. Thank you, Your Honor.

11 THE COURT: All right. Mr. Abusaft.

12 MR. ABUSAFT: Your Honor, I won't belabor any
13 mitigation. You know this case about as well as what we
14 do.

15 Now, at this point I would highlight for you though,
16 Your Honor, that this case has substantial issues of -- of
17 addiction, Your Honor, drug use that mitigate someone that
18 was in -- they're completely -- and issues of mental
19 health, Your Honor, that is not -- we have never asserted
20 that as a defense. That mitigates against Your Honor
21 treating him the same way that you would treat someone
22 else.

23 He was close with this young woman. There is no
24 history of some kind of lengthy -- of any violence between
25 them before. He loved this young woman. There was a

Sentence

1 tragedy that day that, obviously, she's now gone and he'll
2 live with for the rest of his life, Your Honor. We ask you
3 to take those things into consideration.

4 THE COURT: All right. Mr. Allen, do you have
5 anything?

6 MR. ALLEN: No, Your Honor. I do not.

7 THE COURT: Mr. Brewton, would you like to be heard?

8 THE DEFENDANT: I just want to apologize to the family
9 for the mistake. Sorry. I didn't mean --

10 MR. ALLEN: Address the judge.

11 THE DEFENDANT: I'm sorry for wasting the Court's time
12 too, sir.

13 THE COURT: All right. On Indictment 2017-05579,
14 count one, the indictment for murder, wherein you have been
15 found guilty by the jury, the sentence of the Court is that
16 you, Lance Antonio Brewton, be confined to the South
17 Carolina Department of Corrections for the period of your
18 natural life.

19 As to count two, possession of a firearm during the
20 commission of a violent crime, upon reading Section A it
21 seems to apply, seems to require that the 5-year sentence
22 for possession of a firearm during the commission of a
23 violent crime is not applicable because the defendant is
24 receiving a life sentence without parole for the violent
25 crime of murder.

Sentence

1 Are we in agreement with that reading?

2 MR. BARNETTE: Yes, sir.

3 MR. ALLEN: Yes, Your Honor.

4 THE COURT: So the sentence on count two is not
5 applicable under the circumstances of this case even though
6 the defendant was found guilty.

7 Now, Mr. Brewton, you have a right to appeal the
8 verdict of the jury and the sentence of the Court. You
9 must file any notice of your intention to appeal those
10 decisions within ten days of today's date. Your lawyers
11 will assist you with that advice. Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay.

14 END OF REQUESTED TRANSCRIPT OF RECORD

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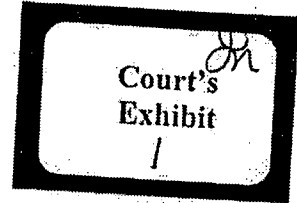


U.S. Department of Justice
Federal Bureau of Prisons
Federal Detention Center

33 NE 4th St.
Miami, FL 33132

December 21, 2017

The Honorable Kevin F. McDonald
U.S. Magistrate Judge
300 East Washington Street, Ste. 300
Greenville, SC 29601



Re: Name : Lance Antonio Brewton
Reg. No: 32803-171
Case No: 6:17-mj-236-MCRI-1 @: 17CR937

Dear Judge McDonald:

Thank you for referring Mr. Brewton to us for an evaluation. In response to your Court Order, a competency evaluation was completed at the Federal Detention Center, Miami, Florida. Enclosed are the results of the examination. Copies were mailed directly to Assistant United States Attorney, Ms. Jennifer Elizabeth Wells, and Federal Public Defender, Ms. Erica Marie Soderdahl.

It is the opinion of our examiner, Mr. Brewton does not suffer from a severe mental disorder or defect, which would preclude his ability to understand the nature and consequences of the proceedings against him, or to assist his attorney in his own defense. Consequently, he is considered to be competent to proceed with the judicial process. The Court also directed that the examination include assessment of the defendant's mental status at the time of the alleged offense. It is the opinion of our examiner, the defendant did not suffer from a mental illness, which interfered with his ability to appreciate the nature and quality or wrongfulness of his actions. Therefore, he is found to have been sane at the time of the alleged offense.

If you have any questions or concerns, please do not hesitate to contact the examiner, Dr. Jorge Luis (305) 982-1469, or facsimile number (305) 982-1413.

Sincerely,

Gio Ramirez
Warden

cc: Ms. Jennifer Elizabeth Wells, AUSA
Ms. Erica Marie Soderdahl, FPD

RECEIVED
DEC 27 2017
APPELLATE DEFENSE



U.S. Department of Justice
Federal Bureau of Prisons
Federal Detention Center

33 NE 4th St.
Miami, FL 33132

December 21, 2017

The Honorable Kevin F. McDonald
U.S. Magistrate Judge
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Sincerely,


Gio Ramirez
Warden

COURT
EXHIBIT

|

cc: Ms. Jennifer Elizabeth Wells, AUSA
Ms. Erica Marie Soderdahl, FPD

**U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL DETENTION CENTER
MIAMI, FLORIDA**

FORENSIC EVALUATION

Defendant Name: Lance Antonio Brewton

Registration Number: 32803-171

Case Number: 6:17-cr-00937-BHH-1

6:17CR937

Date of Birth: [REDACTED] 1979

Dates of Evaluation: October 20, 2017 through December 12, 2017

Date of Report: December 20, 2017

IDENTIFYING INFORMATION:

Mr. Lance Antonio Brewton is a 38-year-old, African-American male, referred by the United States District Court for the District of South Carolina, Greenville Division, for an evaluation under the provisions of Title 18, United States Code (USC), Sections 4241 and 4242. The Court is interested in opinions on the defendant's competency to stand trial and criminal responsibility. The defendant is currently charged with Possession of a Firearm by a Convicted Felon; in violation of Title 18, USC, Sections 922 (g)(1), 924 (a)(2) and 924 (e). Mr. Brewton was designated to the Federal Detention Center, Miami, Florida (FDC-Miami) on October 2, 2017, for the evaluation, and he arrived at the facility on October 20, 2017.

ASSESSMENT PROCEDURES:

During the initial interview, it was explained to Mr. Brewton that the purpose of the examination was to determine if he is competent to proceed and his criminal responsibility. He was also informed of the limits of confidentiality and advised that the usual client/doctor privilege would not be in effect. It was explained to him that anything he discussed with the examiner may be submitted to the Court. Mr. Brewton was informed that a written report summarizing test results and clinical findings would be provided to the Court, to his attorney, and to the prosecuting attorney. Mr. Brewton stated that he understood and agreed to participate in the evaluation.

The evaluation of competency to stand trial involves determining whether or not the defendant is suffering from a mental illness that precludes his ability to understand the nature and consequences of the proceedings against him, and to properly assist in his own defense. To make a determination of insanity at the time of the offense, the presence of a serious mental

disorder or defect is required. Additionally, there needs to be a causal relationship between the mental disease and the offense behavior. Specifically, the defendant's inability to appreciate the nature and quality, or wrongfulness of his actions must be the direct result of the individual's mental disorder.

The defendant's evaluation entailed a comprehensive review of all available legal documentation pertaining to his case. The following is a list of the documents examined and sources that were consulted:

- 1 - Copy of Criminal Complaint and attached Affidavit, filed September 26, 2017.
- 2 - Copy of Order requesting the current evaluation, filed September 29, 2017.
- 3 - Copy of Indictment, filed October 10, 2017.
- 4 - BOP central, medical, and psychological records from FDC-Miami, dated between October 20, 2017 through December 19, 2017.
- 5 - Monitored telephone conversations, various dates.

Members of the FDC-Miami Correctional Services staff reported on the defendant's adjustment to his unit and incarceration in general. This collateral information was necessary in order to obtain a broader understanding of his adaptive and interpersonal skills. The following procedures were employed to assess Mr. Brewton's level of functioning:

Clinical Interviews
 Mental Status Examination
 Booklet Category Test-Second Edition (BCT)
 Georgia Court Competency Test - Mississippi State Hospital (GCCT-MSH)
 Miller Forensic Assessment of Symptoms Test (M-FAST)
 Structured Interview of Reported Symptoms - Second Edition (SIRS-2)

The defendant underwent psychological testing and clinical interviews by various psychology staff including Dr. Jorge Luis and Ms. Marina Mukhin, M.A., M.S., a psychology graduate student under the supervision of Dr. Luis.

BACKGROUND INFORMATION:

Background data was obtained from all sources listed above. Mr. Brewton proved to be an adequate historian, as he was able to relay autobiographical information.

Developmental History: Mr. Brewton was reportedly born on [REDACTED] 1979 in Greenville, South Carolina. He was primarily raised by his mother in the Greenville area and reportedly spent summers with his father. The defendant indicated that his mother recently died due to renal failure. Mr. Brewton reported having two older maternal half-sisters. He reported a history of sexual abuse by his step-brother at age 8 or 9. According to BOP medical and psychological records, the defendant denied any history of sexual abuse during several clinical contacts.

Educational History: Mr. Brewton indicated that he completed the eighth grade and discontinued his schooling during the ninth grade. The defendant relayed repeating the sixth grade, obtaining average to failing grades, and placement in special education classes during the ninth grade. He reported a history of multiple academic suspensions due to involvement in physical altercations with peers. Mr. Brewton stated that he obtained a Graduate Equivalency Diploma (GED) in 2004 while incarcerated.

Military History: The defendant denied any history of military service.

Marital History: Mr. Brewton has never been married. He reportedly has fathered 3 sons with different women. According to the defendant, one of his sons resides with the defendant's sister and the others reside with their respective mothers.

Employment History: Mr. Brewton reported working in a warehouse, loading trucks at age 17. He also reported working in construction with his step-father.

Medical History: The defendant described undergoing a surgical procedure to his left eye socket following a fight in 2001. Reportedly, a steel plate was implanted. He also reported fracturing his jaw and hurting the previously injured eye after falling from a bunk bed in 2010 while incarcerated.

Psychiatric History: The defendant denied any history of mental health treatment or psychiatric hospitalizations. According to Mr. Brewton, he started to experience auditory and visual hallucinations approximately 2 years ago. Reportedly, he hears voices and sees visions on a daily basis. He also reported that 4 months prior he had loaded a gun to shoot himself but ultimately did not engage in a suicide attempt. He indicated that this event is associated with his current charge.

Substance Abuse History: Mr. Brewton reported a history of cocaine use beginning at age 16, heroin use at age 36 and methylenedioxymethamphetamine (MDMA) on occasion. He reported discontinuing use of cocaine approximately 5 years ago. He reported daily use of heroin via inhalation which continued until his arrest.

Criminal History: The defendant reported an extensive history of arrests (over 30 arrests) and/or convictions beginning with a shoplifting offense at age 8 or 9. He reported serving 4 state prison terms ranging from 6 months to 2 years for a variety of charges such as strongarm robbery and probation violations.

Description of Offense: According to the Criminal Complaint and attached Affidavit, Mr. Brewton is currently charged with Possession of a Firearm by a Convicted Felon. Reportedly, the defendant was observed exiting the passenger door of a vehicle "holding a black pistol in his left hand." Subsequently, the defendant was detained by law enforcement. Mr. Brewton reportedly informed the arresting officers that he had killed his family; however, the defendant's family was later located unharmed. The defendant stated the following: "All I

remember is I saw the police at the store and gave them gun I had...that I found... someone had killed my family and I wanted to check on my family and they locked me up... voices I'm hearing said someone killed."

EVALUATION FINDINGS:

Behavioral Observations: Mr. Brewton seemed to function adequately in the highly structured environment of the institution. He did not demonstrate any difficulties obtaining his meals, attending to his activities of daily living, following instructions, or communicating. On November 17, 2017, the defendant was cited for Refusing to Obey an Order and being Insolent to Staff member and was transferred to the Special Housing Unit. On November 21, 2017, he was transferred to a general housing unit.

Current Mental Status: Mr. Brewton is a 38-year-old, African-American male, of average height and build. He appears to be his stated age. Mr. Brewton displayed adequate hygiene. The defendant's manner of dress was appropriate as he wore an inmate's uniform, which is required in the institution. He displayed adequate eye contact with the examiner. He sat in a relaxed posture during interviews. He did not demonstrate any gross neuropathological body movements. Ambulation was characterized with normal gait. He was calm and attentive throughout the evaluation.

The defendant exhibited organized, rational, and sequential thought processes. Throughout clinical contacts, the defendant presented as oriented to current circumstances and autobiographical events. Thought content focused on his reports of auditory and visual hallucinations, black magic and spells being cast on him, and the reported recent death of his mother. He demonstrated adequate attention and concentration skills during conversations. He did not display any evidence of confusion during clinical contacts. Although he reported experiencing auditory and visual hallucinations, he did not appear to be responding to internal stimuli during clinical contacts or on monitored telephone conversations.

An evaluation of his speech pattern found a low volume, slowed rate, and normal prosody (i.e., rhythm). On monitored telephone conversations, the defendant's speech appeared to be spontaneous and of a normal rate, volume and prosody. Receptive language abilities were intact. His intelligence is estimated to be of below average levels based on his vocabulary and general fund of knowledge.

The defendant showed a normal range and intensity of emotional expression. His mood was primarily dysthymic (i.e., depressed). On monitored telephone conversations, the defendant's mood appeared to be euthymic (i.e., normal) with the exception of one call where his mood appears to be depressed. There were no periods of clinically significant anxiety, psychosis, or mania observed during clinical contacts. His mental status was consistent throughout the clinical contacts and he was able to function independently.

Medical Evaluation, Studies, and Treatment: As part of the admission procedures at this institution, Mr. Brewton underwent a routine physical examinations. On November 2, 2017, the defendant was assessed by Kendes Archer, M.D., for possible Deep Vein Thrombosis (DVT)

after being identified as to having possible signs of such a condition (Homan's sign) during an initial health assessment. Dr. Archer noted the defendant having a follicular cyst for which the defendant was prescribed amoxicillin (antibiotic) 500 milligrams (mg.) 3 times a day for 5 days. Dr. Archer noted the following: "no clinical evidence of DVT, negative calf tenderness and negative homan's sign." Upon admission to the facility, the defendant had reported an enlarged scrotum with mild tenderness. A subsequent ultrasound radiography revealed bilateral varicocele and the defendant was referred "to specialist for further evaluation and recommendations."

Psychiatric Treatment: The defendant did not require any mental health treatment during the current evaluation period.

Psychological Test Results:

Neurocognitive Functioning: The defendant was administered the Booklet Category Test (BCT), a measure designed to detect the presence of neurocognitive impairment such as those found in brain injuries or diseases. The defendant scored in the Moderately to Severely Impaired range, suggesting the presence of neuropsychological deficits; however, the defendant elevated several indices suggestive of the exaggeration or fabrication of neurocognitive impairment on this measure. Essentially, these scales are composed of items answered correctly by populations with established brain damage. This suggests that the defendant was attempting to falsely portray neurocognitive deficits.

Psychological/Personality Functioning: Mr. Brewton was administered the M-FAST. This instrument was developed as a screening measure to detect deliberate distortions in self-reported psychiatric symptoms. The stimuli questions are read to the defendant; thereby, eliminating the need for reading comprehension. The defendant's results suggest an excessive exaggeration and/or fabrication of psychological problems and warrant a more comprehensive assessment of feigned mental illness.

The defendant was administered the SIRS-2 which is a comprehensive measure designed to assess systematically deliberate distortions in self-reported psychiatric symptoms. The stimuli questions are read to the defendant; thereby, eliminating the need for reading comprehension. The defendant approached this measure with an inconsistent pattern and he endorsed a very high number of symptoms and psychological problems on the SIRS-2 overall. His combination of elevated scores is characteristic of individuals who are feigning psychiatric symptoms and are rarely seen in clients responding truthfully.

Based on more subjective clinical impressions, the defendant demonstrates grossly organized thinking and volitional behaviors. His perceptions of the environment are realistic. He appears to interact with others with below average levels of extroversion.

DIAGNOSES:

Malingering, V65.2
Antisocial Personality Disorder, 301.7
Opioid Use Disorder, In a controlled Environment, 305.50

CASE FORMULATION:

Mr. Brewton is a 38-year-old, African-American male, with an inconsistently reported history of mental health treatment. The defendant meets criteria for the following classifications under the current system of diagnostic psychiatric disorders (Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition-DSM-5).

According to the DSM-5, the essential feature of Malingering is the intentional misrepresentation or exaggeration of physical or psychological symptoms, motivated by external incentives such as avoiding military duty, avoiding work, obtaining financial compensation, evading criminal prosecution, or obtaining drugs. Malingering should be considered when any of the following combinations occur: lack of cooperation during the evaluation, there is evidence for the presence of Antisocial Personality Disorder, the presentation occurs in a medicolegal context, or there is a marked discrepancy between subjective and objective findings. In Mr. Brewton's case, several of these conditions are present. The defendant is endorsing psychiatric and cognitive symptomatology to a level or degree that is not reported by genuinely impaired populations or fit any known diagnostic cluster of symptoms. Overall, the results on objective psychological testing are consistent with persons grossly exaggerating or fabricating symptoms of psychiatric and cognitive impairment. He appears to be malingering symptoms due to his perception that he might avoid entirely or receive diminished repercussions for his criminal behavior (e.g., diminished capacity, probation or another form of less restricted sentence). Based on these factors, Mr. Brewton meets criteria for a classification of Malingering. While this classification does not exclude the presence of legitimate psychiatric conditions, it should be noted that he failed to display indications of an active phase of a serious mental illness during the course of the evaluation.

The defendant exhibited many tendencies which appeared to be of a long-standing, characterological nature. His idiosyncratic style of failing to conform to social norms, substance use, aggression and asocial activities suggest the presence of a personality disorder. Throughout his life, Mr. Brewton has been involved in various criminal activities that are not causally related to a mental disorder. His self-reported history detailed a willful disregard for rules and regulations. These activities include an extensive substance abuse history, aggression, and significant involvement with the legal system. In other words, for this individual, the diagnosis of Antisocial Personality Disorder best describes his symptoms in the pervasive characterological domain found in the DSM-5.

The defendant reported a history of daily heroin abuse. His overall use warrants diagnoses of Opioid Use Disorder. He may also meet the criteria for disorders related to other substances such as cocaine and MDMA; however, during the current evaluation, he denied regular use of MDMA and denied use of cocaine for several years. The defendant's current remission is due to restricted access rather than true abstinence.

TREATMENT RECOMMENDATIONS:

Currently, there is no psychological or psychiatric treatment indicated for the defendant. The defendant could benefit from mandated substance abuse treatment, if he were motivated to deal with these issues.

PROGNOSIS:

The defendant's psychiatric prognosis is favorable given his stable mental status and absence of any objective evidence of an active phase of mental illness.

OPINION ON THE ISSUE OF COMPETENCY:

Essential to the issue of competency to stand trial is whether or not a mental disease or defect is present and interfering with the defendant's ability to understand the charges against him, his ability to properly assist in his own defense, and the ability to understand the nature and consequences of the proceedings against him.

On the GCCT-MSH, an objective measure of psycholegal knowledge and abilities related to competency to stand trial, the defendant achieved a score consistent with persons found incompetent to stand trial. Although the defendant attempted to impress as having a deficient understanding of the legal proceedings against him, there are indications that he has been attempting to impress as mentally impaired. For example, as noted above, the defendant is fabricating psychiatric and neurocognitive impairment on objective testing. Furthermore, on the GCCT-MSH, the defendant endorsed significant levels of bizarre symptoms related to his legal situation. Endorsements of atypical items are usually associated with persons attempting to malingering trial incompetence rather than genuine psychiatric populations.

A careful review of the defendant's general court knowledge revealed an adequate understanding of courtroom roles and proceedings. The defendant was able to identify the charge against him, stating that he is charged with "firearm, carrying one...that's why I gave it to police...not supposed to have one." He verbalized a limited understanding of the roles of courtroom personnel. He stated that the defense attorney's responsibilities are to "tell my story." The defendant demonstrated an understanding that the judge is responsible for sentencing. Mr. Brewton indicated that the jury "tell if you're guilty or not." The defendant demonstrated an understanding of the possible penalties he could face if found guilty of the charge stating that he could be imprisoned.


Essential to the issue of competency to stand trial is whether or not a mental disease or defect is present and interfering with the defendant's ability to understand the charges against him, his ability to properly assist in his own defense, and the ability to understand the nature and consequences of the proceedings against him. The defendant did not demonstrate any active symptoms of a mental illness that would interfere with a basic understanding of the legal process or his ability to assist in his own defense. The defendant's factual knowledge, including an understanding of his charge and of courtroom procedures, is adequate. Therefore, it is recommended that the defendant be found Competent to Stand Trial.

OPINION REGARDING RESPONSIBILITY ISSUES:

Insanity at the time of the offense requires the presence of a serious mental disorder or defect, along with evidence that there was a causal relationship between the mental disorder and the offense behavior. Central to the determination of criminal responsibility involves the question as to whether or not a mental disorder resulted in an individual's inability to appreciate the wrongfulness of his behavior.

According to the Criminal Complaint and attached Affidavit, the defendant reportedly informed the arresting officers that he had killed his family; however, the defendant's family was later located unharmed. During the current evaluation, the defendant stated the following: "all I remember is I saw the police at the store and gave them gun I had... that I found... someone had killed my family and I wanted to check on my family and they locked me up... voices I'm hearing said someone killed." During another clinical contact, the defendant stated that he had the firearm because he was intending to commit suicide. While the defendant's statements suggest a possible altered mental status at the time of his arrest, it appears that the defendant has provided inconsistent explanations across interviews (i.e., finding the gun, possessing the firearm for suicide, or possession of the firearm after killing his family) and the results of the current evaluation are consistent with persons grossly exaggerating or fabricating symptoms of psychiatric and cognitive impairment. In addition, the defendant's mental status during monitored telephone conversations was not suggestive of an active phase of mental illness and appeared discrepant from his presentation during clinical contacts. Furthermore, the defendant reported a history of daily substance usage that could have also affected his mental state. If any symptoms were due to the volitional use of intoxicants, the use of an insanity defense would be invalidated.

In summary, the defendant's history and current mental state do not suggest the presence of a mental disease or defect that would have impaired his ability to understand the nature and quality or the wrongfulness of his actions. Therefore, it is the examiner's opinion that Mr. Brewton was criminally responsible for his behavior at the time of the offense.



Jorge Luis, Psy.D.
Forensic Psychologist

Name : Lance Antonio Brewton
Reg. No: 32803-171
Case No: 6:17-mj-236-MCRI-1

cc:

The Honorable Kevin F. McDonald
U.S. Magistrate Judge
300 East Washington Street, Ste. 300
Greenville, SC 29601

Jennifer Elizabeth Wells
US Attorneys Office (Gville)
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STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)

INDICTMENT

001 27 2017

At a Court of General Sessions, convened on _____, the
 Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE - MURDER

That the Defendant, Lance Antonio Brewton, did in Spartanburg County on or about September 25, 2017, feloniously, willfully, and with malice aforethought, kill one Natalie Rae Niemitalo, by shooting her with a firearm, and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

**COUNT TWO - POSSESSION OF FIREARM DURING COMMISSION
 OF A VIOLENT CRIME**

That the Defendant, Lance Antonio Brewton, did in Spartanburg County on or about September 25, 2017, visibly display a firearm during the commission or attempted commission of a violent crime, to-wit: Murder, in violation of Code §16-23-490, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended

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


 SOLICITOR

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,



Adam Sinclair Ruffin
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

This 9th day of March, 2020.

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SC Court of Appeals