VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lancaster County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMARCUS OBRIEN FOSTER,

APPELLANT.

APPELLATE CASE NO. 2019-000543

RECORD ON APPEAL

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A I can't really say. I know Willow Lake will be -- Pardue. Pardue is right beside the store with Willow Lake. Willow Lake would be the next street after Pardue.

Q If you kept going out the road from here where you were going to Willow Lake and you just kept on going, what town would you end up in eventually?

Do you know that? What would be the first town you would come to -- besides Lancaster?

It doesn't matter. I will withdraw the question.

You-all were out there. You described what you were doing. You started rapping?

A Yes.

Q How long did that go?

A For a minute. Instrument after instrument. We was testing. We was trying out every instrument that was playing. That is what we do.

Q Tell me more about that. Who all is participating in that?

A Me, Squirt, and I think my little homeboy Zeke.

Q I will hand you pictures, Defendant's Exhibits 5 and 6.

Describe those photos and tell me what they are and where they came from.

A That is Poovey's house.

Q Again, where is Poovey's house?
A Willow Lake.
Q What is going on in that photo?
A We are rapping.
Q What time was that going on?
Just tell me. What kind of time frame would you say that those pictures were taken?
A It was late. It was dark.
Q What does late mean to you?
A I would say about 12:00-something in the morning.
Q The clothes you were wearing.
A Basically the same thing. Pink and black Nelson Mandela shirt, Khaki Boss Man's and my new LeBron's.
Q State's Exhibit 5.
What is this a picture of?
A Me visiting my niece.
Q What is the difference in what you are wearing there?
A The only difference is I got on my team hat, my Clemson hat. That is the only difference.
Q Clemson?
A Yes, sir. I am a die-hard Clemson. Me, my dad, and my brother love Clemson.
Q Mr. Foster, did you change clothes during that

evening at all?
A No, sir. If I do take off anything, I take off my shirt.
Q Did you do that?
A I can't say if I did or not -- that is the only thing I really changed. That's the only thing. We play sports a lot. I keep basketball shorts and shirts in my bag everywhere I go. Like, that is what I do -- boom.
Q Let's talk about that bag. Tell me about why you carry a bag.
A That's why I carry it. We balls, like. My whole family, that's what we do. We play sports. I can pull up at anybody's house in there. I see kids playing basketball. I change clothes and put on my shorts, and I will go play with them. That is what I do. I play sports.
Q Did you carry anything else in that bag that day?
A That's it, sir. That is all I had, a change of clothes in the bag.
Q Did you have a gun on you that day?
A No, sir.
Q Did you have a gun with you on 16th Street?
A No, sir.
Q Did you have a gun on you that night?
A No, sir.

Q Did you use a gun that day?
A No, sir.
MR. GRIER: Your Honor, I will offer these as defense exhibits.
MS. WEISS: No objection, Your Honor.
THE COURT: Defendant's Exhibits 5 and 6 are admitted into evidence.
(The aforementioned item were marked as Defendant's Exhibits 5 - 6 for identification and were admitted into evidence.)
MR. GRIER: May I publish these three photos to the jury?
THE COURT: Yes, sir.
BY MR. GRIER:
Q So you were out there rapping on that night?
A Yes, sir.
Q When did you learn somebody had been shot out on 16th Street?
A That was, I think, the next morning. They said somebody had got shot.
Q How did you learn? Don't say who or what they said. What time did you learn about it?
A It was, like, the next morning.
Somebody came and picked me up from Murph's momma's house that morning. Boom.

I went over there for a little minute and chilled. I got up. I initially got up in the day. Boom. I started getting text messages and phone calls. "D somebody got shot on 16th Street and 3rd. Somebody got shot."

Q What did you do as a result of that -- those communications?

A I was like, "ssssss."

Q Did you respond to any of them?

A No, sir.

Q What did you think about learning that somebody had been killed over there?

A At first it wasn't that. It was somebody got shot. This is Lancaster, like. Somebody say somebody got shot -- okay. Well, somebody got shot.

Q When did you learn somebody had died?

A When I was in County.

Q You gave a statement to law enforcement?

A Yes, sir.

Q At that time, did you know what had happened to Mr. McLemore?

A No, sir.

Q Did you know anything about his condition or anything at that time?

A No, sir. They just said someone had got shot. I

think it was Agent Grant or somebody brought up the name. That is how I knew the name. It's the only way I knew the name.

Q That was the next day. That was on the 28th, correct, that you learned somebody had been shot over there?

A Yes, sir.

Q The next morning after you had done the rap thing out until 3:00 in the morning or whatever, why didn't you go to the police then?

A I didn't want to. Basically, I try to stay away from them.

Q Why were you trying to stay away from them? Had you done anything?

A No. I don't put myself in no situations, like.

Q Did you know -- had the police communicated with you or anybody that you are aware of in your family for you to turn yourself in at that point?

A No, sir.

Q When did you become aware that they were looking for you?

A Well, like, I had gotten a call from someone from the projects. It was confirmed that the police had went to my ex's house looking for me.

As soon as I heard that, I called my girl. I said, "Babe, boom. Somebody say the police be looking for me. Boom. Take me to the police department so I can get my name cleared."

She was like, "Are you sure?"

I was like, "Yeah. Go to the police department and get my name cleared."

That's what I do. Anytime my name come up with anything, I get my mom or one of my relatives to take me straight to the police station. I don't run from nothing. That's me. I want to go get my name cleared, so I go straight to the police department.

Q You said the police department. Where did you go?

A To the Sheriff's station right down the street.

Q What were you expecting to happen?

A Basically, to clear my name. I videoed my whole trip to the police department. Video from my mom's phone. Video the whole trip to the police department.

I went in there. Me and my girl got out of the car. I asked the lady at the desk three times. I said, "My name is Demarcus Foster. Do I have a warrant for my arrest for anything?" I asked three times. She told me, "No." The lady had said no.

I went outside and videoed. If they got my momma's

phone, they could see the video. The Sheriff, Barfield, Captain Howell. There were more officers on the side of the building. I even got them in the video on my momma's phone. Like, really. They said the police was looking for me. The woman literally told me I had no warrants for my arrest or nothing whatsoever. She stated -- it's on the record. Like, I recorded it.

Q That wasn't accurate, was it?

A Even when I was in the County, they still had no warrant for me. One came later on, as I was in the County.

Q You went into custody. They got you?

A Yes, sir.

Q Your girlfriend was with you. What happened with her?

A I didn't even know she was locked up at first. It was someone at the County -- they was like, "Bro, we just seen your girl up front. They locked your girl up."

I was, like, "What?"

They was like, "Yeah. She locked up, too."

I'm like, "Ain't no way, like."

Q You were interviewed that day?

A Yes, sir.

Q Did you tell -- was it Special Agent Grant?

A It was Grant and there was a black male officer with her.
Q Did you tell them you were out on 16th Street?
MS. WEISS: Objection.
THE COURT: What is the objection?
MS. WEISS: Leading.
THE COURT: I will let him answer.
BY MR. GRIER:
Q What did you tell them about your whereabouts on 16th Street on September 27, 2017?
A I told them about me going over there to see my niece, so forth.
Q What did you tell them about a gunshot over there that day?
A I ain't say nothing about the gunshot. I tried to keep that out of my conversation with them.
Q Why did you do that?
A Because I ain't going to go through that same little process with the investigation and stuff no more.
Q What do you mean the same process?
A My name didn't, like, be put in that before. I ain't want to go through that process again.
Q Eventually, you communicated that you wanted to make it known that you were there when the gunshot happened?

A Yes, sir.
Q That happened a couple of weeks ago -- a few weeks ago?
A Yes, sir.
Q Mr. Foster, please look at Defendant's Exhibit 7, which has just been marked.
Mr. Foster tell me, have you ever seen that before?
A Yes, sir. This is from my Messenger.
Q Who is the communication from?
A My brother's baby's momma, Jakenia Stevens.
Q What is it showing?
A Pictures of earlier that day of me and my niece.
Q Does it talk about future plans?
A Yes, sir.
Q What does it say?
A "We are going to the park tomorrow. I will call so you can join."
Q What time was that communication dated, on that document?
A 12:05.
Q On what day?
A 9-28-2017.
Q When did you become aware of those documents?
A I can't say the exact time, sir.
Q You saw it come in?

A Yes, sir.

MR. GRIER: I would move to enter Defendant's Exhibit 7 into evidence.

THE COURT: Any objection?

MS. WEISS: No objection, Your Honor.

THE COURT: Defendant's Exhibit 7 is admitted into evidence.

(The aforementioned item was marked as Defendant's Exhibit 7 for identification and was admitted into evidence.)

BY MR. GRIER:

Q Were you aware of any plans the next day with your niece?

A Not until then, sir.

Q Did you respond when you got those pictures?

A Yes.

Q What did you say?

A I say, "God. Thanks. You almost made me cry. Uncle D loves you."

Q Is there some kind of video in there that came in?

A I missed the video check.

Q As a result of that, did you respond?

A She said, "Already, she loves you already."

I was, like, "I'm crying now, for real for real."

MR. GRIER: Your Honor, ask to publish.

THE COURT: All right.

BY MR. GRIER:

Q Mr. Foster, did you have communication by phone or text or anything with Lashawn White, ever?

A No, sir.

Q What about Quaterious Peay?

A No, sir.

Q With Dario Jones?

A No, sir.

Q With Christopher Stevens?

A No, sir.

Q I asked you about Lashawn White?

A Yes, sir.

Q How about with Joel?

A No, sir.

Q Mr. Foster, you have a past. You have a history; right?

A Yes, sir.

Q Have you ever been to trial before?

A I ain't never been to trial.

Q You pled to those charges?

A Yeah. I did them, so I have to pay for them. I did my time for them.

Q That is before you were 20?

A I was a teenager.

Q Why are you going to trial in this case?
A Because I am innocent. I know I ain't did nothing, so I said I am going to trial from day one. That is my decision.
Q Mr. Foster, answer any questions that the Attorney General may have for you.
A Yes, sir.
MS. WEISS: Your Honor, at this time I would ask that we take a break.
THE COURT: Let's take a very short, five or ten minute comfort break.
The jury will retire to the jury room. Do not discuss the case.
(Whereupon, the defendant exited the witness stand.)
THE COURT: Everyone remain seated while the jury goes out.
(Whereupon, the jury exited the courtroom.)
THE COURT: Before we break, there is a lot of movement going on, and a lot of in and out of this courtroom. If you can't sit here for an hour without having to go outside, stay outside. It's very disruptive all of this up and down and in and out.
When we come back in here, I expect you to remain seated throughout the testimony.

Let's take a break.

(Whereupon, a recess was held.)

(Whereupon, the following proceedings were held in open court. The defendant was present with his attorney, along with counsel for the State.)

THE COURT: All right. As I said earlier, I don't want any up and down and in and out. If you don't think you can sit here for at least an hour, you need to leave and go outside right now. If anybody gets up and goes outside, they will not be permitted back in, Mr. Bailiff. I hope that is clear to everybody.

(Whereupon, the jury entered the courtroom.)

THE COURT: Ms. Weiss.

MS. WEISS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. WEISS:

Q Mr. Foster, just to be clear about the last thing you just said.

You came into the Lancaster County Sheriff's Office to clear your name on September 29, 2017?

A Yes, ma'am.

Q Clear it?

A Yes, ma'am.

Q So you were coming in to tell them what you knew so you would not be put in this case; correct?

A Yes, sir.
Q You didn't want to be put in this?
A Yes, ma'am.
Q So you went -- after you knew law enforcement was looking for you? You knew they had been looking for you, because they went to your ex's house; right?
A They never went there to her house.
Q She knew they were looking for you?
A She said they never came to her house. Someone said they went to her house. So as soon as I heard it, I called my girl and I went to the police station.
Q So to be clear, you knew they were looking for you?
A It was rumor that they was looking for me.
Q It was rumor that the police were looking for you, Demarcus Foster?
A Yes, ma'am. It was rumor.
Q All right. So you got your girlfriend. You said, "I am going to go clear my name. I am going to tell them everything"; right -- get myself up out of this?
A I was going to see if they had warrants for my arrest, yes, ma'am.
Q Wait a minute. Wait a minute. Wait a minute.
You were going to see if they had warrants for your arrest?

A Yes, ma'am.
Q You weren't going to clear your name?
A Yeah. That's why I was going. In order for them to be looking for me, they have to have a warrant for my arrest.
Q Oh. Let me just ask you.
Why were you going to the Lancaster County Sheriff's Office?
A To see why my name is coming up. To clear myself.
Q Ahh. Wait. Wait. You are saying two different things. I'm sorry.
You wanted to see why your name was coming up, or you wanted to clear yourself?
A Both of them are same, ma'am. You was trying to make it seem like they not, but they are the same. I was going to see why my name coming up, and clear my name of it. That is one in the same.
Q Okay. So you are going to see if they have warrants on you, and you are going to go clear your name.
So you showed up at the Lancaster County Sheriff's Office on September 29.
A Yes, ma'am. I showed up.
Q Two days after you had been at 16th Street when a

gunshot went off?
A Yes, ma'am.
Q And you know you were out there when that gunshot went off?
A Yes, ma'am.
Q And you know who was out there with you?
A There were certain individuals that was out there I knew.
Q But you were there?
A Yes, ma'am.
Q And you were going to go clear your name?
A Yes, ma'am.
Q How in the world could they have warrants for you if you have no idea how you got put into this?
A That is what people was saying. People was saying that, "The police are looking for you."
If someone say the police are looking for you, automatically you assuming that they are going to arrest you if they have a warrant for your arrest.
Q What did you think they had a warrant for?
A Because they said someone got shot, and the police is looking for me because someone got shot.
Q Police are looking for you because someone got shot.
Someone got shot where?

A They said on 16th Street.
Q So someone got shot on 16th Street? Did you know when they said someone got shot on 16th street?
A It had to be that night. They was saying my name was in it on 16th Street. That is the only time I have been on 16th Street.
Q Okay. So it had to be that night that you were there?
A Yes, ma'am.
Q So you went in, and you had your momma's phone?
A Yes, ma'am.
Q And you were videoing it?
A Yes, ma'am.
Q Because you wanted to show what was out there.
Where was your phone?
A I can't say where my phone was at the time.
Q Really? You don't know where your phone was?
A No. I can't say where my phone was at the time.
Q When was the last time you had your phone?
A Probably the day before.
Q So what happened between when you had your phone the day before and when you needed your momma's phone to record yourself going to the Sheriff's office?
A Because, like, when I got up, I called my girl. Before I immediately left, I went trying to get my

material. I was going straight to the police station to clear my name and get myself out of this situation, like.

It wasn't no second thought that: I need my phone. I need this. I need that. I am going straight to the police station like this.

Q Isn't it true that you document your life with your phone?

A Yeah. Yes, ma'am. I record a lot of my life.

Q I think that was your quote; that you document your life?

A Yes, ma'am. That is what I do.

Q But when you got up on the 29th and called your girl to clear your name or find out if you have warrants, you didn't think you wanted to have your phone with you?

A No. It was like -- at that moment right there, like -- like I said, like -- boom. As soon as I in it. They said that the police done been to my ex's. My ex's name is Shay. They said that, "The police done been to Shay's house looking for you."

You know what I mean? Once I hear that, it's boom. Call my girl and go on up out of the house and, "Let's go."

Like there is no hesitation. I am going like -- I

am going to the Sheriff's station to get myself out of the situation.

Q So you called your girl on your cell phone?

A Whose phone did I call?

I can't say whose phone I called my girl on. But I called my girl and "Swoosh."

Q Would your girl have known if you called on your momma's phone?

A Probably so.

Q Does she recognize your momma's phone number?

A She just know who -- whatever number I called her on, like.

Q Okay. So between the time you called your girl and the time she picked you up, you don't know what happened to your phone? It wasn't important enough for you to have it?

A I was just ready to go, like, "Swoosh."

Q Where did you get your mom's phone?

A When we was in the car. Like, I told my mom, "Mom. Let me see your phone." I know I ain't got my phone. It's like, "Mom, let me see your phone."

Q Where was your bag.

A Uh -- did I have my bag that day?

I can't say where my bag was. I, boom, got up, go call my girl, and "vroom," like we go, like.

Q What did you wear?
A What I had on.
Q What was it?
A At the police station?
Q Yes.
A I can't tell you the exact clothes I had on. I know I had my LeBrons on. I picked an outfit to go with my LeBrons that day. Then I headed out of the house.
Q Without your bag, without whatever is in your bag, and without your phone?
A Yes, ma'am.
Q So you go to the Sheriff's department.
Do you remember what time you got there?
A It was -- what time was it that I went to the police station?
I know it was early in the day when I pulled up.
Q Did your momma come with you?
A Yes, ma'am.
Q Did your girl pick you up at your mom's house?
A I can't -- I don't think I was at my mom's. Um.
Q Wait. So the last day before you get arrested on this, you have no idea where you were?
A No. I was like -- I said, I don't know if I was at my mom's house or not that day. Boom. I got up that day and when straight to the Sheriff's station.

As soon I heard it, boom. I called my girl. Boom. Boom. Boom. I went straight to the Sheriff's station. My mom was -- where was my mom that day? Did we pick my mom up from her house or -- we might have gotten my momma from her house, but I remember me and my girl and my momma went straight to the Sheriff's station. Like one way.

Q Where did you leave your bag and your phone and whatever else you had?

A I just told you. When I got up, like --

Q Where did you get up?

A Um --

Q You just testified you got a ride from Murph back to somewhere.

A Yeah. When I left from Murph's house, that morning I went to -- my sister-in-law might have picked me up -- somebody picked me up that morning.

Who was that who picked me up? We chilled for a couple of minutes, but -- I know I called my girl --

Q Who is your sister-in-law?

A My brother's girl at the time. Her name is Hillary.

Q Which brother?

A I ain't got but one brother, ma'am.

Q Who is your brother?

A My brother's name Bullet. Markevis Foster.
Q His girl -- at what time?
A This is in the morning.
Q But Bullet was deceased; right?
A Yes, ma'am.
Q So his girlfriend when he died was Hillary?
A Yes, ma'am.
Q And that's who you call your sister-in-law?
A Yes, ma'am.
Q And that is who you are saying picked you up?
A Yeah. My sister-in-law.
Q And she drove you where?
We will just move on. So you get to the Sheriff's department, and you find out that there are warrants?
A She told me there ain't no warrants for my arrest.
Q You find out that there were warrants on you?
A No. She said --
Q The lady at the front -- I am not talking about her anymore.
At some point when you are at the Sheriff's department, and then you find out there were warrants on you?
A No. They never say that.
Q Never?
A No. They didn't say that.

Q Well, did they read you your rights?
A My rights was read after I asked to speak to -- I think it was Kristen Grant and the black guy over in the the corner. That is when my rights were read.
Q Were you already in custody at that point?
A Oh, yeah. I heard it. It was her, Captain Howell and -- there is one more guy who came. They led me to a car with another officer.
The officer behind me, I knew him from when I first got out. He was in Walmart when I was trying to buy a pack of cigarettes --
Q Hey. I get it.
So they took you to a car?
A Yeah.
Q And did what?
A They brought me out to the car.
Q So you got arrested?
A Yes, ma'am.
Q You found out there were warrants against you?
A Like, I did, like --
Q When you got arrested?
A Yes, ma'am.
Q So, yes.
Then you had an opportunity to speak to law enforcement?

A Yeah. I spoke to law enforcement.
Q After you knew that there had been warrants for you?
A No. My warrants ain't come until after I spoke to them.
Q I didn't ask if you had your warrants.
You had already been arrested; correct?
A When I was in custody, yes, ma'am.
Q You had already been changed into jail clothes; correct?
A No. I wasn't in jail clothes then.
Q You know that that interview was audio and video recorded?
A Yes, ma'am.
Q Mr. Foster, you know that these interviews are recorded?
A Yes, ma'am.
Q Would it help to refresh your memory if you saw a picture from the interview?
A Yes, ma'am.
Q Oh. Does that look like anyone you know?
A Yeah. That's me.
Q What clothes are you in?
A Right there I am in orange.
Q That was your interview; correct?

A Yes, ma'am.
Q Did you wear an orange jumpsuit to the Sheriff's department that day?
A No, ma'am.
Q So you had already been arrested before you talked to law enforcement; is that correct?
A I was in custody. Yes, ma'am.
Q Okay. Glad we got that figured out.
So when you talked to law enforcement, you knew there were warrants for you. You knew what they were for. You knew the date we are talking about. We are talking about somebody shooting, and you are going to clear your name.
That is the purpose of you talking to law enforcement? That is what you told your attorney; right?
A Yes, ma'am.
Q At that point, you didn't know where your cell phone was, and your bag wasn't there.
That is what you told law enforcement; right?
A Yes, ma'am. Well, they never asked about my bag. They asked did I have a phone.
Q I'm just asking about the bag.
But you didn't know where your bag was? You already testified to that.

A Right.
Q So you were testifying about all of these jobs that you do with your dad and traveling all over the country.
When is the last time you traveled somewhere on a job with your dad?
A It probably weeks ago.
Q Weeks before?
A I would say about a week-and-a-half before I got locked up.
Q Where did you go?
A We did a job in Alabama, Georgia, and then the Charlotte Air Force Base or something?
Q How often did you do these jobs?
A We did a lot. That is basically my main source of income, working with my dad.
Q That was your main source of income?
A Yes.
Q So that was the last time you did any jobs with your dad?
A Yes, ma'am.
Q So on your Wednesday, September 27, 2017, were you working that day?
A No, ma'am.
Q You remember that day, though?

A Yes, ma'am.
Q Where were you that morning?
A That morning -- I stayed in Richburg the previous night. I stayed at my homeboy's Slick OG's house in Ridgeway.
Q That is Slick OG?
A Yes, ma'am.
Q What does that stand for? Where do you get that name?
A Slick?
Q OG?
A I don't know.
Q What does that stand for?
A I don't know.
Q What does OG stand for?
A I don't why he use OG. I think he use certain things for certain reasons.
Q You don't know what that stands for?
A Not specifically.
Q What about Slick? Do you know what that stands for?
A Yeah. He got that name when we was in school. He was Slick. He is smooth, slick.
Q All right. So you were with him?
A Yes, ma'am.
Q So when did you get up?

A We got up probably -- we played a game all that night. Ate from Waffle House. Played games some more.

We played games. Took a power nap. I would say -- if I don't have it wrong -- about 1:00, something like that.

Q In the afternoon?

A Yes, ma'am.

Q Did you talk to your girlfriend about 10:00 that morning?

A Yes. I always text her, inbox her.

Q Okay. But you didn't wake up until 1:00?

A Yes, ma'am.

Q Then what did you do?

A Well, I think I shot ball. I played good ball with J. When he got home, I played good a little ball with J.

Q You are still in Richburg at this point?

A I was in Richburg all until my girl get off work.

Q What time did your girl get off work?

A We meet up about 5:30, 6:00.

Q Where did you meet up?

A Riverside.

Q That is in Lancaster?

A Yes.

Q How did you get from Richburg to Lancaster?
A Slick brought me.
Q Why did he bring you?
A Because I told him I wanted to meet my girl.
Q So you don't go to her house?
A No. We meet right there in Riverside.
Q You meet at a convenience store -- gas station?
A Yeah. It's a gas station.
Q So that was your girlfriend -- Maryam Rivera?
A Yes, ma'am.
Q What did you call her?
A Maryam.
Q How long had you-all been together?
A About a month then.
Q What did you all do together?
A Chilled. Go to games and junk?
Q What kind of games?
A Kids' games. Football games. One of our cousin -- her cousin on her momma's side, and my cousin on my daddy's side. Her son D was playing football at the time. So we would go to his games, little games like that. That's what we do.
Q Did you all go out on dates?
A Not really dates. Just family gatherings and stuff.

Q So she picked you up about 5:00, 5:30?
A Yeah. I probably got there around 5:00.
Q What time did she pick you up?
A We met at that store. I wasn't really on the time, but it had to be somewhere around that time.
Q You met up at the store when she came to pick you up; correct?
A We met at the store on Riverside.
Q She came and picked you up, and you don't know what time it was?
A No. I can't say the exact time.
Q Was it still light outside?
A It was light outside.
Q Where were you going when she picked you up? What was your plan?
A First thing first, I am going to see my niece.
Q Where were you going to go see your niece?
A Originally, I thought we was going to Baker Street, right by Shrimp Boat. That is usually where I go see my niece at.
Q Usually where you go see your niece at?
A Yeah.
Q Why did you change plans?
A Because I got a message in my inbox that is saying to come to 16th Street.

Q Actually, you got a message that said, "Tweak said he on 16th"; correct?
A Come to 16th Street.
Q Is that what that means?
A I guess.
Q So Tweak said, "He on 16th."
Who is Tweak?
A Tweak is Truesdale.
Q What else do you call him?
A Quinn.
Q What else?
A City. We call him City.
Q That is the same person you were talking about earlier when you said "City"?
A Yeah.
Q Quinterious Truesdale?
A Yeah.
Q So he was on 16th. You got the message from Jakenia Stevens' Messenger, so you knew that is where she was?
A That's where she at.
Q You hadn't talked to her earlier in the day about going somewhere else to meet?
A Baka and her kids -- that is where she at.
Q You were just going to show up?

A That is how I knew.
Q So you were just going to show up. That was in your head that you were going to go to Baker.
But then he reached out and said, "Tweak said he on 16th"?
So you were going to 16th?
A Yes.
Q Why were you going to 16th Street?
A Baka is on 16th Street. My niece is with Baka. Baka keep her kids with her. That is Baka.
Q Sounds good. Why does it matter that Tweak is on 16th Street?
A She just said, "Tweak is on 16th."
I'm going to see my niece, like --
Q Tweak said "On 16th at 6:44 p.m?"
A Yeah.
Q Why does that matter?
A I don't know.
Q Did you want to see Tweak?
A No. I am going to see my niece.
Q Did you and Tweak spend a lot of time together?
A Yeah. That is my homeboy right there.
Q Was he looking for you?
A I can't say.
Q Was he with you at Riverside?

A No. He wasn't with me at Riverside.
Q You didn't get in the car with him at Riverside?
A No. He wasn't with me at Riverside.
Q He was already at 16th Street?
A That is what it say. "Tweak is on 16th."
Q So go back to when you were at the Sheriff's department. The first thing you said was that you know where you were on your Wednesday, September 27, 2017.
That is what we are talking about right here.
A Yes, ma'am.
Q You said specifically that you were at the cemetery on Memorial Park Road and then with Murph Patterson's family.
A Yes, ma'am.
Q That was it. Right?
A Those are the events that I did.
Q That was going to clear your name; right?
A Yes, ma'am.
Q I was at the cemetery, and I was at Murph's. That is going to clear your name after you have been arrested for shooting somebody on 16th to not mention a shooting at all is going to clear your name.
A Yes.
Q Okay. Why did you say to law enforcement there that you were on your way to Carolina Court to go see

your niece?
A I never said I was going to Carolina Court to go see my niece.
Q See, but this is recorded -- audio and video recorded.
A Yeah.
Q We can do this again, but I will ask you the question.
Why did you say you were "On the way to Carolina Court to go see my niece?"
A I never said I was on my way to Carolina Court to go see my niece.
Q Is that a mistake when you said that?
A If that came up? Like, yeah. It had to be. I never went to Carolina Court to see my niece.
Q So if you said that on audio and video, it was just a mistake?
A It had to be. The only time my niece is on Carolina Court is if she at my mom's house.
Q So sometimes she is at your mom's house?
A Yeah. My mom used to get her more than anybody did.
Q But you said you only saw her on Baker Street?
A I know. But I said, if she is at Carolina Court, she with my mom. She is at my mom's house.

Q So you also see her at Carolina Court at your mom's house?
A Naw --
Q -- because your mom gets her more than anybody?
A Yeah. But nine times out of ten, my mom won't bring her to the projects, like, around us, like --
Q You wouldn't go to your mom's to see her?
A No.
Q And if your mom brought her to the projects, that's not Baker Street?
A Yeah. My mom won't bring her to us.
Q But that is not Baker Street?
A No.
Q So you see her in other places.
A Baka even brought her to my ex's apartment in the projects.
Q You see her at different places?
A Usually I go see my niece on Baker Street, right over there by Shrimp Boat. That is where I go see my niece at.
Q That day you are sitting at the Sheriff's Department and you said that you got a call from Jakenia saying, you should come see MarKhyla; right?
You got a call saying that they were on 16th Street, and that you should come see MarKhyla.

That is what you told the police; right?
A I got a call that she was on 16th Street. I was going to see MarKhyla.
Q Right. But, really, you got a text in Facebook Messenger that said, "Tweak say he on 126th."
A From Baka's phone. Baka is on 16th Street.
Q Did you show them that, or -- you didn't have your phone, so you couldn't show them.
You told them that she told you that you needed to come over there to see your niece.
You put this on Jakenia. Like she told you to come over there.
A I don't think I said that she told me to come over. The text say, "16th Street."
They was letting me know she is on 16th Street. Going see my niece on 16th Street.
Q I am reminding you again. This is audio and video recorded.
A You already reminded me of that.
Q Let's get to it in a minute.
You told law enforcement that she told you that you should come over and visit your niece.
A I can't remember that, but I know I got a message that told me that Jakenia was on 16th Street. I was going to see my niece, like --

Q So you told Maryam to take you to 16th Street?
A Yes, ma'am.
Q Then you said that someone took a picture of you and your niece on 16th Street?
A Yeah.
Q Someone?
A Yeah. Someone took a picture. At first I didn't know Baka had took the picture.
Anybody else could take a picture and send it like -- there was an incident when me and my girl had went to a park, and someone else took a picture and sent it to her, and then she posted the picture, like --
Q Who sent you the pictures of you and your niece together?
A That night I got them from Baka.
Q The picture you are talking about --
A Yes, ma'am.
Q -- what time of day is that?
A Daytime. I can't say the exact time.
Q But it was still light outside?
A Yeah, it was still light.
Q If I told you it was 7:15, does that sound about right?
A I can't say.
Q That was the time on the picture. Would you

agree that 7:15 is the time on the picture.
A Yes, ma'am.
Q What are you wearing in that picture?
A Nelson Mandela shirt with North Face toboggan. Bossman khaki pants, and a pair of LeBrons.
Q I will show you State's Exhibit 1E.
Do you recognize this view?
A Yes, ma'am.
Q Tell me what that is a view of.
A A view of Roger's porch.
Q What is that?
A It look like a tree.
Q Is that the same as this tree?
A Yes, ma'am.
Q That is Roger Harris' porch, and that is the tree that you and MarKhyla was standing next to in that picture?
A Yes, ma'am.
Q What is between you, the tree, and the porch?
A It's a cleared area right there.
Q So when you got to 16th Street, Maryam was driving.
Where did you park?
A Right there by the cleared area.
Q Right by the cleared area.

Where by that cleared area? Like, where that car is?
A That car is on the side of the road. We were there (indicating), right there beside the tree right there.
Q So you backed in beside the tree?
A Yeah. Right up in there.
Q You said there were people all around in there -- kids?
A They all right there.
Q State's Exhibit 1B. Does that help?
A Yeah. You see right there where the bright is at, got people around that area. You got people on the side of the house right there.
Boom. We are right there by where the edge of the picture is at. We are probably right there in that area right there. On the other side, you have kids playing.
Q You are sure that you backed in right there?
A Yeah. We was right there.
Q You are sure that you backed in right there?
A We was parked right there. I can't say -- I know we was parked right there.
Q What kind of car were you in?
A A Honda.
Q This Honda?
A Yes, ma'am.

Q Where were you sitting?
A Passenger.
Q State's Exhibit 7C and State's Exhibit 7B. You said passenger. Which passenger's seat? Front or the back?
A Front.
Q Was anyone else in the car when you first pulled in there?
A I can't -- I don't think so.
Q But you said you remembered your Wednesday, September 27; right?
What is your Facebook name?
A Jon Bones.
Q You said it was daylight when you were on 16th Street?
A Yes, ma'am.
Q With Dario and City? Quinterious -- City -- Truesdale?
A Yes.
Q When you-all got ready to leave, what did you do?
You said you told Jakenia to take your niece home.
A Yeah. "Take MarKhyla home."
Q So you are talking to her under the tree. You send her off to play. You are hanging out at the car and

drinking beers?

Maryam is drinking. People are out there drinking and whatever. All of a sudden it dawns on you to say, "Take MarKhyla home"?

A No. Right when we start drinking and stuff, it's like, boom. It's time for the kids to be up. Like, if you was ever around my family, like daytime is for the kids.

It starts getting dark and alcohol or smoke come out, it's time for the kids to go. It's time to put the kids up.

Q You have been on 16th Street before; right?

A I ain't stop by 16th Street.

Q Ever?

A When I first came home, Baka and them don't stay on 16th Street.

Q But you are familiar with 16th Street?

A Yeah. I never hung out there, but I know 16th Street.

Q Are you trying to say that nobody else around there was drinking or smoking or doing anything prior to you leaving?

A I can't say.

Q So why all of a sudden did you want her to take MarKhyla home when it was still light?

A Because in the vicinity I was in, wasn't nobody drinking or smoking yet.
Q But you had a 12-pack of Yuengling?
A Yeah.
Q You had already offered Jakenia some.
A I had bought some. Boom.
Q Did you offer Jakenia one?
A Yeah.
Q What did she do with it?
A I don't know if she opened the bottle or not. I can't tell you if she drunk the beer or not.
Q But if you gave it to her, MarKhyla was still out there; right?
A She was up top.
Q Did MarKhyla walk home by herself?
A No.
Q So if you gave Jakenia a beer, MarKhyla was still there?
A She was on top -- I'm going to tell you, like -- Baka is the type like, she would have got a Yuengling and held onto it just to say, "I'm getting this because it reminds me of Bullet." Just crazy stuff like that. That's the type of person --
Q You gave her a beer?
A Yeah. I offered her a beer.

Q You gave her the first beer out of that 12? How did she even know that you had beer?
A Because I showed her the box, like --
Q But you hadn't had anything?
A To drink then?
Q Right.
A I don't think I had started drinking yet.
Q What about Maryam? She was drinking her Mike's Hard Lemonade?
A She probably was drinking. That is what she drank.
Q And she was smoking?
A We wasn't smoking at the time.
Q You-all were out on 16th Street, and you are saying nobody was drinking or smoking?
A No. Zy and Ny -- most of them was school kids right there around us, like. They was, like, young.
Q You said, Zy and Ny. How old are they?
A Probably about 19, 18 -- probably about 18 and 19 now.
Q You mentioned Jakenia and Zy McGriff. Is Zy McGriff the guy you are talking about?
A Yeah. Zack.
Q Those are the only two people that you mentioned. Those are the only two names of anybody that you knew on

16th Street that day -- according to what you told law enforcement when you were clearing your name.

Those were the only two people you knew; right?

A Those are the ones that I mentioned at the time. It was fresh on my mind.

Q That was fresh on your mind. Jakenia and Zy McGriff. Law enforcement asked you who else was out there. You are out there to clear your name from a warrant for shooting somebody for attempted murder. And you could only think of two people?

A Yeah. Those are the first names that came to my mind.

Q But you remembered your day. You couldn't think of one more person?

A Not at the moment.

Q You did not see Joel McLemore out there?

A No, ma'am.

Q Did you see any white person out there?

A No, ma'am.

Q But you had seen Joel before?

A They said he might have been at Deuce's one time when they was there one time, but --

Q I am not asking what they said. What did you say?

A I never seen him.

Q You didn't say that you had seen him at Lashawn White's house?
A They say he might have --
Q Who is "they"?
A That is what people are saying, like --
Q Who people?
A Bay and other people.
Q Who is Bay?
A Kaneisha Young.
Q So when you are trying to clear your name, you told law enforcement something from yourself; that you had seen him at Lashawn White's house, but it was really other people who had told you that. You really had never, ever seen him?
A I can't recall if I knew him.
Q I didn't ask you if you knew him. I asked you if you had seen him.
A Naw, I can't --
Q But when you are trying to clear your name, you told law enforcement that you had seen him at Lashawn White's house?
A I can't.
Q Did you ever see a white person out there?
A Where? At Lashawn's house?
Q On 16th Street?

A No. Never. I ain't seen that.
Q Are you aware that a white person was shot?
A We found that out the next day.
Q I am asking you about what you know.
I am not asking about we. I am not asking about they. I am not asking about people. I am asking about what Demarcus Foster knows.
A That includes what I know is with them, ma'am.
Q Did you know that a white person was shot out there?
A No, ma'am.
Q Are you aware right now that a white person was shout out there?
A I know it now. Yes, ma'am.
Q That night, a white person was shot and died out there?
A I know now.
Q But you didn't see that person at all?
A No, ma'am.
Q That is because, according to what you told law enforcement, you left before the gunshot; right?
A Yes, ma'am.
Q That is one way to clear your name. Tell them you were never there.
That is what you did; right?

A Yes, ma'am.
Q The problem is, you had already been arrested?
A Yes, ma'am.
Q So did you tell them the truth?
A In the first interview?
Q Yeah.
A No. I left out there. I was dealing with gunshots. That is when I came back and I let them know.
Q How were you planning to clear your name if you just said, "Oh. I wasn't there?"
A Being that I couldn't say what happened -- I took myself out of the picture.
Q Since you had already been arrested for attempted murder, you knew that other people had already put you in the picture.
A Yeah. I figured. Yes, ma'am.
Q So is that what you told Maryam and City to say as well -- that you were not there at all?
A No, ma'am.
Q You knew Maryam was there?
A Yes, ma'am.
Q I know you are having trouble with the times, but you said it was light when you were out there with MarKhyla?
A Yes, ma'am.

Q And you told Jakenia to take her home?
A Yes, ma'am.
Q You had how many beers while you were out there?
A During that time, none.
Q How many beers did you have while you were on 16th Street?
A To drink, or --
Q To drink?
A I hadn't drunk any.
Q You hadn't drunk any. Did you have any in your hand?
A The one I gave to Jakenia, I probably had one for myself in my hand.
Q Was it open?
A No, ma'am.
Q So you are telling us that you were standing out there with a beer in your hand and not drinking and talking to your family, friends, whoever was out there?
A Yeah. By that time, I had told Jakenia "It's time for you to take my niece home. It's time for you all to go."
Q What is going to happen once everybody starts drinking?
It's not illegal to drink around children; right?
A Yeah. But that is not proper. That is my niece.

My brother wouldn't tolerate it, so I ain't going to tolerate it. Ain't going to be no drinking around the kids, like --

Q Did you smoke around the kids?

A No. We don't do nothing.

Q But you document your life?

A Yes, ma'am.

Q So you have videos of you doing all kinds of stuff; right?

A Yes, ma'am.

Q Do you have videos of you smoking around the kids?

A No, ma'am.

Q Not at all?

A No, ma'am.

Q So you left before Jakenia and MarKhyla left, didn't you?

A I can't really say I left before they left.

Q Can't say?

A Naw. I can't really --

Q So you told Jakenia to take MarKhyla home?

A Yes, ma'am.

Q Then you just blank out as to whether or not she actually did?

A I can't say who left first. I can't --

Q So maybe you left?

A I can't say --
Q This is your Wednesday, September 27.
A I can't say who left first that night. I can't say.
Q So you don't know if the kids were still out there when you left?
A I don't know if they had left yet, but they weren't playing out in the yard no more.
Q Where would "they" be?
A They said Bree's girlfriend -- they could have been in their house before they left out of there. They could have left into the house before they left.
Q There were a lot of kids out there?
A Yeah -- well, I don't know.
Q So when you left, were there still a lot of kids out there?
A I can't say that.
Q You just don't remember?
A No.
Q All right. So you left. Where did you go when you left? You don't know who left first, so where did you go when you left?
A Just like I said, I can't even say I left. I just remember that my girl saying something about her cousin, like --

Q What happened? Your mind is just blank?
A It ain't that. It's just like -- I don't know. I can't say if I left with her to go pick her cousin up or if I stayed. I can't say.
Q If you left to go pick her cousin up, you were in the car driving; right?
A No.
Q You were in a car riding. She was driving?
If you left to go pick her cousin up, you were in the car as the passenger; correct?
A I say I left over there. I really can't say I left, because I don't know if I stayed or if I left.
MR. GRIER: Your Honor, I think she is badgering at this point. It's been asked and answered about four or five times, you know.
THE COURT: Ask him one more time.
BY MS. WEISS:
Q If you left, you would have been the passenger in Maryam's vehicle?
A If I left, she drives her own car.
Q If you left, then Quinterious, City, Quinn -- and Tweak was sitting in the back seat?
A Yeah, they still there.
Q Because you-all hang together a lot?
A Yes, ma'am.

Q So that wouldn't be unusual for him to have gotten in the back seat?
A No, it wouldn't.
Q So at that point if you left, you had just started drinking? You finally opened that beer?
A I might have joined --
MR. GRIER: Your Honor, we are talking hypothetically about something that has already been answered. He said he doesn't remember. That's the answer. I would ask to move on to another line of questions. It's hypothetical, at this point, questions.
THE COURT: Well, I will let you delve into it, very briefly.
MS. WEISS: Thank you, Your Honor.
BY MS. WEISS:
Q Not remembering that period of time.
How long before you remember being back at 16th Street? When is the next time you remember being at 16th Street on the 27th?
A Let's see. Like I tell you, I don't even remember leaving.
Q Right. But there is a period of time you just don't remember; right?
A Right. Can I tell you what I remember?

Q No. I am asking the questions. I think you have already told what you remember.

So you remember talking to MarKhyla?

A Yes. I remember talking to MarKhyla.

Q And then you remember having a beer that you did not open?

A Yeah.

Q You remember giving a beer to Jakenia that she did not open, because nobody around you was drinking or smoking because there were kids around?

A Yes.

Q Then your mind goes blank as to what you did at that point?

A It ain't even going blank. I remember from that point, like --

Q What do you remember?

A Speaking to the guy. His name Bad Ass.

Q What is his real name? What is his legal name? What does he look like?

A Short, brown skin.

Q Dark brown? Light brown?

A My complexion. He's my complexion.

Q How old is he?

A Probably a year or two younger than me. Probably about 29.

Q Is that same person they called G Money?
A No. His name was Bad Ass.
Q Was G Money out there?
A That is the guy I told you is Ny.
Q Ny is G Money?
A Yeah. Ny is G Money.
Q Oh. Okay. Got it. Got it.
So Ny is G money?
A Yeah.
Q So G Money is out there?
A Yeah.
Q What is his real name?
A I don't know his real Government name. I know we call him Ny.
Q He is one of your good friends; right?
A Yeah. I call him a homie.
Q But you don't know his name?
A I don't know his real name.
Q Is his name Demarcus as well?
A (No response.)
Q So Ny is G Money. Does he go by G Money, or is that just his Facebook name?
A I call him Ny.
Q How do you spell that?
A N-Y.

Q What does that stand for?
A I don't know. I just call him Ny.
Q How long have you known him?
A I knew him since he was a baby.
Q That was Ny. Ny was out there and B.A. We will call him B.A. for short.
So B.A. was out there, but you have no idea who that is?
A Who?
Q Who B.A. is?
A I don't know his real name. That's what he go by, B.A.
Q But when you were clearing your name, you didn't mention B.A. or Ny to law enforcement, because you couldn't remember anybody else out there other than Jakenia and a teenager, Zy (phonetic) McGriff?
A I guess those are the names I gave them then.
Q So Ny and B.A. are not mentioned at all?
A Not then.
Q So was Ny with B.A?
A No. Ny and Zy -- they run to the car. They were right there around the car with us.
Q Zy is Zy McGriff. Ny is G Money. I am just trying to get my people right.
So they were all around the car, which according to

your testimony now, is State's Exhibit 1E.

You pulled up right here on this side of the tree (indicating)?

A Yeah. Right up in that area.

Q You had a whole car up in here. Everybody is gathered around that car?

A Yeah.

Q So where was B.A?

A Well, B.A. was sitting right there on the porch, like --

Q State's Exhibit 1K. That is the porch you are talking about; right?

A Yes.

Q Where was he sitting?

You have a picture right there beside you, don't you -- on that screen?

A He is right there in front of the bench, sitting right there (indicating).

Q Sitting in front of the bench? This bench (indicating)?

A Yeah. He is sitting right there on that little porch rail right there (indicating).

Q Was there somebody on the bench?

A Yeah -- um -- there was somebody sitting right there (indicating).

Q One or two people?
A One other person sitting right there.
Q Who is it?
A Well, I don't know who it is that might be sitting there.
Q B.A. was sitting on the railing?
A Yeah. He is sitting on the railing.
Q You go out there to talk to him?
A I didn't talk to him. I spoke to him from the car. Yeah. I spoke to him from the car. We was joking about the fight that he had gotten in.

I think it was the previous day, the fight he got in.

Q You were standing at the car? You were walking over?
A It's me, Zy, Baka, Dario. Boom. Like, speaking over the girl like -- boom. Boom. "Who fucked up your face?"

"Yeah. Well, I got into a little scrap. I just did it."

Q You are just yelling back and forth. But your car is beyond this; right? It's, like, off the screen over here (indicating)?
A Yes.
Q And so you are just yelling all the way to the

porch? All these people around your car and anywhere else, you are just yelling out to the porch?
A Yes. That is how it was going down. Yes.
Q There was a guy sitting on the bench, but that is the only person you can remember -- B.A?
A Yeah. As soon as I noticed him, that is when we brought up talking about the fight.
Q Did you go up there to talk to him?
A No. I never walked to the porch. I talked to him from the car.
Q Showing you State's Exhibit 1B.
That is the same porch; right (indicating)?
A Same porch.
Q You are saying there was a person here on the bench. He was leaning on that wall?
A Well, he was sitting on the bench. You see the wall --
Q He was sitting on the wall?
A Yeah. On the porch rail.
Q Facing the person sitting on the bench, metal bench.
A He is sitting on the porch rail.
Q Is that a beer bottle right where he is sitting? Would that be right at about the same spot?
A I can't say.

Q Right across from the bench?
A I can't say. Somewhere in that area right there though.
Q Showing you State's Exhibit 10B.
Is that a Yuengling bottle right there where you are pointing to? Right where B.A. was on the porch when you never went up there?
A Not during that time. That is what I am trying to say. You are talking about two different times.
Q Oh. I didn't know I was talking about two different times. I'm sorry.
A You are mixing time frames.
Q All right. So you are yelling to B.A. What happened next?
A We get to talking --
Q We get to talking?
A Yeah. We get to talking.
Q But you are still yelling from the other side of the car over to the porch?
What are we talking about?
A Boom. We are talking about a fight. We did. We be joking about a fight. Boom. He still talking about, boom, boom. He still got to look at the dude he was fighting with. We are still joking about the fight. So boom.

Q Is it still light at this point, or is it dark?
A It is still light outside. So other people were around the car. They are around the car and putting their input in. We are talking about stuff, and the next thing you know -- I think Zy or Ny said that we was going to go. I was like, "I love you, big bro. You have done good by me."

Boom. Boom. Stop by. That was Thursday, I think. This is around the same time she had gotten her own place. So her and G Man ended up leaving. When they leave, boom. Boom. Chill.

Q She left with who?
A G Man.
Q So Ny is G Man? Now you are saying you call him G Man?
A Yeah. G Man. So they ended up leaving, you know what I mean. So once they leave, boom. Chill. That's my thing.

Quinn was standing over there by the light. Boom. We started talking to him for a minute. We start, like -- all I remember is, like, boom. That is when it started getting dark. It was nighttime now.

Q Where are the kids?
A They are like -- I don't see the kids no more.
Q They vanished?

A They must have left, like --
Q So that is part of that time that you just don't know what happened?
A Yeah. It's like --
Q Okay. So now it starts to get dark?
A Yeah. It's starting to get dark out.
Q Where are you right now as it is starting to get dark?
A As it is starting to get dark, I am talking to Quinn -- who else was there -- me, Quinn, and someone else talking around this time.
Q Where?
A Where? In the yard.
Q I will show you State's Exhibit 1L. Where are you in the yard at this point? Your car is somewhere over here; right?
A Yeah.
Q So where are you-all in the yard?
A Right there in that same area. It's like, the light where Quinn came from is -- it's clipped off by this little picture right here (indicating).
Q So it's somewhere over there; right?
A Yeah. I don't know, but --
Q State's Exhibit 1D. So from this your car is over here?

A Uh-huh.
Q Here is the light. Do you see the light?
A I see the light.
Q Who is over at the light?
A Quinn and a couple more guys there at the light.
Q Who else? Quinn and who else?
A I am trying to remember. I know there was Quinn and a couple more out there by the light, though.
Q Who?
A I can't say exactly who all was at the light. I know Quinn and a couple guys at the light. Quinn come out, and me and him started talking for a few minutes.
Q You can't say -- you cannot say, or you don't remember?
A Ma'am?
Q You said you can't say. But you can see.
A I can't say exactly who --
Q You don't know or you don't remember?
A I don't know exactly who is at the light with him. I just know I spot him.
Q I thought you said he was over hanging out at the car just a little bit earlier?
A No. I said Dario, Baka, Ny, and Zy.
Q So Tweak is over there at the light?
A Yeah. He spotted me, so boom. Boom. We start

talking.
Q Where do you start talking?
A Like -- you see the little car parked there (indicating)?
Q Yeah.
A A little spot on up a little bit.
Q Up here?
A A little closer to the car.
Q Right in that area?
A A little closer to where you just made the mark at.
Q So he comes all the way over to the car to talk to you?
A Yeah.
Q So you talked to him?
A Yeah. We conversate for a little few minutes, and boom. Boom.
Q What were you conversating about?
A Just talking about, boom, boom, getting up with Slick, boom, boom at Richburg. We was talking about going back to the strip club.
I took him, my brother, and Murph before he died to the strip club. I always told them I would take them to the strip club. When they died, then it's two. Quinn, one time, and he enjoyed his time. We were going -- talking about when are we going to go back there.

Q Quinn was friends with Bullet and Murph?
A Yeah. All of them grew up together.
Q How old would you say they are?
How old was Quinn at the time?
A Probably early 20s.
Q How old were you at the time?
A At this time?
Q Yes.
A I was 29, because I am 31 now.
Q You said he was in his 20s. How old was Bullet when he passed?
A Twenty-three.
Q You-all were about six years apart?
A Yeah, six going on seven.
Q He was your little brother?
A Yeah. That's my little brother.
Q And Quinn was one of his friends?
A Yeah.
Q So you-all are sitting there talking about going to the strip club.
What other details do you remember about that conversation? Slick taking you to Richburg. Had he taken Quinn, too?
A Yeah. That is how we was talking. Talking about what we were doing at Richburg and hanging out.

Q How long did you-all talk?
A I can't say how long. When you are communicating, time -- just like right now you start having a conversation with somebody. Time just seems to pass when you are communicating.
Q Who else was around you?
A Around that time me, me and Quinn was talking. We boys. If you are with one of your friends, you communicate. You-all ain't worried about what is going on around you. We all be communicating.
Q Where is Dario at this point?
A I can't say where he is. Me and Quinn right now conversating. Everybody else doing whatever else they were doing.
Q What did you do after you conversated for you don't know how long?
A I can't say how long we conversated.
Q That is not what I asked you. What did you do after?
A Around this time, I say it got dark. A guy asked me for a beer, like.
Q A guy?
A Yeah. A guy asked me for a beer.
Q How many beers had you had at this point?
A I can't say how many I drunk.

Q How many did you bring?
A I brought a case with me.
Q You brought 12?
A Yeah. I brought 12.
Q And you were out there just drinking and talking?
A Yeah. Drinking and talking.
Q Would you say you had more than five?
A I don't drink that much. At the most, like -- because I give out more than I drink, like. My whole thing is, like, I make sure everybody else is doing better than me. That is what I try to do. I try to make him feel better when he asked me.
Q So somebody asked you for a beer?
A Yeah.
Q This is the first person we have heard about asking you for a beer?
A First person?
Q Right.
A A guy asked me for a beer, no.
Q Who is he?
A The guy sitting on the porch. I would describe him as a cool-looking guy.
Q You described him as a cool-looking guy sitting on the porch. Where was he sitting on the porch?
A He was sitting on the bench.

Q He was sitting on the bench?
A Yes, ma'am.
Q What did he look like?
A Glasses, dreads.
Q Did he yell to you?
A Did he yell?
Q Uh-huh.
A Naw, but what he said, I hear him. I don't want to say he yelled.
Q But you are all the way over between the light and the car?
A Yes, ma'am.
Q And there are all kinds of people out there?
A Yes, ma'am.
Q But you were able to hear him clearly from the porch say, "Hey. Can I have a beer?"
A So, he said have a beer. Get one of those Yuengling, like --
Q What did you do?
A I took him a beer.
Q So you went up on the porch?
A Yeah.
Q That's the first time you went up on the porch?
A Yeah. That's when I go on the porch.

Q Show you State's Exhibit 1E.
Where did you go?
A Now, he is sitting on the right side. He is sitting right on the right.
Q On the bench?
A On the bench. He is sitting on the right.
Q Here?
A Yeah. That's where he is at.
Q Okay.
A Boom. I am in front of him reaching him a beer.
Q So you are right here?
A Right there.
Q Where is B.A?
A Ain't on the porch right now.
Q Who else is on the porch?
A I remember the guy I was talking to. The guy I was reaching the beer, like --
Q You don't remember anything else about him?
A No. Me and him right here (indicating).
Q So who did you walk by on the steps to walk up there?
A I can't say who was on the steps right then, ma'am.
Q This is Exhibit 1B. Are there people in this area right here?

A Ma'am, I ain't seen nobody right there, but --
Q I just want to be clear. There was nobody right there, in any of that area?
A No. But like you say, there was somebody sitting on the porch. I remember walking by.
Q So there is somebody sitting right there on the steps?
A Right there. Somebody sitting right there
Q On that side of the steps?
A Yes, ma'am.
Q So you walked by them?
A Yeah. I walked up the steps.
Q So there is only one person in this whole area? That is that person sitting right there?
A Yeah. That is the person who I walked by.
Q You have no idea who that is?
A Naw. I not paying him no attention. A guy called for a beer. So boom. I got the beer and I am taking the beer to the guy.
Q But you know Damu; right?
A Yeah.
Q Is that him?
A I can't say. Whoever is sitting right there, I'm not paying them any attention.
Q You walked from all the way over here. Your beer

is way over here in the car?
A Boom.
Q So there is nobody in here. You just walked across the gravel?
A I walked that way to give him his beer.
Q Did you stay out there and talk to him?
A No. Like I say, like, boom. I am giving him the beer. When I am giving him the beer, that is when I hear a shot and I break.
Q You said you didn't see a white person out there?
A I didn't.
Q You just walked here, and you didn't see a white person out there?
A Look, I am telling you -- I can't tell you exactly what happened. Boom. You say the car is here. Boom. So I get his beer. Boom. Give him the beer. Boom. As soon as I hand him the beer, pow. You hear a shot. I break straight to the car. I open the door, tell my girl, "Babe, let's go."
Q Where did you hear a shot? Where is it coming from?
A I hear the shot, "Come on."
Q Where is it coming from?
A I can't say which direction. I know I just heard the shot and "pssss."

Q Are you aware that the man who was shot was laying right here (indicating)?
A No. I didn't see none of that.
Q Are you aware, as of today sitting in the courtroom, that the man who was shot was laying right here bleeding?
A Yeah. As the case unveiled, yeah. That is what they said.
Q You are saying you have no idea from right here where that gunshot came from?
A No, ma'am. I just hear a shot. "Pssss."
Q But you had just told me that there was nobody in this area when you walked up on that porch?
A Yeah. Because I paid none of that no attention. I'm telling you.
Q No. You said you didn't pay attention to who the person was.
A I didn't see him on the porch.
Q Right. You didn't pay attention to the person --
THE COURT: Wait a minute. Wait a minute. Let her finish asking the question before you start answering. The court reporter can't take down two people talking at one time.
BY MS. WEISS:
Q You said you paid no attention to who was sitting

on the steps?
A Yup.
Q But you said there was nobody in this area when you walked around to take the beer to the guy on the porch, other than the guy sitting on the steps?
A Yeah. I wasn't paying no attention to none of that, like. I was one way to the porch, and that's it.
Q Where did you go when you left there?
A When I left?
Q Yes. Do you remember leaving this time?
A Yeah. I remember leaving.
Q Where did you go?
A I went to Richard's house first.
Q How many beers had you had?
A I would say, like -- that night I probably drunk -- because I still had Yuengling when I went to Murph's mom house. So I know I ain't drank that much.
Q You had 12 in there?
A I know. I still had a beer. I gave out a couple, and I still had beer when I went to Murph's house.
Q You told law enforcement that you had been out there drinking when it was still light; right?
A I told law enforcement it was still light when I was drinking?

Q Yes.
A I don't know that.
Q When you talked to law enforcement, you said you were only out there in the light. You said that you-all were drinking beer. When you got ready to leave, you told Jakenia it's getting dark. She needed to take her daughter in the house. That just wasn't true?
A That was like -- I ain't going to bring my name up in it.
Q So where did you go?
You said you went to Richard's house?
A Yeah. I went to Richard's house.
Q Who was in the car with you?
A Me, my girl, and Tweak, I know for sure.
Q Anybody else?
A I can't say.
Q Mondra?
A I know it was me, my girl, and Tweak in there.
Q Was Mondra in there?
A I can't say that. I'm telling you. I remember me, my girl, and Tweak.
Q You can't say because you don't know, or because you don't remember?
A I can't -- I know it was me, my girl, and

Tweak.

Q So you are not going to say?

A Me, my girl, and Tweak. That is what I can tell you.

Q So you, your girl, and Tweak. You go to Big Richard's house.

Did you tell law enforcement that you went to Big Richard's house?

A Yeah. I think I did.

Q When you talked to them after you had been arrested, you are saying you told them you went to Big Richard's house?

A I said I think I did. I think I did.

Q Or did you tell them that you went to the cemetery and to Murph's family?

A I can't say. I know I told them about the cemetery and Murph's family. I may have said Richard's house as well. Richard is right there. Richard's house. The cemetery right there. They are right there together.

Q Where is Big Richard right now?

A I can't say where he is.

Q So you went to Big Richard's house to buy drugs?

A Yes. A little smoke.

Q So then you went to the cemetery and talked to your brother about everything that had just happened?

A I talked to my brother about my day with MarKhyla.
Q Your day with MarKhyla? You spent like five minutes at the house; right?
A I went to see MarKhyla. I told him about my mom.
Q You said you told him about your day. You just said that you go there just about every day to tell him about your day?
A With MarKhyla. My time with MarKhyla.
Q Did you not say on direct that you go there? You go there when you talk to MarKhyla, but you go there even when you don't see MarKhyla just to tell your brother about your days?
A I go and talk to my brother. I ain't say talk about my day. I just go spend time with my brother. Spend time with him.
Q You can tell him anything, because he ain't going to repeat it?
A It ain't that. It's just, boom. I am used to talking to my brother. I talk to my brother.
Q So you went out there and talked to your brother. Then where did you go?
A We went to Carolina Court.
Q You didn't tell that to law enforcement, though?
A Not at first.
Q Why wouldn't you tell them that?

A Because, like --
Q Because what?
A I didn't go that far.
Q You went to your mom's.
A Yeah. I went to my mom's.
Q You are trying to clear yourself up out of this, and you didn't tell them you went to your mom's?
A No. I didn't tell them I was at my mom's.
Q Why?
A It wasn't on my mind at the time. I went to Ms. Poovey's house.
Q Why wouldn't you want to tell them you went to your mom's?
A It wasn't on my mind at the time, ma'am.
Q Okay. You said you went to Murph's?
A Yeah.
Q So when you were at your mom's, your mom got a phone call; right?
A Yes. Jakenia called my mother's phone.
Q How did your mother react to that phone call?
A Basically, she just handed me the phone.
Q Is that the first time or the second time she called?
A I can't say if it was the first or the second time. I know the first time, I got on the phone and

talked to her.
Q Why is your momma giving you the phone to talk to Jakenia?
A Because she gave me the phone, I guess.
Q Why didn't she just call your phone?
A Who? Baka?
Q Yeah.
A I can't say. I guess she called me on my mom's phone first, like. I can't say.
Q What did she say when you picked up the phone when you got the phone from your mom?
A She asked me did I see anything happen on 16th Street.
Q Did she tell you what they were saying on 16th Street?
A No. She said -- did I see anything that happened on 16th Street?
Q What did you tell her?
A "No. I ain't seen nothing."
Q Did you say "because I was at the cemetery and at my mom's?"
A I don't know if I told her that. I may have told her when I left 16th Street, and then that I went to the cemetery to see my brother.
Q So then she calls your mom?

A She calls Portia.
Q Who is Portia?
A Portia is one of my cousins.
Q Not one of your sisters?
A Portia is my cousin. I only got two sisters.
Q So she calls Portia?
At this point, Portia went down to 16th Street?
A I don't know that.
Q You know Jakenia went down to 16th Street?
A I can't speak of nothing I don't know about.
Q I will show you State's Exhibit 4D.
Do you recognize that person right there?
A No. It's blurry. I can't tell you who that was.
Q Do you know Jakenia's cousin Alexis?
A No, ma'am.
Q You don't know Jakenia's cousin Alexis?
A No, ma'am.
Q At 20:42, this is State's Exhibit 4D. Jakenia is on 16th Street. Where a person had been shot and taken away by the ambulance. Law enforcement was out there, because she is caught in the pictures with the camera from law enforcement.
So she is out there; right?
If that is her, she is out there at 20:42, 8:42

p.m? I am telling you that's her. It's been testified to.

A I can't say.

Q Since you were sitting here, I thought you knew.

A Yeah. I can't say that.

Q If that is her, she was there at 20:42; right?

State's Exhibit 14. Your mom's name is Angie?

A Yeah. My momma's name is Angie.

Q Is that her phone number there?

A Yes.

Q What time was she called?

A It says, 8:35.

Q So that would be after Jakenia was already on 16th Street?

A Correct.

Q It's your testimony here that she didn't tell you what was going on, on 16th Street?

A No. She just asked me did I see anything happen on 16th Street?

Q Does that make a lot of sense since she is there watching it?

A If you know Baka, yeah, it makes a whole lot of sense.

Q All right. She told you that they are saying you

are the one who did that?
A No. She didn't say that.
Q Where was your gun that night?
A I don't know what I did with it. I know I ain't had my Ruger with me that night.
Q You have a Ruger. What is a Ruger?
A My gun is a P91 Ruger. It's a .40.
Q I'm sorry. I am not a gun person. Describe it to me.
A It's P91 Ruger. It's an automatic clip load, 12. I got a Glock clip and a Ruger.
Q That is an automatic?
A Yes. Automatic.
Q But you have a revolver too?
A No. I never had a revolver.
MR. GRIER: Your Honor, may we speak to the Court?
THE COURT: All right.
(Whereupon, a bench conference was held off the record and out of the presence of the jury and court reporter.)
BY MS. WEISS:
Q I am going to show you State's Exhibit Number 20 for identification. Do you recognize that photo?
A Yes, ma'am.
Q Is that you?

A Yes, ma'am.
Q What are you holding in that photo?
A That is a revolver.
MS. WEISS: Your Honor, at this time I would like to admit State's Exhibit 20 into evidence.
MR. GRIER: Subject to the objection I have stated to the Court.
THE COURT: State's Exhibit 20A is admitted into evidence.
(The aforementioned item was marked as State's Exhibit 20 for identification and was admitted into evidence.)
BY MS. WEISS:
Q Is that from one of your videos?
A Yes, ma'am.
Q You said you don't have a revolver.
A No, I don't.
Q This is from September 22, 2017?
A September 22?
Q Yeah.
A I guess so.
Q Am I incorrect in saying that in that photograph, you have a revolver?
A Yes, ma'am. I have one.
Q Is that during one of your videos?

A Yes, ma'am.
Q You said if you change clothes, you take off your shirt?
A Yes, ma'am.
Q That would be the same in that video?
A Yes, ma'am.
Q You said that you have a P91?
A Yes, ma'am.
Q I will show you State's Exhibits 20B and 20C. Do you recognize that person?
A Yes, ma'am.
Q Who is that?
A That is me.
Q I will ask you to look right here. Is that the gun that you are talking about?
A That is a P91 Ruger.
Q What color is that right there?
A Black.
Q What color is that?
A Silver.
Q That is the one you are talking about?
A Yeah. That is my gun.
Q That is a picture of you.
What hat are you wearing in that picture?
A Clemson.

Q What color is the hat?
A It's orange and a darkish purple.
Q Is this also from one of your rap videos?
A Yes, ma'am.
Q Is this the gun that you were just talking about?
A Yes, ma'am.
Q It's your gun?
A Yes.
Q The handle is what color?
A It's black and gray -- silver.
Q This was from September 14. Where was this or this on September 27?
A The P91 -- that is my gun.
Q Where was that? Who had the gun?
A I'm trying to remember who had my gun. Somebody had my gun, yeah. There had been an incident that had took place somewhere. I had let one of the guys hold my gun.

This incident took place where somebody was going to school and somebody pulled up on them and tried to do something to him. So I let them hold my gun for protection.

Q Who was that?
A Who it was?
Q Yes.

A One of the little dudes from my area, like.
Q What is his name?
A Where I lent my gun?
Q Who had your gun?
A I am trying to remember who I had gave it to.
Q You just let people borrow your gun?
A Naw. Like, one of the guys from the area, like.
Q When did you get it back?
A Probably -- couple -- I think one of my people went and got my gun back while I was locked up, to be honest with you.
Q That is the Ruger?
A Yes, ma'am.
Q Now, during direct you said that you wanted to go to the police station and clear your name because you didn't want to get wrapped up in something like this, because you had been wrapped up in something like this before?
A Yes, ma'am.
Q What do you mean? What was that?
A Like my name had came up in another shooting before. I don't want my name up in another one.
Q Another shooting where somebody was shot?
A Yeah.
Q Yeah?

What year was that?
A It was after I came home. I can't say the exact year.
Q Does 2016 sound about right?
A I can't say.
Q Do you remember who was shot?
A Yeah. It was one of my relatives, one of my homeboys.
Q Brandon Reese?
A Yes, ma'am.
Q So you went to the police department yourself to clear your name on that one; right?
A No. It was like -- with that incident, the other guy had already went first, and I went after, like -- me and my mom and my girl at the time then went up there to the police department.
Q Right. So you went up to the police department to clear your name on that one?
A Yes, ma'am.
Q In clearing your name, you told them that -- you gave them a revolver. The person who was shot had your revolver?
A No. That wasn't my revolver. It was the revolver -- someone had left it at the house prior to that.

Q But you gave it to the person who was shot?
A Yeah. They came and got it. The person who left it, they send him to come get it. So I got it up my -- like --
Q A Smith & Wesson revolver .38 Special?
A Yes, ma'am.
Q Did you get it back from Reese after he died?
A I think they might have left it right there on the scene, like --
Q Were you on the scene? Were you out there?
A Yes, ma'am.
Q How did he die?
A Okay. I don't know for sure.
Q That's okay. Simple answer. How did he die?
A They say he shot his-self.
Q You were there?
A Yes, ma'am.
Q But you didn't see it?
A No. Me and the other guy, we was joking about it. He was laughing because he had been playing with the gun. I'm like, "Dude, what are you doing playing with the gun?" Then, pow.
Q What did you do at that point?
A I tell them, "Man, take him to the hospital. Get the man out of my yard," like --

Q He was in your yard?
A Yeah. It was in my yard at the time.
Q Sorry. I didn't realize that.
Your attorney said that you had been in some trouble before?
A Yes, ma'am.
Q I think he said all of your arrests were before you were 20. One of them, actually, was when you were 20; right?
I believe you said you pled and took responsibility for those?
A Yes, ma'am.
Q You had never been to trial before?
A No, ma'am.
Q One of those charges that you said you took responsibility for, it took you over eight years to plead to it?
A Yes, ma'am. That is when they came to me with the plea, like. They waited until after I served my time to get me in court for the charge.
Q They offered you time served for that?
A Yes, ma'am.
Q So that is when you pled?
A Yes, ma'am.
Q But you didn't serve any time on that?

A The eight, I did, then it was time served. I had to do time before that.

MS. WEISS: I have nothing further, Your Honor.

THE COURT: Mr. Grier.

MR. GRIER: A couple of things, Your Honor.

REDIRECT EXAMINATION

BY MR. GRIER:

Q Your Facebook name is Jon Bones?

A Yes, sir.

Q Why was that?

A Me, my brother, and Murph -- like -- when King Kong first came out, we was watching King Kong. Murph made a comment -- he's like -- there is a scene in King Kong where he is fighting the helicopters, like.

He take the lead punch and boom. One other cop he smashed, like -- he fight like my favorite UFC fighter, Jon Bones.

Q The Brandon Reece suicide --

A Yeah.

Q -- you were not charged with murder?

A No, sir.

Q But you went and met with law enforcement?

A Yes, sir.

I even went a step further. I went and purchased the firearm that was used in that back from the guy who

had it and took it to the police, knowing I had eight years over my head, just to clear it up, and also clear the guys that they had arrested for it.

Show them and his family that I had nothing to do with it or the guy that was locked up before that time, knowing that I could go to jail.

Q I'm a little bit confused about your beer. This is State's Exhibit 10E.

Does that -- what do you see pertaining to beer on that picture?

A A Bud Lite right here.

Q How did that beer get on the porch?

A This beer?

Q Yes.

What kind of beer is it?

A I see Bud Lite right here.

Q What is that (indicating)?

A It looked like I might have a Yuengling

Q How would that beer have gotten on the porch?

A Because I literally handed the guy a beer, then we hear a gunshot.

Q So you had the beer with you?

A Yes, sir.

Q Did you have a beer when you got back in the car?

A Yes, sir. I had my own beer. I had two beers.

The one I handed him -- pow. The shot go off. I shoot to the car.

Q How about the bag of beer? It has Yuengling in it, too?

A I can't --

Q State Exhibit 2D.

Do you recognize that?

A Yeah. That is my Yuengling bottle.

Q Was there other stuff in there?

A There is other beer. It might be a Bud Lite can.

Q Did you put that in that bag?

A No. I ain't put that in that bag.

Q Mr. Foster, this picture, State's Exhibit 20, what is that?

A A video I had shot.

Q What was the purpose of that video?

A It was for the song.

Q Who did that revolver belong to?

A One of the guys I associated with. One of the guys that was helping me go shoot the video. You take bits and pieces of small videos and put them together and make one big video, like. That's how a video come together.

There may be a three- or four-minute video. Ten-second clips here. Fifteen-second clips here. A

minute here. Then you merge them all together. You take out what you want to take out. Add what you want to add. Boom. Adjust it to the music.

Q Have you ever owned a revolver?

A In my past life.

Q Did you own a revolver on September 27, 2017?

A No, sir.

MR. GRIER: I have no further questions. Thank you.

THE COURT: Ms. Weiss.

MS. WEISS: No, Your Honor. Nothing further from the State. I want to make sure I admitted 20B and 20C into evidence.

THE COURT: I don't know that you did. Those will be admitted into evidence as State's Exhibits 20B and 20C.

(The aforementioned items were marked as State's Exhibits 20B to 20C for identification and were admitted into evidence.)

MS. WEISS: Thank you, Your Honor.

THE COURT: Mr. Grier, will you have anymore witnesses?

MR. GRIER: Judge, I would ask that we take a break for lunch. We may be able to shorten this trial considerably.

THE COURT: All right. Ladies and gentlemen, I understand that the clerk has lunch for you back in the jury room. We will break for lunch at this point in time.

Some of you may need to go outside to get some fresh air, smoke, whatever. If you do, we will have somebody escort you out.

Remember, do not discuss the case.

(Whereupon, the jury exited the courtroom.)

MR. GRIER: Your Honor, my expectation is that I will not be presenting anymore evidence, but I need a few minutes to recap a couple of things, and I can let you and Ms. Weiss know within 10, 15 minutes.

THE COURT: That will be fine.

During this period of time, Counsel, can you go ahead with getting your thoughts together with regard to your closing arguments?

MS. WEISS: Yes, sir, Your Honor.

THE COURT: We are working on the charge. I can have that done and give you copies before we come back in.

The jury is not going to go anywhere, so if we could start back at 2:00. Will that give you time to do what you need to do?

MR. GRIER: Yes, sir.

Whereupon, a luncheon recess was held.)

(Whereupon, the following proceedings were held in open court. The defendant was present with his attorney, along with counsel for the State.)

THE COURT: Are we ready for the jury?

MR. GRIER: I would like to renew my motion for directed verdict. I will note for the record that I would like to raise arguments that I have already raised on the same basis, in addition to having heard of testimony of my client, I would say that adds to my motion for directed verdict, Your Honor.

THE COURT: All right, sir. Again, taking everything again in the light most favorable to the State, I am satisfied that there is sufficient evidence that this matter should be submitted to the jury.

Again, I respectfully deny your motion for directed verdict.

Bring them in.

THE COURT: Mr. Grier, just for the record, you are resting on the two charges we are trying here and the bench trial?

MR. GRIER: Yes, Your Honor.

(Whereupon, the jury entered the courtroom.)

THE COURT: Ladies and gentlemen, we have reached

the point in the trial where the attorneys will be making their closing arguments to you. As I explained to you at the beginning of the trial when they made their opening statements, just as the opening statements are not evidence, their closing arguments are not evidence. They are, by way of these arguments, trying to persuade you to see things in the light that they do and the way they do it with regard to making your decision concerning the guilt or innocence in this particular matter.

Again, this is not evidence.

Is the State ready?

MS. WEISS: The State is ready, Your Honor.

MR. GRIER: Your Honor, it has been noted that I don't think I rested on the record, but the defense has concluded the presentation of its case and it rests in front of the jury.

DEFENSE RESTS

THE COURT: Any rebuttal?

MS. WEISS: No, Your Honor. The State is ready.

THE COURT: All right. Now we have reached the point of closing arguments. That is just a procedural matter. He actually rested out of your presence, so we wanted to do it also while you are all present.

Now, we are ready for the closing arguments.

Ms. Weiss.

CLOSING ARGUMENT BY MS. WEISS

MS. WEISS: Thank you, Your Honor. May it please the Court.

"You-all ain't seen nothing." He took a couple of steps, pointed the gun at Joel McLemore's head and fired one shot. Within seconds, the white car was gone. Joel McLemore lay on the ground dying from a gunshot wound to his head.

You can't just shoot somebody in the head at 8:30 at night on a Wednesday without somebody saying something. "You-all ain't seen nothing." Ladies and gentlemen, this is 16th Street.

Thank you for your attention during this trial. I know it has been kind of a long week. We have gone a lot of hours, and we appreciate your attention. We are at the last few minutes of the trial now. I don't want to take too much longer, but I did want to say that.

Mr. Fussnecker and I represent the State of South Carolina. It is our duty to prove to you beyond a reasonable doubt that Demarcus Foster is guilty of two charges. First of all, murder.

Second, possession a weapon during a violent crime. The first charge of murder requires us to prove that Demarcus Foster did, on September 27, 2017, kill

Joel McLemore with malice aforethought.

The second charge, that he did it with a weapon, because murder is a violent crime.

I will talk to you a little about what that crime requires. Demarcus Foster did, in Lancaster County on September 2017, kill Joel McLemore. That's pretty self-explanatory. It also require malice aforethought. The Judge will instruct you on the law, but I will go over it just briefly.

Malice aforethought doesn't mean it was a long, thought-out plan. It just means that at some point when he pulled that trigger he did it with an ill-will and a mind on mischief or with the thought Joel McLemore. He wanted to kill somebody. It didn't specifically be Joel McLemore. He was mind-bent to kill.

Malice aforethought can be the split second he decides he is going to pull that trigger. It just has to be right before the shot was fired.

Again, possession of a weapon is pretty much self-explanatory. You are the sole tryers of the facts. That means what happened on September 27, 2017, now that we have closed our cases, is in your hands.

The Judge is the tryer of the law, and he is going to tell you what the law is, and you have to apply it to those facts, that you, as a jury, decide what those

facts are.

You are the sole deciders of the credibility of the witnesses. That is an issue in this case, the credibility of the witnesses. The only thing you can consider in that jury room is the testimony that came from this witness stand and the evidence that you take back there with you, taking into consideration the evidence from that witness stand.

You also take into consideration where something different was said here and was said before when those questions were asked, and you can determine, do you believe exactly what was said here, what was said before? That is totally your decision.

You can believe some or part of any of all of that. You take all of that and put it together to determine what the facts are on September 27, 2017.

There are two types of evidence: Direct and circumstantial. Direct evidence is eyewitness testimony. It's direct evidence, what people saw, what they heard, what they felt.

Circumstantial evidence is what you can infer from what the facts are, even if someone didn't directly see it. So if somebody says they hear a gunshot and they turn around and that person is running, you can find that that was the person who fired the gun. If they

turn around and that's where the shot came from, then that is the person.

Circumstantial evidence versus direct evidence is, "I saw that person pull the trigger." Circumstantial and direct evidence have the same weight in a court of law, but you have to determine what the truth is.

I will go through somewhat briefly what the facts are in the light as we see them, as the State sees them. I will submit to you the facts are as they were shown before you.

Several things are undisputed. On September 27, 2017, at 946 16th Street, at Roger Harris' house, it's a Wednesday evening, and people were gathering to hang out, drink a few beer, smoke, talk, remember Murph -- hang out with friends.

Everyone thought this was going to be a relaxing, fun night. Children were out there swinging on swings. People were playing basketball. There were a lot of people in the yard. There were so many people in the yard that they had told some people to leave because there were too many people. You heard that on Roger Harris' 911 call. "I knew there were too many people out there."

They were a lot of people out there, and they were hanging out in that lot at Mr. Roger Harris' house on

16th Street. The people out there were friends. They had been friends for a long time. This is their neighborhood.

There is also undisputed testimony that Jakenia Stevens, Baka, went out to 16th Street and took the kids. She and her sister and her sister's kids, her mom -- they all went out there. She had lived there. These are her people. These are her friends.

She was out there hanging out. Quinterious Truesdale was out there. He was an old friend of Bullet's, and a good friend to Demarcus Foster.

He asked Jakenia to tell Demarcus that he was out there. "Tweak say he on 16th Street." That is the text that is in evidence. Based on that -- Jakenia says that Demarcus used to show up and visit her daughter and give her a few dollars. They got along.

It was Bullet's brother. There were no hard feelings between the two, and there is nothing that has been presented to you today to say anything otherwise. Everybody agrees with that.

He got a text from Jakenia that Tweak was out on 16th Street. So he and Maryam Rivera come out in the white Honda out on 16th Street. That is undisputed.

Demarcus Foster brings Yuengling beer. The only person -- the testimony is undisputed that he is the

only person who drinks Yuengling beer. He brings his bottles of Yuengling. She brings her Mike's Hard Lemonade, and they come out to 16th Street.

Demarcus Foster is wearing the mixed color Nelson Mandela shirt, khaki pants, and LeBrons. He is out there talking to his niece. The interesting thing is, Demarcus Foster made the decision to go out to 16th Street to go see his niece. He made the decision. He gave statements that Jakenia told him to come out there; that Jakenia told him to come meet his niece. So he says that Jakenia was the mastermind of this, but that is not what the evidence shows.

The evidence shows that Jakenia sent him a text saying, "Tweak say he on 16th Street." Demarcus Foster told Maryam Rivera to go to 16th Street. It's not where he normally hung out, but he had been there before. He knew people who lived there, but that's not where he normally hung out.

He came out there and saw his niece. He got a picture of him with his niece that is on his phone. He had her to send him a copy. This is where things get a little bit fuzzy.

There is no question at this point that people are hanging out. Jakenia is there. Children are there. Jakenia's family. People are drinking. People are

smoking. They are hanging out and talking. Maryam is talking to Baka, Jakenia Stevens. They are drinking Mike's Hard Lemonade. I think everything is good at this point. Nobody made anything of it.

Also undisputed is that Demarcus Foster says to Jakenia, "You need to get your daughter inside."

Demarcus Foster says, "You need to get your daughter inside."

She said, "It's still light out here. My daughter is playing. I will get her home and in the bath in a minute, but, thank you." That is about where we end with the undisputed.

You hear from different witnesses that Demarcus gets back in Maryam's car, in the white Honda. He is in the front passenger's side. She is driving. Quinterious Truesdale, Tweak, Quinn, City, gets in the backseat. They are friends, and they hang out. They leave, presumably to go pick up Mondra.

Demarcus Foster told you that he doesn't know if they did or not, because he doesn't really remember. I submit to you that that is what they did. They went to go pick up Mondra or do whatever. That is when Demarcus Foster changed clothes. That's one thing that people are consistent about saying; that he changed clothes, and he came back in a black shirt. It's not the

multi-colored Nelson Mandela shirt. He is in a black shirt. Black hat. Black shirt. He changed clothes.

Perhaps they picked up Mondra. Maryam told you that they were just going to chill. They are picking up Mondra. They are going to hang out. She has her Mike's Hard Lemonade. He has Yuengling. They don't hang out on 16th Street. The kids have already gone home, and at this point dark, and everyone admits that at this point its dark.

The kids are home. Demarcus doesn't hang out on 16th Street, but Demarcus is all about control. Demarcus chose to go out there for the first time. Demarcus told Jakenia to take her daughter inside. Demarcus told Maryam to go back to 16th Street. We may never know why Demarcus told her to go back to 16th Street, but that is in his mind.

She did what he said. She drove him back to 16th Street. He was in the passenger's seat. Quinterious Truesdale was in the backseat, and possibly Mondra back there as well. She drove back. She told that you she was parked on the side of the road the first time, but when she came back, he told her to back in. Demarcus, Foster told her to back in.

The white car backed in at 946 16th Street, right next to those steps. She told you through the

passenger's window where those steps were. She could see them. She could see who was out there.

This is out of her passenger's window. She didn't get out of the car. Quinterious Truesdale, Tweak, got out of the car. He stood there as a lookout. Demarcus Foster got out of the passenger's and went up to the porch.

We know Demarcus Foster was there earlier, because there was Yuengling beer already in a trash bag that had been cleaned up from earlier. Only Demarcus Foster had Yuengling beer, whether he gave to somebody or he was drinking it himself on the porch himself only, only Demarcus Foster had Yuengling beer, and it was already in a trash bag. So he was there earlier.

He was there that night, too, because his Yuengling beer was on the banister on the porch across from the bench. He absolutely was there later when it was dark. He was there. He was in all-dark clothes. He was talking about drinking his brother's beer. Nobody was fighting, and nobody was arguing. Nobody planned to be at the scene of a murder that night. Nobody except Demarcus Foster.

They were drinking. They were smoking. They were not making notes. They are not jotting down printed-out Google maps of who was standing where. Who

was standing there that night versus the night before or the next night. They were just relaxing.

Ladies and gentlemen, I submit to you when that gunshot rang out, they were terrified. They remain terrified to this day. But Joel McLemore did not deserve to die that night, and none of them are sure why he did.

But the person who shot him, Demarcus Foster, said, "You-all ain't seen nothing."

And they ran. They ran, but they came back. They ran across the street. It's the distance from a three-point line to a basket. It's a basket. It's across the street. They went across the street, and they went to the path behind the house. Only one person got in the car and left and did not come back to 16th Street.

Defense talked about how Demarcus was in his shirt, pants. Later that night, he was doing a rap. He was in the same shirt and pants. You see there is one problem with this. He is in the same shirt and pants, but it's a fact that he did change hats by then.

He changed from a black toboggan to what could have been seen as a black ball cap, white-boy hat, baseball hat, for the Clemson Tigers. That is consistent with what one of the witnesses -- a couple of the witnesses

said -- that it was a ball cap when he came back and when he changed.

That night on scene, nobody saw anything, just like Demarcus told them. "You-all ain't seen nothing." That is what they told law enforcement. "We didn't see anything. We were in the house. We just heard something. We don't know what happened, and we don't know who did it."

They said that you can submit the gunshot residue test, search the house, get the gun out of the house. You can get the stuff. It's not like we want you to. Because this is 16th Street, we really don't want to be dealing with any of you, but you can do it. Here. Do it. We are here. We are here after Joel McLemore is taken away in an ambulance.

We are still here to talk to law enforcement. Quaterious Peay, Kendrews Stover, who pulled up afterward, and his cousin dropped him off and made that first 911 call.

Kendrews Stover, Lashawn White, Kaneisha -- they submitted to the test. They talked to law enforcement. Now, they did not tell everything that night. They were terrified that there was a gunshot, and Joel McLemore was being taken away in an ambulance after being shot in the head. Kaneisha saw his brains coming out

of his head.

They were terrified. They didn't want to come to the Lancaster County Sheriff's Office either. But Jakenia Stevens, Baka, had no problem with Demarcus Foster. She got a call from her boyfriend who said, "Your baby's uncle just shot that white boy."

There is only white boy who hangs out on 16th Street. That's Joel McLemore. Jakenia is a curious type. We gathered that from when she was on the stand. She thought, "What in the world?"

Less than nine minutes after the 911 call, Jakenia was back on 16th Street. All she knows at first is that -- she knows the white boy was shot. She doesn't know if anybody else was shot. Her brother lives next door. These are her people. These are her friends. She doesn't know.

She goes back over there to find out that, no, it's not your brother who was shot. It was the white boy. It was Joel McLemore. She doesn't know that, obviously, but it was Joel who was the white boy who was shot. She said, okay. It was one shot.

And then she stays out there, and she is watching what happens and sees who is out there. Alexis Grier is out there with her, because she is shocked. She is gone. She was gone while it isn't dark yet. That is

consistent. She took her kids, and she put them in the bath. Shortly after, she is back on 16th Street. Demarcus Foster was never back on 16th Street.

Jakenia says she gets an unknown call at 8:33:59, an unknown call on her phone. But it was her boyfriend, Ladario. No. She did not tell agent Kristen Grant that Ladario Jones, her boyfriend, was the one who called her.

Absolutely, no. She was not putting him in that. He was terrified. She was terrified. Absolutely she didn't say that. But what she did do is say that she heard that Demarcus Foster might be the one who shot Joel McLemore. She didn't say she saw it. She didn't say he did it. She said, "That's what I heard."

She let somebody know who let law enforcement know. At this point, everybody was a suspect. What did she do after that phone call, after her boyfriend told her what happened? She hangs up and calls Angela Foster, Demarcus Foster's mom, Angie.

She says, "They say D shot somebody on 16th Street." She said that Angie started crying and hangs up the phone. It's right there in the phone call. She called Angie. She said that she asked Angie to get her a ride over there.

What did she do after that? She calls Portia.

Portia is Angie's family, Demarcus' family. She tells Portia. Portia says she is at the Family Dollar. She comes down there, because she is just up the street. Then Portia shows up on scene to see what is going on. That is what she tells you, and it is corroborated there by her phone calls.

Nobody brings Angie out to the scene, so she calls Angie back to see if she has been able to get in touch with Demarcus. She calls her. Angie hands the phone to Demarcus. She says, "They say you just shot that boy." He says, "No. Tell them I was at the cemetery and I was at my mom's."

Then she hangs up. She sends him the pictures of her daughter with him. Uncle D with a heart. Maybe this is someone who just shot somebody, but she doesn't want him to know that she thinks he did it or get him mad. She doesn't remember saying, "We are going to the park tomorrow. I will call you. You can join."

Whether she did or not, she never saw Demarcus Foster after these texts. She never saw him again after she left 16th Street that day. Yes, these Facebook messages are out there, but she doesn't want them mad at her, because she is scared, too.

Demarcus wants you to believe that he doesn't remember the period of time between when he was with his

niece and right before the gunshot. He doesn't really remember that. He remembers a whole lot of details about what he wants to remember, but he doesn't remember that. You are the judges of the credibility on that.

Kristen Grant, Agent Grant, formerly with Lancaster, she knows this town. She takes the lead on this investigation. None of these people want to come in and talk to her. So she talks to the people who will talk and give information.

She gathers that Ladario was out there. Jakenia didn't tell you. She told you that she didn't know until she was on the stand that it was Ladario who called.

She finds out Ladario was out there. Damu was out there. Lashawn White was out there. Bree was out there, Jakenia's brother. She starts trying to track them down. Quinterious Truesdale is out there. Maryam Rivera was driving the white car, and she starts to track them down to find out what was going on. There was not a line outside the Lancaster County Sheriff's Office of people waiting to talk to Kristen Grant.

Agent Grant from the Lancaster County Sheriff's Office went out and found people and encouraged people and talked to people. This wasn't like a drug deal. This wasn't just somebody having drugs or guns or

something like that. This was a gunshot that went out in a crowd of people where Joel McLemore was with no argument, no fight, no beef, no problem.

Joel McLemore was shot and killed and left to die in the yard. It was senseless, and nobody knew why. So why when they were told not to say anything did they say anything; because they didn't think it was right. This man died. He was shot and eventually died from that gunshot wound right there on 16th Street.

So while they didn't want to come in and nobody wanted to put anyone else in it, when Agent Grant got them in there -- whether it was by arrest on some charges or convincing somebody to bring in somebody -- however she did it -- she got them in there.

One after another they talked. It was audio and video recorded. They talked and they said who was out there. Lashawn, Joel, Deuce, D, Peay, Kris. That's Kristavious Stevens with a K. Chris Stevens with a C was actually at work. That was proven.

Lashawn White, Joel, P, Tweak, Bree, Chris Peay -- who was at work -- Dario, Quaterious, Deuce, Joel, car -- going there.

Nasty, D and Dreads. D. One by one not -- not all at the same time. Not in one room. Not together. They didn't come together by any means. One by one,

they each gave the information they had.

I would submit to you that this is not CSI. This is not Law and Order. I don't have a video, and these stories don't align perfectly. The reality is that they were drinking and they were smoking, and they were not expecting to be witnesses to a murder. They knew what happened just wasn't right, so they gave the information.

Nobody wanted to be put in this, and nobody wanted to be putting people in this, because they were scared. They were scared of retaliation. You heard what Bree said on the stand. They have to deal with what happens when they walk out of here. But they came anyway.

Why did they come? Because they were under subpoena by the State of South Carolina. If they didn't come in here, they were going to be arrested and brought in here by law enforcement.

So they came. They didn't line up outside this courtroom waiting to come in here and talk to you. They came in here, because they were served with subpoenas and under order of the law had to come in here. But they came in and they sat there.

Then there is Demarcus Foster. I will show you a little bit about the steps. These steps, wide steps (indicating), certainly people can walk on either side

and can sit on either side. Everyone says Quaterious was on the steps. His phone was taken from the side of the steps. There is the bush.

He is sitting on the steps. He is talking to Ladario. They were standing on the side of the house. His back is off the steps in the yard that way -- the bush -- and he is talking to Ladario this way, sitting on the steps.

Demarcus didn't notice who was sitting on the steps, but Demarcus was clear that there was nobody else except the guy on the steps and the guy on the bench. Everybody else was over in the light. He took everybody away from outside the house. All the people that came in one by one over the next -- from September through February of 2018 -- all marked these down.

This wasn't his version. None of these people were here. They were over by the light. It was just one guy on the steps and a guy on the bench. There was a guy named B.A. there earlier, but he doesn't know his name.

Right next to this bush that you are looking at (indicating), right here, is a matter of just a couple of feet from those steps. That is where Joel McLemore and Lashawn White were standing.

Some of these pictures make it look farther. That is why we have this one. That is where Lashawn White,

Deuce, and Joel McLemore were joking around. Deuce put his around him. "This is my homeboy." Within seconds of that statement is when Demarcus Foster came from those steps from the porch -- from those steps that you see right there. Split-second.

The gunshot went off into the left side of Joel's head and lodged to the back of his head. He fell to the ground. Demarcus got his beer, got in the car, and was gone. Demarcus was in control.

Why was he on 16th Street that night, when that is not his place, I don't know. Why did he shoot Joel McLemore? Only Demarcus Foster can tell you that. But he was there, and he had a gun. People saw the outline of the gun. They saw him pull the gun from his pants. They described the gun. He held it to Joel's head, towards Joel's head, within just a couple of feet, and pulled the trigger.

Whose arm was around Joel? Lashawn White's. He is the one who allowed his hand to be tested. He was nervous, because he didn't know, but he ended up having gunshot residue on his hand, which is completely consistent with the story of having his arm around Joel.

I submit to you that that could not have been planned by this witness; that by saying, telling you, that he put his arm around Joel, that he would be right

there in the line of fire, the line of smoke of gunshot residue. Those are just facts.

You have heard from the expert that the hand is there, right there, when there were particles of gunshot residue on his hands. Completely consistent with having his arm around him.

The white car was gone, and Joel McLemore was left in the yard, in the empty yard, in the dark with a gunshot wound. Roger Harris and Keneisha, Bay, tried to help him. Kendrews got dropped off just at that moment. Cousin called 911. Roger Harris called 911. They came out, and they took him away.

Demarcus Foster didn't come back. He didn't come back to the scene. He didn't go to law enforcement to clear his name. He found out that after all of these people talked to law enforcement and found them by hook and crook and gotten them to talk and filled out these forms, that they were looking for him.

The one consistency was the only person mentioned by anybody was that Demarcus Foster shot and killed Joel McLemore. It was only after they got warrants for Demarcus Foster two days later that he came in to the Police Department or the Sheriff's Department, to clear his name.

He didn't say anything he did when he talked to

Jakenia the first time. He went to the cemetery. Then he didn't say he was at his mom's. He said he went to Murph's mom's house. He was at the cemetery.

"You-all ain't seen nothing. Tell them I was at the cemetery and I was at my mom's." That is what you heard first. Nobody saw anything. Nobody said anything. Then when he was going to clear his name, he said, "I was at the cemetery, and I was at Murph's mom's. He said when he was on the stand that he forgot to mention that he was at his mom's.

Just on the eve of trial, he wants to talk to law enforcement and says, "Okay. Actually, I was there when the gunshot went off and jumped in the car and left. But then I went to Big Richard's house, and I went to the cemetery."

So he was there. He wasn't just there. He had it all planned. He knew that state of mind of the people who were there. He knew he was on 16th Street, and he knew the likelihood of anybody saying anything was very low.

So that is Demarcus Foster's gun. The gun described by law enforcement is a revolver. He had loaned his gone out. I submit to you that Demarcus Foster had a revolver. It wasn't his revolver, maybe, but he had a revolver in his hands. That is what the

outline was under his shirt. That is what he pulled out of his pants. That is what he pointed at Joel McLemore's head and then got in the car and left. He never said a word.

"You-all ain't seen nothing."

When you go back to the jury room, I ask you to look at all the evidence, think about the testimony, and find that Demarcus Foster is guilty of murder and possession of a weapon during a violent crime beyond a reasonable doubt.

Thank you.

THE COURT: Thank you.

Mr. Grier.

CLOSING ARGUMENT BY MR. GRIER

MR. GRIER: I will tell you something that the attorneys did to save you a lot of time. You heard there was about 20 hours of videos on this. You didn't have to look at all of that. So we were able to agree as to what was in the record on those videos.

Sixteenth Street is a dangerous place. We have heard that from almost every witness here. Some of the people live there. When this tragedy happened, some people who lived there could not avoid being questioned by the police and attempt to explain what happened there.

There was no nobility in being there for any of the folks that stayed across the street in the house. It's not like they came out. They -- at least Mr. White and Peay were there. Nobody implicated Demarcus Foster. These folks that stayed there, they didn't implicate anybody because they were scared.

Were they scared, or did they not implicate anybody because their own family and friends were the ones who were involved in this?

You heard Lashawn was there, and he submitted to gunshot residue. He lived across the street. He couldn't really go anywhere without it being obvious that he had been on the premises. He didn't give an interview, in fact, there was no interview again implicating anybody in this case until the next day.

Jakenia Stevens, certainly she had the opportunity immediately to speak to law enforcement and tell them what she had been told that night. Everybody is scared to death. Go ahead and get this person in custody, if that were the case, and begin the search.

No. Nobody mentions anything that night. Certainly, they could have. They could have initiated this process sooner. What happened was that they began the process of covering up their family and protecting their family.

I think from what you saw from the witness stand here, you could -- and what you learned about this case -- what we know is Jakenia Stevens, even though she talked about Demarcus being a good uncle -- what we know is Ladario Jones was there. We didn't find out about him being there from Jakenia Stevens until through some other source apparently. We don't even know how we found out about Ladario Jones.

Additional information was developed. It didn't come from Jakenia. Her boyfriend -- she never told anybody he was there. She never told anybody her brother was there, Bree, Kristavious Stevens.

Kristavious Stevens took off running and never showed up for eight months, who ended up testifying and implicating Demarcus Foster.

So we want to make everything Jakenia Stevens says gold. While she is trying to keep -- immediately, her first impulse is to keep law enforcement from knowing about her boyfriend and her brother and concealing that from law enforcement, and that never changed, at least from the evidence that we have.

Ladario Jones, when he was questioned, he didn't admit being there until additional information was obtained. He gives a statement at that point.

So my point is to suggest that these people who

stayed and helped and assisted in this case immediately, somehow should be given credit and believed because they stayed is not consistent with the way they actually tried to lead the police into this investigation. It was more cover up the 16th Street crowd.

I want to thank you for your attention again, and you have paid very close attention. We have noticed that you have. We certainly -- your function is sworn officers for the purposes of this case. You have taken an oath to listen to all the evidence before you deliberate.

I taught at USCL for about nine years as an adjunct professor while I was practicing law. One of my students, who was an adult student, showed up and asked me if he could borrow a book. He didn't have a book, and he wanted to get started. So I was, like, "I have an extra book. I will let you borrow it."

So he took that book, and I never saw him again. Well, since I never saw him again, about two weeks later, I saw him in the lobby. It kind of miffed me that he took my book and didn't return it. He was talking to this young lady over there, obviously flirting.

I took it upon myself to confront him about the book. So I went up to him, and I said, "Where is my

book?"

He said, "What book are you talking about?"

I said, "The book that you took from my class and never showed up and brought it back. Do you want to go talk about this in my office?"

I had misidentified him. I should have deliberated more and listened and taken everything into consideration. My point is: You have done it. You have listened to all the evidence. Rushing to conclusions and passion -- and I was mad. I made an idiot of myself by not really -- by not being deliberate and rushing in to try to confront him.

So is the reason that you are asked to don't consider the evidence until all the evidence is in. We can jump to conclusions immediately from things that we hear in a courtroom or in our own lives. We have all probably done that.

At any rate, ultimately, you-all listen to each other. You have to make a decision in this case now that all the evidence is in.

I don't know if you recall, but it was early in this case. We have been at it for a while. I think Jalissa Stover, who is Roger Harris' daughter, and Camilia, Kris Stevens' girlfriend, lives on 16th Street. That's Roger Harris' daughter. Kristavious, Bree, that

is his girlfriend. In fact, I don't know, he may have lived with her at the time. She was the one who testified about the vehicle. It was her function. She testified that the vehicle went flying off the road and turned right.

What I think is important is that even she said that "This is a dangerous place, and bad stuff happens there." That is why she didn't go there or spend any time there, even though her father and sister lived there.

So the people that were connected to 16th Street ultimately became witnesses in this case. It's pretty obvious from their testimony that all of their objective was to, first of all, cover themselves.

Nobody was forthcoming about what happened on that night immediately. Everybody, I think it's safe to say, was not forthcoming immediately.

Demarcus Foster was not forthcoming immediately about being there, just like everybody else that was there. He did have the experience of being questioned and accused of things before and then being vindicated by the investigation.

Nobody can claim that they were forthcoming in the way that they addressed law enforcement and came to law enforcement to begin with.

Kaneisha Young, Deuce's wife/girlfriend -- her immediate impulse when she is interviewed is to protect Deuce. "He was here in the house when the shooting happened." That was her way to cover up what happened out there. Also, that wasn't that night, when everybody had the chance to say who the gunman was?

The story gets put together, and there is plenty of time for the 16th Street family and friends to put the story together. But they didn't completely get the job done, obviously. I think you paid attention, and you can see that.

So her immediate impulse is to not be forthcoming about her boyfriend's whereabouts when this crime was committed. We know he was the one right there next to Joel.

I think that you can -- you heard the text messages and the communication between Joel and Deuce that day. It's pretty obvious that they were more than friends. They were business associates.

I think that may be the explanation of what happened out there that night. It's the most likely explanation, if you want to find a reason for this senseless -- well, the only thing that makes any sense is that there was some confrontation among the people who knew each other out there, because Demarcus Foster

didn't have any connection to them. So nothing makes any sense for him to have killed Joel.

Ladario Jones, when he is interviewed, he denied being on 16th Street at all. Then eventually he testifies that -- the thing for the State that, "You ain't seen nothing," comes from Ladario Jones. He is the one who heard that. Well, who else heard it?

Kristavious Stevens heard it, coincidentally. Baka's brother, Baka's boyfriend -- those two happened to hear, "You ain't seen nothing." Demarcus Foster supposedly said that and then just shot.

Lashawn White, Deuce, doesn't hear that or say that. Mr. Peay, Quaterious Peay, Damu, he doesn't hear that or say that. I mean, if that happened, why wouldn't they have at least say that that happened. That was the thing that would have been an alert.

No. Kristavious Stevens gets the memo, because he is on the run for eight months. He didn't even talk to law enforcement. He shows up eight months later and suddenly, he has Ladario Jones' story. "You ain't seen nothing."

I don't think it's any coincidence that they both say that Demarcus Foster said, "You ain't seen nothing." Both of them are friends with Deuce. Both of them are friends with Peay. They are friends with each other,

and they are all hanging out on 16th Street together.

So what happens, when you have something unspeakable like this happen, everybody tries to cover their own. That is exactly what they did with this, "You ain't seen nothing stuff" that is not supported by the two other unbiased witnesses.

I should say the other witnesses that were there and didn't hear it. Well, the witnesses that admit they were there are Quaterious Peay, Damu, and, Deuce, Lashawn White. Both of them say the shot came off of the porch.

So it was a close-range shot. The evidence points to that.

Now, I do think you need -- I think you need to pay special attention to Damu's testimony. I think he is the man in all of this -- he has a conscience, at least, about trying to keep an innocent man, Demarcus Foster, from being convicted in this case. You could tell his discomfort level in testifying.

He called Kaneisha Young a liar for having testified -- not contemporaneous with the shooting -- later on when she is trying to explain away Deuce; for her to have said that he came in and said that D shot that man.

Peay didn't want to have any part of this. He is

sitting on those steps, and he says what happened in front of him. He can't rat out the family. He is cousins with these folks. He is friends with them. He in a spot -- and he doesn't want to implicate Demarcus Foster, because it's a lie.

What is the solution? They came from behind me. I didn't see nothing. If I am sitting on the porch and that is my testimony, well, I had to have seen something, if it happened right there the way that it is described in this case.

I believe that he has fashioned his testimony -- it appears -- it's consistent with him fashioning his testimony to try to not be forced into giving false witness against this particular defendant, but also not to tell what happened, what went wrong in a drug deal or whatever beef was going on out there between this family.

It might have been an accident. Supposedly, Lashawn and Deuce and Joel are business associates. I think it's pretty obvious that they were. We don't know. The only thing that really makes any sense is -- as far as potential things that may have gone wrong out there is that something went wrong between those two.

Again, Baka's brother, Kris Stevenson, or boyfriend's friend -- he comes up with this same

language, "You-all ain't seen nothing" thing that the Attorney General said. He supports that eight months later. He is also the guy that said that Demarcus shot Joel McLemore. He went over, picked up his beer, gave his gun to Tweak, went over and got his beer and went back to the car and took off.

Now, that is what he said in his interview. From the stand, he just said, "I took off." He said, "I didn't say that." Well, he did say that. The memo has gone out about how we are going to extricate ourselves, clear all of our names, which is what all of this was about.

This is how we are going to do it. We will do it by implicating Demarcus and make him out to be a cold-blooded killer.

How do you do that? Shot him. Went over. Gave the gun to his buddy Tweak. Casually gets his beer, and goes and walks off and gets into the car and leaves. There is no explanation for why. There is no robbery or anything. That is his statement to the police eight months after -- while he has been on the run for eight months and law enforcement hadn't been able to find him and question him about this case.

Do you think he didn't have contact with his sister? Do you think he didn't have contact with his

friend? We don't know, but I strongly suspect he had. It is consistent with him backing up Ladario and clearing the names of everybody else there. Everyone else is just as innocent as the driven snow here and had no part of this.

Lashawn White, again, you know, you can read the conversation. You heard it from the stand yesterday. His communications are what was found on Joel's phone. It's a horrible thing what happened to Joel. Deuce and Bay, Kaneisha, all the folks that chose to spend their time on 16th Street, they chose that. To be what they did with their lives, to hang out on 16th Street.

What we know about that day -- however you think it happened -- either Baka called Demarcus and told him, "We are on 16th Street," if you believe what Ms. Rivera said initially in her first interview, or that he found out about it from a Facebook message or whatever.

He finds out that Baka is on 16th Street. His intention is to go see his niece. He knows that that message -- if it came from Tweak over Baka's phone -- he is headed over by the Shrimp Boat. Either they divert or wherever they are, they go over to 16th Street, because he knows his niece is going to be there. We know that he visited with his niece.

The Solicitor said five minutes. Certainly, I

don't know if any time was ever stated. I missed that if there was. The point is, we know what his motive for going over to 16th Street was.

We know that he wasn't a regular over on 16th Street. We know that he was the odd man out of this crowd of people coming across this witness stand. He was the odd man out in terms of the relationships.

I would submit to you the Facebook page of Jakenia's communications to Demarcus that night after 12:00, she is trying to stay on good terms with him. She says she doesn't remember saying, "We are going to the park tomorrow." That is the last communication to Demarcus.

The one before that, "She love you too."

That would be from her daughter to Demarcus. This is all posting at 12:05. "I am -- emoji -- crying now, for real, for real."

Before that after the 7:15 posts, he posts the pictures that are sent to him and his niece. He responds to those in a heart-warming way. I think this tells you that at midnight on the night of the murder, Jakenia is communicating with Demarcus Foster in a way that she wouldn't be doing if she thought that he was a murderer. She never told law enforcement that he was a murderer until the next day. She didn't realize the implications

of all of this, apparently.

I don't know why her story went from, "I am not saying nothing" to "Demarcus did it," except it was the only way out to extricate, to get all of her family and friends from 16th Street out of this mess. Demarcus was the odd man out.

Somebody -- the way that the testimony and the statements that were given to the police did exactly that. They think Demarcus is a bad dude.

Everything that they say is gold, and nothing he says means anything, if you noticed the way the arguments were presented in here.

Maybe he is right. Maybe he didn't leave 16th Street, and maybe other people thought he did. What would be his motive to lie about that? That seems to be some kind of big deal. I don't even understand how that implicates him.

What makes sense for him to say, "I can't remember leaving." Maybe he didn't leave. Maybe people thought he left. Maryam went and picked up her cousin. Why would he have gone to do that if he's chilling after visiting with his niece. Why wouldn't he just hang out and say, "Hey. Go get him and come back."

He is being asked to remember everything perfectly about things that nobody is going to remember exactly

how things went down, when they have no reason to remember every nuance of it. I can't remember what I had for supper two days ago. It happened, and if I was asked to recall it, I just couldn't remember. I mean, it's not some sort of concealing something to say, "I just can't remember."

What is it concealing? Nothing. I think one witness said he was wearing black. Maybe there were more, and I am sure that can be argued. The witness who said he was wearing black, that I recall, was Deuce. He said the shot came from the porch.

Lashawn White denied communicating with Joel that day. You can reach your own conclusion as to what they were communicating about. I think he lied about that. He was evasive about everything. In fact, the possibility of there being some confrontation between Joel and him accidentally -- if he didn't do it on purpose, shot Joel, there is a real possibility in this case that you need to consider, I think.

He is the man who had GSR. Now, he submitted to a GSR test. He didn't have a lot of particles on him. We heard the testimony. We know that he had ample time. It appears that drugs and a gun were -- he had plenty of time to wash his hands to try to conceal the gunshot residue on his hands.

He wasn't out there when law enforcement got there. They went over to the house and started talking to these folks. It's like he came out and started implicating everybody. But he did submit to it. We don't how long had transpired since the gunshot.

We didn't even know that he was implicated as having gunshot residue until -- the report wasn't even prepared until last month, the 22nd of February. We got it sometime after that. I can't tell you what day. Why wouldn't that have been done early on? Why does it take this long to get a gunshot residue test in a murder case back?

They already had their man. Okay. Give them the statements until you implicate Demarcus Foster. That was the way that this investigation was conducted. As soon as his name came up, it was the avenue for everybody to walk out of this and get their name out of it and to cover for their friends and their family.

Why didn't they test the car? They had the opportunity to. Did they do that? We know from the testimony of the SLED technician or scientist that -- if they believed that that car had transported a man who shot a gun -- it might not have been conclusive, but it certainly might have resolved the whole case. If it was found, it could have been dispositive. It would have

been very important information to have in this investigation to know if they found any gunshot residue in that car. But that wasn't done.

Rivera -- Demarcus' girlfriend at the time -- doesn't think much about hearing a gunshot. She said she is used to hearing that in the neighborhood. I think a lot of us take for granted how a lot of folks live and what they are subjected to and what things are like over there on 16th Street and a lot of neighborhoods and what people deal with and live with, and how challenging their environment is. It sounds like 16th Street is one of those places.

According to Rivera -- you saw her. She is a very compelling witness in the case. She took awhile to come clean on it, too. She had gone to pick up her cousin. She just wasn't acting normal. When he said goodbye to her, he said he kissed her goodbye and said, "I'll talk to you in the morning."

It's hard for folks who don't live in the neighborhoods that Demarcus Foster lives in and his family to understand how you can hear a gunshot and not show some sort of emotion or anxiety or anything. That is exactly what Demarcus Foster, according to Ms. Rivera, that is exactly how he was.

She didn't notice anything wrong or abnormal about

him. He wanted to see his brother's grave, certainly after going to see his niece. They go to Big Richard's, according to him. They try to go get some weed, and then they went over to the gravesite.

That is consistent with what Rivera says. It's just not what somebody who has just killed somebody is going to be doing. It is just irrational to think that you just do your normal routine after that.

Certainly, if Rivera had thought anything of that nature had happened or if anything had been said, I don't think she would have had any part of this.

She went with him to turn himself in. We saw that he was over on Willow Road in the morning wearing the same clothes that he was wearing when he was talking to his niece, except that he had a different cap on. So this black shirt business, I don't know why it even matters. Evidently, he changes his clothes often -- whatever. I don't know the point of making any point that he changed clothes, if he did.

I would submit to you that the evidence you are going to be looking at suggests that he is wearing the same thing later on. Maybe he changed clothes again. If he did, I don't know why it matters.

I believe this is probably the best picture to show the porch and for you to get a feel for where Demarcus

was on the porch when the shot occurred. I think it shows a couple of things. If you look immediately to your left, you see the steps going off. We know the car was parked right there, backed in, supposedly.

She said that Demarcus told her to back in. Demarcus says he doesn't even remember going. What really happened, I don't know. I guess the implication is that, somehow, he intended on doing something, and he backed in so he could get out of there faster. I don't know.

What it demonstrates to you is that the car would have been right out there to his left and went off of those steps and went straight on out there, more or less. The passenger door, if it was backed in, would have been right there.

It also demonstrates to you the big bushes in front of the house, in front of that porch.

Your vision of what is going on in that yard is obscured by what you are looking at from that porch, most certainly. That gives a lot of possibility to his statement that he ran off the porch and -- it was dark, too. It was pitch dark. You look at these pictures. They got light on it, and it's still dark out there.

If you didn't see somebody come up -- which Demarcus Foster said he didn't see Joel at the time he

came up, and he didn't see him after the shot. Certainly, if you were standing on that porch when the shot went off and somebody was standing right there on the other side of that bush, you wouldn't have seen him. You might not have seen him. You probably wouldn't have seen him. Pretty thick bush. In fact, if they are on the ground and it's dark, you are not going to see him either, most likely.

So Demarcus, when he left, he doesn't know. Totally plausible that he doesn't know what is going on out there. He in a situation where he has been around people shooting guns. You run when a gunshot goes off. You get out of there. I think anybody does that, not just somebody in that neighborhood.

If you don't know where a threat is coming from, you go to your safest place, which for him, in that case, is the car that he came up in. That is perfectly consistent and plausible with good common sense.

It is also with good common sense that he didn't see who shot Joel out there or what happened out in that yard. No evidence in this case of phones implicating Demarcus Foster in anything, as far as communications, calls, text messages, other than people saying stuff on the phone.

Were those numbers verified, those calls to him and

who he spoke to were actually made? There may have been phone calls made, but it doesn't prove that Ms. Stevens spoke to him at all, although he admits that she did. She asked him if something happened out there. He is, like, "No. I don't know if anything happened," which he didn't know that Joel had been shot.

Bree Stevens testified that he saw a black gun. Ladario said he saw a gray and silver gun, if I understood that testimony correctly. These are the people that they say heard, "You ain't seen nothing." They said they heard Demarcus stand up and say, "You ain't seen nothing."

It seems that the implication that the State is trying to set up is that Demarcus was -- knew Joel was coming over there. He was there, and maybe he didn't leave. Maybe he was over on the side of the yard. Do you really expect somebody to remember precisely what they did when they are hanging out at somebody's house drinking? That is a little bit beyond reasonable, to expect everybody to account for every spot they were at throughout a whole evening in somebody's yard.

Apparently, that is what the State expects him to do. He didn't get any credit for turning himself in. No. He didn't turn himself in. Okay. Well, what do you call it when you go to the Sheriff's Department and

you say, "I heard that my name is out there, and that they are looking for me?"

I call that turning yourself in. No. They couldn't even concede that was turning himself in, not exactly.

You know, as a criminal defense attorney, Demarcus Foster said some things on that stand that I wish he hadn't of said. That has the potential for making his defense more difficult. What it shows you is that he is authentic, and he is telling you like it is.

He admitted that he had been to prison. He admitted that he had four felonies and two misdemeanors. He admitted that he smoked weed. He admitted that he had a gun. He admitted going to strip clubs. The reason he admitted that is because he is telling the truth about himself. He has a history. He is telling the truth about what he knows about what happened out there.

Yes. He tried to extricate himself, like everybody else in this case.

Everybody else is nervous about him, but not because they are not being forthcoming. That is the State's theory of this case. Everybody else is scared and nervous. There is no evidence of any reason for them to be -- if he threatened anybody or they had a

reason to be. They knew their family and their friends were up to their neck in it, and they knew they had to come up with a way to get everybody out of it. The most plausible thing that happened was either an accident happened or a murder happened at the hands of the people who were out there in the yard.

Two of the people who were out there in the yard say, "The shot came off the porch." We know that is not accurate. And they say that Demarcus was on the porch when the shot went out.

I don't think it's uncontradicted that Demarcus was there. He doesn't deny it. As you can see from the photo I put up of the porch, I think that tells you the reason he doesn't know that Joel showed up. To believe that he killed Joel, you have to think that he cold-bloodedly went out and shot him for no reason at all. That makes no sense. It makes no sense except to explain and extricate and get all of these family and friends of 16th Street where we know is a bad spot to be, and he shouldn't have been there.

The State doesn't have to prove motive. But you have common sense. It didn't just happen out of the blue and for no reason. Who had the reason? We know that these friends, Deuce, Damu, Dario, and Bree are tight. They are buddies. You know that -- I don't

think you are going to be able to conclude anything other than that Deuce is a drug dealer, and these guys are his closest buddies.

Something went wrong out there. Either an accident, or somebody made somebody so mad that they did commit a murder. They want to say that he had his arm around him and that -- okay. All right. That is the way you want to get around Lashawn White. He didn't say that. He never said it. In fact, when I asked him if it was an accident, I thought his reaction was telling.

Ladies and gentlemen of the jury, thank you for hearing me out. It's a tragedy. It's not going to get explained today. Whatever your decision is, this isn't going to get explained. But you swore an oath to apply and follow the Constitution and to deliberate and make a decision in this case. It will be in your hands very shortly, assuming the Judge gives it to you today.

What -- again, I will go back to the pointing. The State does a lot of pointing over at Demarcus Foster. They did it first thing in this trial. They used, "You ain't seen nothing." Of course, we know that Quaterious Stevens, Ladario Jones, that is their thing. It's not supported by the other witness in the case.

But the law points at this desk for the burden of proof. That is not a "Get out of jail free" card. That

is your Constitutional right to a fair trial. You have sworn your oath of Officers of the Court to apply the evidence in this case and to be fair to Demarcus Foster and to be fair to the State. Those rules are set up because the State has overwhelming power, you might say, compared to the individual. So the burden of proof is on the State.

If they are going to take the liberty of someone away, then they have to prove it beyond a reasonable doubt. Now, they get some advantages. As you noticed, they got to go first. In opening argument, they got to go first and point at Demarcus Foster. They got to go first in presenting their case. They got to go first in closing.

First impressions can be really important, and because they have the burden of proof, they have those advantages of being able to make first impressions. That desk is the one that has the burden of proof. The burden of proof is beyond a reasonable doubt.

Demarcus Foster is presumed innocent and takes the cloak of innocence. He is presumed innocent. To remove that cloak of innocence, you must consider all of the evidence you have heard in this courtroom. If you didn't hear evidence that you felt that you should have, you can consider that, too. That is the State's burden

of proof.

This man has no burden of proof. He doesn't have to prove nothing. He did get up and give his story, because he wanted to be heard in this case, because he is an innocent man.

After you have deliberated and considered all of the evidence, you will have to come to a conclusion. If you are firmly convinced of Demarcus Foster's guilt, then you must convict him. However, if you believe that there is a real possibility that he might be innocent, then the State has not met their burden of proof.

If you hesitate to convict him, you will know that the State hasn't met their burden of proof. That is how you define truth beyond a reasonable doubt. Truth beyond a reasonable doubt is that the State proves it in such a way that you would not hesitate to convict because you are so firmly convinced that there are not any real possibilities -- it's not really possible that he might be innocent.

Ladies and gentlemen, my job is done, and the hard part of your job has begun, which is to get in that jury room and, in following your oath, deliberate on this evidence and consider it and do your very best to reach a verdict.

If you come to believe that Demarcus Foster might

be guilty -- obviously, you don't get convicted in a criminal case because you might be guilty. I don't see how you can believe -- certainly, that is a low burden. If you come to believe that he is probably guilty -- well, if he was being sued for money, well, you could get a judgment from him. You could get money from him. This is a criminal matter.

If you believe there is a real possibility that he might be innocent, you must acquit him.

Ladies and gentlemen, he is innocent. He is not guilty, and I ask you to return a verdict of not guilty.

THE COURT: Ms. Weiss.

REBUTTAL CLOSING ARGUMENT BY MS. WEISS

MS. WEISS: Ladies and gentlemen, this is the worst cover-up ever. The people on 16th Street are trying to cover-up for each other by putting Lashawn White next to Joel McLemore? Horrible story.

Lashawn White could have gone through the cut in the woods like Bree Stevens and been gone and not come back while the crime scene tape was out, but he didn't.

Mark Grier just said that Demarcus Foster jumped in the car and left, because he felt that was the safest way out. Lashawn White and Quaterious Peay went across the street to where Kaneisha lived and got in that house, because that was the safest place. They stayed

there. They heard the sirens coming, and they stayed there. They stayed there and submitted to GSR tests. They stayed there when law enforcement came.

Ladario and Bree got together and got the memo. Ladario was interviewed the day after the crime took place, two days after the crime took place, back in September of 2017. No.

Jakenia didn't put him in it. It's her boyfriend. Jakenia didn't see anything. Jakenia made it very clear that she had heard that Demarcus may have done it. She holds that information. It got to law enforcement. She didn't see anything. She didn't see who did it. She didn't see who was there. She couldn't have put people there. She couldn't put law enforcement on the path to arrest the right person, because she didn't see anything.

All that she knows is that she heard that Demarcus Foster killed Joel. That information got to law enforcement. She had no duty or burden to do anything, but she did that. She heard that one thing.

She couldn't -- she testified she couldn't tell you who was there when the gunshot went off, because she was gone. She couldn't tell you if Demarcus did the shot, because she was gone. Demarcus Foster is Bullet's older brother, and Bullet was the father of her child. Would

she have sent text messages and hung out with someone like Demarcus Foster if she thought that he had committed murder? She knew exactly who Demarcus Foster was.

The child was six years old. Demarcus Foster told you it was 2014 when he got out of prison. She knew Demarcus Foster. She knew his background. She was Bullet's girlfriend. She had a child with Bullet. She knew Demarcus. She knew Angela Foster. Demarcus Foster would bring her child money, twos, two bills of something every time. She holds no ill-will towards Demarcus Foster, but she didn't think that Joel deserved to be shot and killed.

She didn't want to think that Demarcus Foster shot and killed anybody. Would she not send him text messages? Is he not still the uncle to her child?

She knew Demarcus Foster's history. She didn't know what was going to come out of this case. She just told some people that she had heard Demarcus Foster shot him, and that information got to law enforcement.

When law enforcement heard that Ladario was involved, she encouraged him to come up there. She gave him a ride. She did do that. She didn't speak for Ladario either, but she got him up there, and he talked to law enforcement. He talked to law enforcement that

same week.

Bree? Bree took off. Bree took off. When he got arrested in 2018, Agent Grant took a chance to talk to Bree. Then he told her what happened. If you believe the defense's version, he took the memo that was given out to everybody on 16th Street. He carried that with him throughout his life for months through whatever was going on.

The defense said that the people who lived right around there couldn't have run, because it would have been obvious that they ran. Bree Stevens lived next door with his girlfriend -- or he stayed there a whole lot. But he ran, just like Lashawn could have and just like Quaterious could have. Bree ran. Bree didn't want to talk to law enforcement. He never wanted to talk to law enforcement.

He got arrested, and Agent Grant took a chance that maybe he would talk. He told what happened. He told what happened that Ladario told happened. They are similar, because they were both there. They were both there and told you what they knew from that night.

Quaterious Peay, Damu, was on his phone, just like he told you. He was sitting on the steps. Lashawn was right there next to Joel when he was shot.

Demarcus Foster is the only one who knows why he

shot Joel McLemore. Maybe it was a message to Lashawn White. Maybe it was a message to drug dealers on 16th Street. Maybe it was a message to Joel's family. Maybe there was something going on with them. Maybe there was something going with Lashawn and Demarcus.

Lashawn's girlfriend, Kaneisha, that is Demarcus' cousin. That is Demarcus' family. Jakenia, her child is Demarcus' family. Odd man out? He was more related than the other people that were out there. Those are his people, too.

Odd man out was Joel McLemore. Demarcus knew that. Don't know why Demarcus said, "Go back to 16th Street." If he felt like he was the odd man out, why is he going back? Why is he going back to 16th Street? He went back.

Jakenia is gone. Kaneisha is not out there. When he went back, he got out. Who was the odd man out was Joel McLemore. What message was he sending? Who was that bullet intended to affect?

I don't know what Demarcus does, he went out there. He chose the location. He chose the witnesses. He pointed a gun at Joel McLemore's head. He shot one time, and he left.

He lied when he talked to law enforcement. He had Maryam Rivera saying the same thing. We were just out

there one time -- trying to make the story fit.

Yes. She had a couple of interviews and eventually said they left and came back. But she was trying to tell the same story he was. Who had a memo out as to what to say? If it's true, it's Demarcus Foster and Maryam Rivera.

Kaneisha couldn't tell you who the gunman was, because she wasn't out there. She told you that. Bay wasn't out there.

What did Roger tell you when he came out? Lashawn was out there. Lashawn was out there with his friend who had just been shot and was standing right next to him. Then he went into the house after Quaterious Peay had gone in the house.

Bay told you that Quaterious came in and said, "D just shot that boy." That is her cousin, her family, and she got up there and told you that.

She didn't say it right away, and she didn't say that Lashawn was in there right away. That would have been the best story to really try to protect people out there, to say Lashawn wasn't there. But once you get them away from 16th Street and everybody tells their individual stories, Lashawn was out there. He just was. That was his friend.

Yes, they were communicating. That was their

business, but that was a bad business plan if you want to believe that Lashawn White ended his business association with Joel McLemore by killing him. They were business partners. Best friends. Homeboys. Business partners. He didn't have a job. He told you that. That is where he got his money. Worst business plan ever. Worst cover-up ever, or the people on 16th Street were scared.

They each told law enforcement what they remembered, because it just wasn't right that Demarcus Foster killed Joel McLemore. They told you they remembered when they got talked to by Agent Grant. Ultimately, the only one name ever put into this case for the shooting of Joel McLemore was the defendant, Demarcus Foster. I submit to you that he is guilty of murder and possession of a weapon during a violent crime.

THE COURT: Ladies and gentlemen, would you like a break, or do you want to go forward with my charge? The court reporter needs one. Everybody can just stand and stretch.

All right. We will take about a 10-minute break.

(Whereupon, a recess was held.)

(Whereupon, the following proceedings were held in open court. The defendant was

present with his attorney, along with counsel for the State.)

JURY CHARGE

THE COURT: All right. We are going to get started again. No in and out while I address the jury.

Ladies and gentlemen, we have reached the point in the trial where I will be charging you with the law that you are to apply in this case. I realize you have been here a good while. It will probably take about 10 or 15 minutes. I know some parts of this trial have been very tedious. You have been very patient. You have been very attentive. I have no reason to think that you will not continue to do so if I go through this.

Now, the indictments charge the defendant with murder and possession of a weapon during a violent crime. I remind you that the fact that the defendant was arrested, charged, and indicted in this case is not evidence in this case, and it cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilt. These documents are simply the formal written instruments which contain the charges made against the defendant. They are the formal documents by which the case is brought into this court.

The indictments in this case allege two different

offenses against Mr. Foster. The charges are, under Indictment Number 1, 2018-GS-29-00899, for murder.

The second indictment is 2018-GS-29-00903, possession of a weapon during a violent crime.

Each of these indictments charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law which applies to it.

The defendant may be convicted or acquitted on any or all of the offenses charged. You will be asked to write a separate verdict of guilty or not guilty for each indictment, Mr. Foreman.

The defendant has pled not guilty in this case. That plea puts the burden on the State of South Carolina, which you have been told before, to prove the guilt of the defendant. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important rule of the law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictments were issued, unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence does not end when

you begin your deliberations. It accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the defendant. It remains with the defendant until it has been stripped from the defendant by evidence satisfying you of the defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not mere legal theory. It's not just a legal phrase. It is a substantial right to which every defendant is entitled, unless you, the jury, are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

What is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, and you have heard examples throughout the opening and closing where you were told it's only necessary to prove that a fact is more likely true than not true, such as by the greater weight, you have seen the example of the scales.

In criminal cases, the State's case must be more

powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty. In criminal cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty.

On the other hand, if you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find him not guilty.

I remind you that during the trial, you and I have had certain duties to perform. As the trial Judge, it's my responsibility to preside over the trial of this case. I also have the duty to rule on the admissibility of the evidence offered during this trial.

You are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record in this case during the trial, you must disregard that testimony. You are to consider only the testimony which has been presented from this witness stand, any exhibits which have been made a part of the

record in this case, and any stipulations of counsel.

I have the additional duty to charge you on the law which applies to this case. As the Presiding Judge, I am the sole judge of the law in this case. It is your duty as jurors to accept and apply the law as I now state it to you. If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon this idea, because you are sworn to accept the law and apply the law exactly as I state it to you.

In every case tried in this case before a jury, the jury becomes the sole and exclusive judge of the facts in the case. A Trial Judge cannot intimate, state, comment on, or make any statements to a trial jury about the facts in a case.

Since you, the jury, are the sole judge of the facts in this case, you are not to infer from what I have said during the progress of this trial in ruling upon the admissibility of evidence or otherwise, or anything that I say now during the course of this instruction to you that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts in this case. This is a matter solely for you, the jury, to determine. As jurors, it is your duty to determine the effect, value,

weight, and truth of the evidence presented during this trial.

There are two types of evidence which are generally presented during a trial: Direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proven.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred.

Circumstantial evidence is based on inference and not on personal knowledge or observation. I understand that is somewhat difficult to follow and understand -- especially when it is being read to you. Let me give you an example that I have -- which may not be the best in the world.

When I try to explain circumstantial evidence, it would be as if all of us went outside. We looked up in the sky, and we saw a jet plane. As that jet plane is going across the sky, it's leaving a vapor trail. We see the jet plane. We know it is up there. That is

direct evidence. We see that. We are observing that.

If you come back inside and go back outside 30 minutes later and we look up in the sky and we see that streak, that vapor, being left by some other jet -- we don't see the jet, but we know from our experience in what we have seen before, that a jet plane has left that vapor. That is what we consider circumstantial evidence. That is the example I have come up with to explain direct evidence and circumstantial evidence.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than direct evidence.

You should weigh all of the evidence in the case. After weighing all of the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

Necessarily, you must determine the credibility of witnesses who have testified in this trial. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of witnesses who

have testified in this case, you may believe one witness over several witnesses, or several witnesses over one witness.

You may believe a part of the testimony of a witness and reject the remaining parts of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety.

You may consider whether any witness has exhibited to you any interest, bias, prejudice, or other motive in this case.

You may also consider the appearance and manner of the witness while on the witness stand.

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses.

You heard from more than one expert witness. You heard me qualify them as experts as we went through the trial. A witness, who by education and experience has been an expert in some art, science, profession, or calling may state an opinion as to relevant and material matters, to which that witness claims to be an expert. They may also state the reasons for the opinion.

You should consider any expert opinion received in

evidence in this case, and like any other evidence, give it the weight you think it deserves.

If you decide that the opinion of an expert witness is not based on sufficient education and experience, or if you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness' testimony is to be given no greater weight than that of any other witness simply because the witness is an expert. Further, you are not required to accept an expert's opinion, even though it is not contradicted.

Now, mere presence at the scene is not sufficient to prove someone guilty of a crime. A defendant's presence when a crime is being committed, a mere association of a person who commits a crime, does not make a defendant an accomplice or an aider or abetter of the person committing the crime.

The burden is on the State to prove every element of the crime charged. If you find after reviewing all of the evidence that the State has proven that the defendant was present at the scene of a crime and that he has not proved or they have not proved beyond a reasonable doubt any other participation in the crime,

you must find the defendant not guilty.

The law is that proof of presence at the scene of a crime is not sufficient to find someone guilty. Where a person inflicts a fatal injury on another person and that other person dies at a later time, you must be convinced beyond a reasonable doubt that the infliction of the first injury was the proximate cause of the victim's death.

Proximate cause is a direct cause. It is the immediate cause. It is the sufficient cause. It is that cause without which the death of a victim would not have resulted. There must be a chain of causation from the time of the injury inflicted by the defendant until the time of the victim's death.

Proximate does not necessarily mean that it occurred prior to death. There may be more than one proximate cause. The action of two or more persons combined together may be the proximate cause of the death of a person.

The defendant's acts may be regarded as a proximate cause if it is a contributing cause of the death of the victim. The fact that other causes also contribute to the death of the victim does not remove the defendant from responsibility. The defendant's act need not be the sole cause of the death, but it must be a proximate

cause contributing to the death of the victim.

There has been evidence presented that witnesses have made prior statements that are not consistent with the witness' present testimony that they gave here in court. You may use this evidence to decide whether to believe the witness. You may also use evidence of the earlier contradictory statements to determine the truth of those statements.

It is up to you to decide whether to believe the earlier statements or the testimony given at trial. If a witness is shown to have knowingly testified untruthfully concerning any material matter, you may consider this in determining whether to trust the witness' testimony as to other matters. You may reject all testimony of that witness, or give all or part of the testimony the weight you think it deserves.

A person who has a past criminal record is competent to testify during a trial. A past record does not affect the ability of that person or that witness to testify. The past record may only be considered by you, if at all, in determining the witness' believability.

Remember, you are the sole judges of the facts in this case and of the believability of any and all of the witnesses.

You have heard evidence that the defendant was

convicted of crimes other than the one for which the defendant is now on trial. This evidence may be considered by you if you conclude it is true, only in deciding whether the defendant's testimony is believable, and for no other purpose. You must not consider the defendant's prior record as any evidence of the defendant's guilt on the charge we are trying today.

The defendant has been charged with murder. The State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought. Malice is hatred, ill-will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse with an intent to inflict an injury or under circumstances that the law would infer as an evil intent.

Malice aforethought does not require that malice exist at any particular time before the act is committed. The malice must exist in the mind of the defendant just before and at the time of the act when it is committed. Therefore, there must be a combination of a previous evil intent and act.

Malice aforethought may be expressed or inferred. These terms expressed and inferred do not mean different kinds of malice, but merely the manner in which malice may be shown to exist. That is either by direct

evidence or by inference in the facts and circumstances which are proven. Expressed malice is shown when a person speaks words which express hatred or ill-will for another, or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person or any other acts of preparation going to show that the deed was within the defendant's mind to be expressed malice.

Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon.

A deadly weapon is an article, instrument, or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances in each case. The following are examples of instruments which may be deadly weapons: A pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a slingshot, metal knuckles, a razor, gasoline, a firebomb, a molotov cocktail, and liquid in lighter fluid.

A gun may be a deadly weapon even if it is not operating. For the crime of possession of a weapon in the commission of a violent crime, the State must prove beyond a reasonable doubt that the defendant was in possession of a firearm or visibly displayed what

appeared to be a firearm during the commission of a violent crime. Again, a firearm means any machine gun, automatic rifle, revolver, pistol, or any weapon which will and is designed to or may be readily converted to expel a projectile.

In order to find the defendant guilty of possession of a weapon during the commission of a violent crime, you must first find the defendant guilty of either committing a violent crime or attempting to commit a violent crime. Murder is a violent crime.

Ladies and gentlemen, there are four possible verdicts which you may find in this case: Guilty as to murder; not guilty as to murder. Guilty of possession of a weapon during a violent crime, or not guilty as to possession of a weapon during a violent crime. There is no significance whatsoever in the way I just worded those. I just had to state one before the other.

Your verdict must be a unanimous one, ladies and gentlemen. Mr. Foreman, when the jury agrees on the verdict, you will check the two appropriate boxes -- which I will show you in just a second -- on the verdict form, and you will sign the verdict form yourself as foreperson. You will then knock on the jury room door, and the bailiff will let us know that you have reached a verdict. After a very brief period after that, you will

be brought back into the courtroom.

Here is the actual verdict form. You will have this with you, obviously, in the jury room. The verdict is for murder. You will see here, guilty or not guilty.

Possession of a weapon during a violent crime, guilty or not guilty.

If you find the defendant not guilty of murder, you would have to find him not guilty of possession of a weapon during a violent crime.

All right, ladies and gentlemen. I will ask that you retire to the jury room at this time. Do not begin your deliberations yet. I have to go over this with the attorneys and make sure they have no objections as to what I have just said here. They may have some things that I may have to call you back out.

Also, you need to have all of these exhibits with you before you begin your deliberations. We will bring them to you very shortly. It won't be long. Please don't start your deliberations until the bailiff brings you these exhibits. Thank you.

(Whereupon, the jury exited the courtroom.)

THE COURT: Are there any issues or exceptions to the charge?

MS. WEISS: Not from the State, Your Honor.

MR. GRIER: Not from the defense, Your Honor.

THE COURT: Then we will be at ease until we hear from the jury.

(Whereupon, court stood in recess while the jury deliberated upon a verdict.)

THE COURT: All right, Counsel. We have a question from the jury.

"Can we review the interview notes from Deuce, Lashawn White, also Maryam Rivera, interview notes?"

Obviously, those are not in evidence. I will bring them out and let them know that and have them continue their deliberations.

Does the State have anything you want me to tell them?

MS. WEISS: No, Your Honor.

THE COURT: Mr. Grier.

MR. GRIER: No, Your Honor.

THE COURT: Bring them in.

(Whereupon, the jury entered the courtroom.)

THE COURT: Mr. Foreman, I have your questions that have been submitted by the jury. If an item is not in evidence, that is not something I can submit to you after the fact. The notes were not introduced into evidence, so I cannot let you see these notes. You must reach a verdict the best you can by using your own memories of the evidence.

That being said, is there any type of progress report that you have, if you are close to a verdict? I am trying to calculate and determine how long we are going to work tonight.

THE FOREPERSON: I would say we are getting close, sir.

THE COURT: All right. Do you think you are going to need something to eat?

THE FOREPERSON: I think we are okay. Thank you.

THE COURT: If it gets later and you get hungry, just tap on the door and let somebody know. We don't want to starve you out.

I will ask you to retire to the jury room to resume your deliberations.

Thank you.

(Whereupon, the jury exited the courtroom.)

THE COURT: Any exceptions to what was just said?

MS. WEISS: Not from the State, Your Honor.

MR. GRIER: No, Your Honor.

THE COURT: All right. We will be at ease.

(Whereupon, court stood in recess while the jury deliberated upon its verdict.)

READING OF THE VERDICT

(Whereupon, the following proceedings were held in open court. The defendant was present with

his attorney, along with counsel for the State.)

THE COURT: Counsel, I understand we have a verdict. Anything before we bring the jury in?

MS. WEISS: Nothing from the State, Your Honor.

MR. GRIER: No, Your Honor.

(Whereupon, the jury entered the courtroom.)

THE COURT: Mr. Foreman, do you have a verdict?

THE FOREPERSON: Yes, sir.

THE COURT: Hand it to the clerk, please, sir.

Publish the verdict, please, sir.

THE CLERK: Yes, sir.

THE COURT: Will the defendant stand, please. Before we read the verdict, I don't want any outbursts of any sort whatsoever in this courtroom. If I hear any kind of commotion or outbursts, I will have one of these officers remove you from the courtroom immediately.

Mr. Hammond.

THE CLERK: Yes, sir, Your Honor.

State of South Carolina v. Demarcus Foster, as to murder, guilty.

Possession of a weapon during a violent crime, guilty.

Signed, Kevin Shields, foreperson.

Ladies and gentlemen of the jury, if this be your verdict, so say you all by the raising of your right

hands. Let the record reflect all jurors raised their right hands.

THE COURT: Thank you, Mr. Hammond.

MR. GRIER: Your Honor, I move that the jury be polled.

THE CLERK: All right.

Mr. Foreman, Kevin Shields, is this your verdict, and is this still your verdict?

THE FOREMAN: Yes, sir.

THE CLERK: Petra Murphy, is this your verdict, and is this still your verdict?

THE JUROR: Yes, sir.

THE CLERK: Randi Faile, is this your verdict, and is this still your verdict?

THE JUROR: Yes, sir.

THE CLERK: Lissa Young, is this your verdict, and is this still your verdict?

THE JUROR: Yes, sir.

THE CLERK: Kelly Oxener, is this your verdict, and is this still your verdict?

THE JUROR: Yes, sir.

THE CLERK: Angela Wingert, is this your verdict, and is this still your verdict?

THE JUROR: Yes, sir.

THE CLERK: Scottie Mungo, is this your verdict,

and is this still your verdict?

THE JUROR: Yes, sir.

THE CLERK: Diana Niven, is this your verdict, and is this still your verdict?

THE JUROR: Yes, sir.

THE CLERK: Thomas McCowan, is this your verdict, and is this still your verdict?

THE JUROR: Yes, sir.

THE CLERK: Shelly Hildreth, is this your verdict, and is this still your verdict?

THE JUROR: Yes, sir.

THE CLERK: Cindy Hanna, is this your verdict, and is this still your verdict?

THE JUROR: Yes, sir.

THE CLERK: Thank you.

THE COURT: Thank you, Mr. Clerk.

Ladies and gentlemen, you have completed your service for this week. As I mentioned earlier, you are one of the most attentive jurors I have had in a long time, and I really appreciate that.

You have been diligent with your work. You have been patient with us, as we have sent you back to the jury room a number of times this week. I do appreciate your patience.

I appreciate your service. I know I have told you

that two or three times, but I sincerely mean it. I appreciate the services that you have provided to the citizens of Lancaster County and the State of South Carolina.

Now that the trial is over, you have the right to talk to anybody if they want to talk to you about your verdict or whatever. You also have the right not to talk to them. If you decide that you want to talk to somebody, and you are halfway through the conversation and you decide you don't want to talk anymore and they keep pursuing it, or if you tell somebody right off the bat that you don't want to talk and they try to pursue you or if you feel like you are being harassed and they are staring at you, all you have to do is contact the Clerk of Court or the Lancaster County Sheriff's Office. They will provide you with that information, and I will deal with that individually.

It's your right to either talk to someone or not talk to someone. So there are no restrictions on you at this point in time.

Now, the defendant will be sentenced shortly. If you wish to stay around and see the sentence, you are welcome to do so. You are also welcome to leave and go home. It's late at night, and you are probably tired.

If you want to stay, you certainly have the right

to stay. The bailiffs will escort you back into the back of the courtroom, or someone will escort you outside so you can leave and go home.

Again, I appreciate your service.

Anyone have any questions they might want to ask?

THE FOREMAN: No, sir.

THE COURT: Thank you, so much.

(Whereupon, the jury exited the courtroom.)

THE COURT: Counsel, we are going to take about a five-minute recess before sentencing.

MS. WEISS: Yes, sir.

MR. GRIER: Yes, Your Honor.

THE COURT: Before I do that, though, who is that talking? I want her removed from the courtroom. I don't want any disruptions, I said. No outbursts. No talking. No nothing.

Let me go ahead and also deal with the bench trial matter.

As you know, the charge of possession of a firearm or ammunition by a person convicted of a violent felony was tried before me as a bench trial. Based on the testimony and evidence introduced, I am satisfied beyond a reasonable doubt that Mr. Foster is guilty of the offense of possession of a firearm or ammunition by a person convicted of a violent offense or a felon.

That is my decision in that case. He will be sentenced on all three when we return from about a five-minute break.

(Whereupon, a recess was held.)

(Whereupon, the following proceedings were held in open court. The defendant was present with his attorney, along with counsel for the State.)

SENTENCING HEARING

THE COURT: Bring Mr. Foster around, please.

Mr. Grier, I will be glad to hear from you.

MR. GRIER: Your Honor, Mr. Foster is 31 years old. Your Honor, you heard him really tell you about himself, I suppose, in the trial; what jobs he has done. He also found out about his record by virtue of this trial.

Judge, he has been the perfect client in terms of, for me, just amiable, likable, got along. The jail said that he got along with the folks at the jail. They didn't have any problems with him. He was just one of those, I would have to say a client, who took my advice. He was engaged in his defense. He is a smart fellow, young man.

This is a tragedy in both respects, Your Honor.

We have the McLemore family suffering, and then to

have this be the outcome for the Foster family as well. I am asking for the Court's mercy. I understand it's life without parole. I have discussed that with Mr. Foster. I don't know what the implications and intentions are today.

Your Honor, I am asking for the mercy of the Court. I think I would be obliged to ask his mother to speak at this point, Your Honor.

THE COURT: I have no problems in letting someone speak.

MR. GRIER: I think Mr. Foster needs to hear from his family; for my client's benefit.

MS. BOULWARE: My name is Janet C. Boulware. I am Demarcus' aunt.

Demarcus is a real nice person. I am his godmother, too. I never had any problems with him.

When he was in jail in Chester, I went to see him. He was so respectful. I just don't understand this judgment.

I will be truthful with you, Judge. I don't think he did it. I don't think he did any of it. I want to say to everybody in here that God knows. God knows, and he will take care of this. I know he will.

I love him from the bottom of my heart. He knows that, too. I still love him, and I still support him,

because I don't believe he did this. I don't believe it. I do believe that God will let you-all see that he didn't do it.

It may be too late for some of you, but you will see. I promise you, you will.

I love you. I hold nothing against nobody.

Thank you.

THE COURT: Thank you, ma'am.

MS. WILLIAMS: I am Gloria Williams. I am Demarcus' aunt. Like I said from the first time, you have to prove somebody guilty before you say they are guilty. This is the law we got to live by, because God made the law. We just honor it because He made it. He is in control of it.

Demarcus didn't kill that man, and I know he didn't. The evidence proved that he didn't do it. You know what? The killer is still out there. The drugs is still out there. You can't stop it. But I tell you this. From the spirit of God that is within you, some of you families will be in the same position that he is in.

You will reap what you sow. That is the Bible. You can't get by it. You know where it is coming from.

Those men that got up there and testified, none of them had but a 10th-grade education. All of them was

not telling the truth. They got drug charges, other charges, but you still believe them after whatever they have said and done. I feel for their family, too, because they lost a son.

His life was taken. But the people who took his life, they have been deceived. They used him and played on his goodness. And as a result, his life was taken.

Everybody knows and understands what went on. When you deal with drugs -- I know about it. When you deal with drugs, you look for anything to happen.

I love Demarcus. Demarcus live beside me, and I know what type of person he is.

D, keep your head up. Keep praying. You know who you are. Don't let this situation take away who you are. You know who you are.

Judge, I thank you for coming and getting this trial over with, because there was nothing being done until you came. Other Judges just put it in motion.

All of this stuff had been taking place. He stayed out there for over two years, and never got a bond hearing.

Evidence, so say it, come forth. These people are there all the time, but the job was not done.

I thank you for getting this done. God bless you.

THE COURT: Thank you, ma'am.

MR. GRIER: Judge, his mother just walked in.

Ms. Foster.

MS. FOSTER: My name is Angela Foster. I am Demarcus Foster's mother. I promise to God that it ain't over.

Son, stay focused. Fast, do whatever you have to do. This stuff was planted. I need my phone back; okay? They took my phone. You-all, God will win. God is still on the throne.

Love you, Son.

THE COURT: Thank you, ma'am.

MR. GRIER: Judge, I would ratify one thing that was said, most certainly. He has always been the most respectful person around everybody, as respectful as any client I have ever seen.

THE COURT: Mr. Foster, do you wish to say anything?

THE DEFENDANT: If I can, to the guy's family. Like, for you-all, I am sorry what happened to you-all's son. I lost a brother myself. I am still going to tell the truth. I am innocent, like. Even though I am going to be locked up, I will still push the issue, like, you-all can get some closure, because it ain't right. It just ain't right. I feel no type of way about it.

THE COURT: Ms. Weiss, anything from the State?

MS. WEISS: No, Your Honor. I don't think the victim's family wishes to address the Court.

THE COURT: Anything Mr. Fussnecker wishes to say?

MS. WEISS: No, Your Honor. I think it has all been said during the trial.

We ask that you follow the sentence of life without parole. We just respectfully ask for that to be the sentence.

THE COURT: This is a tragedy.

Anytime we deal with a murder case, it is always tragic. There is a loss, an actual loss of life. Then there is also the loss for the sense of the life of the one who has been convicted.

This jury has spoken, and I must take their verdict and base my sentence from the decision of the jury.

Mr. Foster was placed on notice that the State was seeking a life sentence without the possibility of parole.

The sentence of this Court is: On the murder charge, Indictment Number 2018-GS-29-00899, the sentence is that Mr. Foster shall be committed to the State Department of Corrections for the remainder of his life without the possibility of parole.

As to Indictment 2018-GS-29-00902, possession of a

weapon by a person convicted of a violent felony, the sentence of the Court is that he be committed to the State Department of Corrections for a term of five years. That sentence will run concurrent with the murder charge.

With regard to Indictment 2018-GS-29-00903, possession of a weapon during a violent crime, the sentence of the Court is that he be committed to the State Department of Corrections for a term of five years. Again, this sentence runs concurrent with the life sentence of the murder charge.

That is the ruling of the Court. Good luck to you, sir.

MR. GRIER: Judge, I do need to make a post-trial motion on the record.

Judge, at this time, the defense would make a motion for a new trial. Judge, based on the same evidence and the same basis that my motions for directed verdict were made: The issue with the attorney/client, the statements by Lashawn White that we were not allowed to pursue, the other objections that were made during the trial that were overruled by the Court. I would ask the Court to order a new trial at this time.

THE COURT: Thank you, Mr. Grier.

Ms. Weiss, any response?

MS. WEISS: Your Honor, the jury has spoken. I believe that the evidence that was presented to the jury was sufficient, and it supported the verdict that the jury came back with. For the arguments and your reasons on the objections earlier, I believe they stand for themselves.

Thank you.

THE COURT: Thank you, ma'am.

Mr. Grier, I am going to respectfully deny your motion for a new trial. I am satisfied that there was sufficient evidence that supports the jury's verdict with regard to their two verdicts.

I find also that there is sufficient evidence to support my verdict as well, concerning the possession of a weapon by a convicted felon. Thank you.

MR. GRIER: Thank you, Your Honor.

(Whereupon, the trial was concluded.)

* * *

END OF VOLUME IV

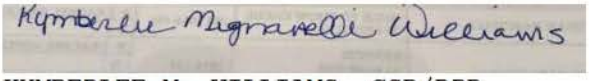
- - -END OF TRANSCRIPT- - -

CERTIFICATE OF REPORTER

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the 6th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the CircuitCourt for Lancaster County, South Carolina, on the 18th - 21st days of March, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

This, the 18th day of September 2019.



KYMBERLEE M. WILLIAMS, CSR/RPR

WITNESSES

K. Grant-State Law Enforcement Division

K Grant

ARREST WARRANT NUMBER

2017A2910101976

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

Docket Number 2018-GS-29-899

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

May Term 2018

THE STATE

vs.

Demarcus Foster

DEFENDANT

Indictment for

Murder

16-03-0010
Felony
CDR Code 0116

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

Defendant

I, _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. Pls. And G.S.

FILED
OFFICE OF CLERK
OF COURT
2018 JUN -5 AM 11:27
CLERK OF COURT
LANCASTER, SC

4/26/2019 1:51 PM FROM: Lancaster County TO: +18037341397 P. 3

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on May 31, 2018 the Grand Jurors of Lancaster County present upon their oath:

Murder

On or about September 27, 2017, the Defendant, Demarcus Foster, did in Lancaster County, commit the crime of Murder in that the Defendant, with either express or implied malice aforethought killed the victim, Joel McLemore, in violation of §16-03-0010, 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.

for ALAN WILSON/ HSW
SOUTH CAROLINA ATTORNEY GENERAL

WITNESSES

K. Grant-State Law Enforcement Division

K. Grant

ARREST WARRANT NUMBER

2017A2910101975

ACTION OF GRAND JURY

TRUE BILL

Stephen Sapp

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

Docket Number 2018-GS-29-902

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

May Term 2018

THE STATE

vs.

Demarcus Foster

DEFENDANT

Indictment for

Possession of Firearm or Ammunition by Person Convicted of a Violent Felony

16-23-0500(A)
Felony/Class F
CDR Code 3434

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

Defendant

I, _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. Pls. And G.S.

FILED
OFFICE OF CLERK
OF COURT

2018 JUN -5 AM 11:27

CLERK OF COURT
LANCASTER, SC

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on May 31, 2018 the Grand Jurors of Lancaster County present upon their oath:

Possession of Firearm or Ammunition by Person Convicted of a Violent Offense

On or about September 27, 2017, the Defendant, Demarcus Foster, did in Lancaster County, commit the crime of Possession of a Firearm or Ammunition by Person Convicted of a Violent Offense in that the Defendant, who was previously convicted of a violent crime as defined by §16-1-60, that is classified as a felony, was in possession of a firearm when he shot the victim, Joel McLemore, in violation of §16-23-500, 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.

for ALAN WILSON/ HW
SOUTH CAROLINA ATTORNEY GENERAL

WITNESSES

K. Grant-State Law Enforcement Division

K. Grant

ARREST WARRANT NUMBER

2017A2910101974

ACTION OF GRAND JURY

TRUE BILL

Stephen Sumps

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

Docket Number 2018-GS-29-903

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

May Term 2018

THE STATE

vs.

Demarcus Foster

DEFENDANT

Indictment for

Possession Weapon During Violent Crime

16-23-0490
Felony/Class F
CDR Code 0549

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

Defendant

I, _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. Pls. And G.S.

FILED
OFFICE OF CLERK
OF COURT
2018 JUN -5 AM 11:27
CLERK OF COURT
LANCASTER, SC

4/26/2019 1:51 PM FROM: Lancaster County TO: +18037341397 P. 6

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on May 31, 2018 the Grand Jurors of Lancaster County present upon their oath:

Possession of a Weapon during a Violent Crime

On or about September 27, 2017, the Defendant, Demarcus Foster, did in Lancaster County, commit the crime of Possession of a Weapon during a Violent Crime in that the Defendant possessed a firearm during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined by §16-1-60, when he shot the victim, Joel McLemore, in violation of §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.

for ALAN WILSON/ HSW
SOUTH CAROLINA ATTORNEY GENERAL

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,

This 27th day of April, 2020.

s/David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED
Apr 27 2020
SC Court of Appeals