

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM PICKENS COUNTY
General Sessions Court
Letitia H. Verdin, Circuit Court Judge

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S.C. SUPREME COURT

Opinion No. 5760 (S.C. Ct. App. filed August 19, 2020)

The State,

Respondent,

v.

Jaron Lamont Gibbs,

Petitioner.

**APPENDIX
VOLUME II OF II**

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1 A Yes.

2 Q Do you ever -- does he ever get any phone
3 calls while he's in the car with you?

4 A Yes, they called him multiple times.

5 Q Okay. Does he answer every time?

6 A Almost.

7 Q And at what point -- do you know where on
8 the map y'all were when they started calling? Do you
9 recall what you told the detective?

10 A Shortly after I pulled off from the stop
11 sign.

12 Q From which stop sign?

13 A This one. (Indicating.)

14 Q Is it safe to say that that entire route
15 from Curtis Circle over to this four-way stop at
16 Cambridge and Issaqueena is about a mile and a half?

17 A Yes..

18 Q It's about a four- or five-minute drive?

19 A Yes.

20 Q Now, do you guys come to a stop at that
21 four-way stop?

22 A Yes.

23 Q All right. And where is the white SUV at
24 that point?

25 A Right behind me.

1 Q And again, there's no car accident or
2 anything like that; is that right?

3 A No.

4 Q When you get to that four-way stop, what
5 happens?

6 A Jaron gets out the car. He walks over to
7 the SUV with the weapon.

8 Q All right. Let me stop you just real quick.
9 Where was he seated in your car?

10 A On the passenger's side.

11 Q Did he remove that weapon from your glove
12 box or your center console?

13 A No.

14 Q Was that weapon in your car prior to him
15 getting in it?

16 A Not that I knew of.

17 Q How long had you been driving that car?

18 A About a year.

19 Q Let me ask you this way, was it your
20 weapon?

21 A No.

22 Q Did you provide it to Mr. Gibbs?

23 A No.

24 Q So you see him get out of the passenger
25 side. If you've got one car in front, your car and

1 then the SUV behind it, does he walk in between the
2 cars, around all the cars? How does he walk?

3 **A** He gets out of the passenger side of my car
4 and walks behind it and then over to the driver's
5 side of the SUV.

6 **Q** Now, when he gets out, are the people in
7 the white SUV and Mr. Gibbs yelling at each other?

8 **A** From what I could hear, yes.

9 **Q** And at what point do you see him with a
10 weapon?

11 **A** About 30 seconds after he's out of the car.
12 I didn't turn around right away.

13 **Q** And were your windows tinted on your car?

14 **A** No.

15 **Q** So I guess, at some point, you turn around.
16 When you turn around, where is he in his walk towards
17 that car?

18 **A** At the -- beside the driver's side of the
19 door of the SUV.

20 **Q** And where is he holding the gun, at that
21 point?

22 **A** Towards the window.

23 **Q** Okay. And is it barrel towards the window?

24 **A** Yes.

25 **Q** Now, after you see that, what do you do? Do

1 you keep watching? Do you turn back around? What do
2 you do?

3 A I keep watching.

4 Q And what happens?

5 A I can't see that far. By the time that I
6 looked, his hand's in the window -- into the car --
7 in the SUV.

8 Q Okay.

9 A And I can't really see at far distance.

10 Q Okay.

11 A So I didn't really see much after that. But
12 I heard the gun go off.

13 Q All right. And when you hear the gun go
14 off, what do you see Mr. Gibbs do?

15 A He walks back to my car.

16 Q Does he get in your car?

17 A Yes.

18 Q When he gets in your car, does he get in
19 there with a gun? Do you see him with a gun?

20 A I didn't see the gun when he got back in
21 the car.

22 Q What did you see him have instead?

23 A A brown satchel.

24 Q Did you see him with that brown satchel
25 when you picked him up?

1 A Yes.

2 Q At that point, do you call 911 at all?

3 A No.

4 Q At that point, does Mr. Gibbs call 911 at
5 all?

6 A No.

7 Q At that point, do you drive straight to the
8 Clemson Police Department?

9 A No.

10 Q Does Mr. Gibbs tell you to drive to the
11 Clemson Police Department?

12 A No.

13 Q Do you get out to check on the people
14 behind you?

15 A No.

16 Q Does Mr. Gibbs get back out to check on
17 them?

18 A No.

19 Q Okay. Which way do you guys -- well, let me
20 ask you this, when he gets back in the car, what do
21 you say to him?

22 A I asked him what happened, multiple times.
23 I asked him if he shot anybody.

24 Q Okay. And what did he say to you?

25 A He said no, it just went off, it just hit

1 the top of the roof.

2 Q Okay. And did he also tell you that
3 everything was okay?

4 A Yes.

5 Q So he tells you, no, I shot the roof, it
6 just went off, everything is okay?

7 MS. D. WHITE: Objection, Your Honor. That
8 is not what she said. She said that he said it
9 just went off, it hit the top of the roof.

10 THE COURT: Okay. All right.

11 BY MS. HINTON:

12 Q Okay. Well, let me ask you this. Did you
13 ever tell law enforcement that he said no, I shot the
14 roof, everything is okay, drive off? Do you recall
15 telling Detective Arflin that on your recorded
16 statement?

17 A Yes.

18 Q So that is what he said; is that correct?

19 A I'm not sure.

20 Q Okay. Is that what you told Detective
21 Arflin two hours after this happened that that's what
22 he said?

23 A Yes.

24 Q Did he ever say to you that there was a
25 struggle over the gun?

1 **A** No.

2 **Q** Did he ever say to you they pulled a weapon
3 on me so I had to defend myself?

4 **A** No.

5 **Q** Does -- who tells you where to go after
6 that? How do y'all -- why do you decide to drive off?

7 **A** He told me to just drive off.

8 **Q** And when you drive off, where do you go?

9 **A** To Edgewood.

10 **Q** And where is Edgewood?

11 **A** In Pendleton.

12 **Q** Okay. Is it an apartment complex?

13 **A** Yes.

14 **Q** And when you go there, do you get out of
15 the car?

16 **A** No.

17 **Q** Does Mr. Gibbs get out of the car?

18 **A** Yes.

19 **Q** And what do you do?

20 **A** I just sat in the car. Dale comes out of
21 the apartment with John.

22 **Q** What's Dale's last name?

23 **A** Anderson.

24 **Q** And --

25 **A** And his baby mother and his child.

1 Q All right. And where were you guys going to
2 go after that?

3 A Supposed to go to Atlanta, but I told them
4 I couldn't take them to Atlanta anymore, because I
5 was unsure of what really happened.

6 Q So where did you end up taking them?

7 A To Greenville Hospital.

8 Q And why do you take them to Greenville
9 Hospital?

10 A Cause Dale's baby mother told me her mom
11 would let them drive her car.

12 THE COURT: Ma'am, I'm going to have to
13 ask you would you just speak into the microphone
14 a little bit. You've just got a soft voice. I
15 want to make sure everybody can hear you.

16 THE WITNESS: Okay.

17 MS. HINTON: Thank you, Your Honor.

18 BY MS. HINTON:

19 Q So do you take them to GHS to get another
20 vehicle?

21 A Yes.

22 Q And what vehicle, what kind of vehicle did
23 they get into?

24 A A Jeep Cherokee.

25 Q And when I say "they," who all got out of

1 the car, out of your car?

2 **A** Jaron, Dale Anderson, his baby mother and
3 the child.

4 **Q** And does Jaron take that brown satchel with
5 him?

6 **A** Yes.

7 **Q** After you saw the gun that first time when
8 he got out of the car and walked over and put it in
9 the window, did you ever see that gun again?

10 **A** No.

11 **Q** After he got out of that -- out of your car
12 at GHS with a satchel, did you ever see the satchel
13 again?

14 **A** No.

15 **Q** After you leave them at GHS, where do you
16 go?

17 **A** I go to the Clemson Police Department.

18 **Q** And why did you go there?

19 **A** To tell them what I seen and what happened.

20 **Q** How were you feeling when that was all
21 going on? What was your mind-set?

22 **A** I was nervous, scared, flustered.

23 **Q** Okay. And just stepping back a little bit
24 back to the four-way stop, did you ever see anybody
25 get out of the white SUV before Jaron got to the

1 window?

2 A No.

3 Q Did you ever see anybody get out during the
4 time that he was at the window?

5 A No.

6 Q And when you went to the police department,
7 did you give them consent to search your vehicle?

8 A Yes.

9 Q And I'm going to show you what's been
10 entered -- I'm just going to show you two of them,
11 State's 17 and 16. State's 17, was this the vehicle
12 that you were in?

13 A Yes.

14 Q Okay. And there is some damage to the side
15 of that vehicle, did this occur during this whole
16 thing?

17 A No.

18 Q And then, State's 16, what kind of tags are
19 on that, North Carolina?

20 A North Carolina.

21 Q Okay. Did you have North Carolina tags at
22 this time?

23 A Yes.

24 Q Now, you said that while you guys were at
25 Berkeley -- and I'll put State's 1 back up -- I'm

1 sorry -- around Abel Road at the stop sign, they
2 started calling. What did Mr. Gibbs say to them when
3 he was on the phone with them?

4 **A** That he would be right back and he would
5 give them their money back.

6 **Q** Okay. Did he also receive a phone call when
7 y'all were on the way to Greenville Hospital?

8 **A** Yes.

9 **Q** Okay. And what was said on that phone call?

10 **A** Well, from what I could hear, the person on
11 the phone said someone was shot in the head. Jaron
12 said, no, nobody got shot, nobody's hurt.

13 **Q** Okay. At that point then, he called 911
14 then, Mr. Gibbs?

15 **A** No.

16 **Q** At that point, did you call 911?

17 **A** No.

18 **Q** At that point, did either one of you drive
19 back to the scene to check on anybody?

20 **A** No.

21 **Q** Were you scared at all during this whole
22 thing?

23 **A** Yes.

24 **Q** Okay. Tell me why you were scared.

25 **A** I was not sure what really happened.

1 Q Were you scared for other people, for
2 yourself? Who were you scared for? Both?

3 A Yes.

4 Q Which one?

5 A Both.

6 Q All right. Ms. Gilstrap, thank you. Please
7 answer any questions -- I'm sorry. I do have one more
8 question. Prior to getting to that four-way stop, you
9 do pass other things, correct? You mentioned in your
10 statement that you pass a 7-Eleven; is that right?

11 A Yes.

12 Q There's a Walmart on that map. Did you guys
13 pull off anywhere or did y'all go straight from when
14 they got behind you on Abel Road to that four-way
15 stop?

16 A I went straight from the stop sign to the
17 other stop sign.

18 Q Okay. Did you make any stops prior to the
19 four-way?

20 A No.

21 Q All right. Ms. Gilstrap, that is all that I
22 have. Please answer any questions Ms. White may have.

23 CROSS-EXAMINATION

24 BY MS. D. WHITE:

25 Q Ms. Gilstrap, you went to the police

1 department within about two hours of this happening;
2 is that right?

3 A Yes.

4 Q And at that police department, did you give
5 a written statement?

6 A Yes.

7 Q And did you write this out yourself?

8 A Yes.

9 Q I'm going to give you a copy of that.

10 MS. HINTON: Judge, I don't know if we're
11 impeaching her or what we're doing, but I think
12 she has the opportunity to deny it or not
13 remember or something like that before we go
14 down this route.

15 MS. D. WHITE: I'm not going to read the
16 statement at all. I'm going to ask her on cross
17 if she's given a prior statement and she can
18 have it, if she wants to look.

19 THE COURT: I don't have any problem with
20 her looking at this point. We'll see.

21 MS. HINTON: Thank you.

22 BY MS. D. WHITE:

23 Q Now, you said that you received a call from
24 Jaron and he wanted to go to Atlanta, wanted a ride,
25 is that correct, in your written statement?

1 A Yes.

2 Q And you agreed to pick him up near Curtis
3 Circle?

4 A Yes.

5 Q And you said that you did that; is that
6 right?

7 A Yes.

8 Q You say a white SUV pulled up and the
9 people in the white vehicle were pointing at Jaron;
10 is that right?

11 A Yes.

12 Q Now, you said that they got behind you and
13 followed you to the stop sign. You said they didn't
14 hit you, they didn't run into you. How are they
15 driving?

16 A Very aggressively.

17 Q How did that make you feel when they were
18 driving that way?

19 A Scared. They were tailing my car.

20 Q So as they drove and followed you, you said
21 in your -- let's go back to your written statement.
22 You said that the people were pointing at him. You
23 said that he was getting calls; is that correct?

24 A Yes.

25 Q And you said that you heard them -- Jaron

1 -- the boy talking about Jaron having his money; is
2 that correct?

3 A Yes.

4 Q Now, I believe you said they followed you
5 past Walmart all the way to the four-way stop; is
6 that correct?

7 A Yes.

8 Q And then you write that he gets out and he
9 walks to the driver's side; is that correct?

10 A Yes.

11 Q And you say -- you use these words, I seen
12 him holding a gun and he reached inside the car.
13 Holding a gun and he reached inside the car. That's
14 an interesting choice of words. Did you choose words
15 or did somebody else?

16 A I did.

17 Q And is that how you would describe what
18 happened?

19 A Yes.

20 Q Were you alone in the room when they told
21 you to write this statement?

22 A Yes.

23 Q In other words, the detective was in there
24 questioning you during the videotape and then he left
25 the room and you wrote out this statement; is that

1 correct, or do you remember?

2 A I'm not sure.

3 Q Okay. All right. And you say, I couldn't
4 see past that. A few moments later, I heard a
5 gunshot. Do you recall saying that?

6 A Yes.

7 Q And you say I asked him what happened and
8 if anyone got hurt or shot. He said no, the gun just
9 went off and it hit the roof of the car and
10 everything is okay. Do you remember writing that?

11 A Yes.

12 Q Do you remember ongoing that you went
13 through where y'all went and picked up Dale and all
14 of that? But then do you remember that, talking about
15 the phone call that you just mentioned where you got
16 a phone call saying that someone might have been shot
17 in the head and he said no one got shot, it hit the
18 roof of the car, everything is going to be okay? Do
19 you remember that?

20 A Yes.

21 Q Now, you wrote this within a couple of
22 hours after this occurred; is that right?

23 A Yes.

24 Q In your taped interview, you say multiple
25 times, he said it went off and hit the roof of the

1 car. You say one time whatever you told the
2 prosecutor just now -- I can't remember what the
3 words were. Something like I did -- I heard it go off
4 or something. I can't remember. Whatever you just now
5 told her. Do you know which one it was? It just went
6 off or the other?

7 A Yes.

8 Q What do you believe it was?

9 A It just went off.

10 Q Why do you think that?

11 A I said it multiple times.

12 Q Were you crying during this statement?

13 A Yes.

14 Q Through some of it? And again, you wrote,
15 is this correct, he was holding a gun; he reached
16 inside the car; I couldn't see past that; a few
17 moments later, I heard a gunshot?

18 A Yes.

19 Q And he definitely got in this car with a
20 brown satchel-type thing; is that right?

21 A Yes.

22 Q And he wanted you to take him to Atlanta?

23 A Yes.

24 Q Are you aware of whether or not he knows a
25 girl by the name of Chance? Do you know?

1. A I'm not sure who that is.

2. Q You're not sure? Okay. You don't know the
3 names. Are you aware that he knows some people in
4 Atlanta?

5. A Yes.

6. Q Now, did you, at any time -- during the
7 time that you all were being followed, at any time
8 during that time, did you hear Jaron threaten anybody
9 or act like he was going to do any harm to anybody?

10. A No.

11. Q Was this a sunny day?

12. A Yes.

13. Q Was it a busy intersection where this
14 happened?

15. A Yes.

16. Q Do you know any of the people who were in
17 the other car?

18. A Yes.

19. Q Okay. How did you know them? Or let me ask
20 it another way, did you -- had you met them before?
21 Before that day is what I'm talking about.

22. A Yes.

23. Q Okay. So you knew of them?

24. A Yes.

25. Q Let me put it this way, do you know them

1 well enough that you can identify them? Could you.
2 tell them who was in that car?

3 A Yes.

4 Q And were they close enough that you could
5 see who they were yourself during this -- in other
6 words, when did you identify them, at the beginning,
7 during the chase, or at the end?

8 A At the very end.

9 Q When you all were driving along this
10 approximately mile and a half, did you all pass -- is
11 this a public road?

12 A Yes.

13 Q Are there any businesses along that road,
14 for instance, 7-Eleven, Walmart, that sort of thing?

15 A Yes.

16 MS. D. WHITE: Just one minute please.

17 (Pause.)

18 Nothing further.

19 THE COURT: Any redirect?

20 MS. HINTON: Just briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. HINTON:

23 Q Ms. Gilstrap, you said that they were
24 driving aggressively. Then I think you explained that
25 they were tailing your car; is that correct?

1 A Yes.

2 Q And, at no point, when they are tailing
3 your car, do you call 911 to report that someone's
4 driving aggressively behind you; is that right?

5 A No.

6 Q And you said, on your testimony on direct,
7 that I asked you when he walked up to the car and
8 reached in the car if the barrel was out towards the
9 people in the car. What was your response?

10 A That it was.

11 Q And you said that Jaron made no threats to
12 anyone, but you did testify that he was yelling at
13 the people in the car, correct, and they were yelling
14 back at him; is that right?

15 A I'm not sure.

16 Q Was it not your testimony on direct that
17 when he got out of your car and walked towards the
18 Explorer, that they were yelling back and forth at
19 each other, was that not your testimony under oath?

20 A Yes.

21 Q Okay. And you did say, at least once in
22 your recorded statement that he said, no, I shot the
23 roof. Is that right?

24 A Yes.

25 Q In fact, isn't it true that that was the

1 first statement at 14:52 that you gave to law
2 enforcement? That was the first statement that you
3 said, actually, is that he said, no, I shot the roof,
4 everything is okay, drive off; is that right?

5 A Yes.

6 MS. HINTON: That's all I have.

7 RECROSS-EXAMINATION

8 BY MS. D. WHITE:

9 Q And in that same statement, you're saying
10 multiple times -- you are crying during that time --
11 you say multiple times he said it went off and hit
12 the roof; is that correct?

13 A Yes.

14 Q And your recollection is that's the one
15 that's correct?

16 A Yes.

17 MS. HINTON: Objection, Judge.

18 THE COURT: What's the objection?

19 MS. HINTON: The testimony and your
20 recollection is that's -- which one is correct.

21 THE COURT: Overruled.

22 MS. HINTON: May she be excused?

23 THE COURT: Any objection to her being
24 excused?

25 MS. D. WHITE: No, Your Honor.

1 **THE COURT:** Thank you, ma'am, for being
2 here.

3 **THE WITNESS:** Thank you.

4 **MS. HINTON:** Sorry, Your Honor.

5 **THE COURT:** That's fine.

6 **MS. HINTON:** State would call Deputy
7 Robert Porter to the stand.

8 **MS. D. WHITE:** Your Honor, may we approach
9 the bench while he comes in?

10 **THE COURT:** Oh, sure.

11 (Bench conference is held off the record.)

12 **ROBERT PORTER**

13 having first been duly sworn, testifies as follows:

14 **THE CLERK:** Thank you, sir. If you would,
15 have a seat and state your name for the record
16 please.

17 **THE WITNESS:** Sergeant Robert Arthur
18 Porter.

19 **DIRECT EXAMINATION**

20 **BY MS. HINTON:**

21 **Q** All right. Sergeant Porter, before we get
22 started, just to be very clear, the victim in this
23 case is named Robby Porter. Are you related at all to
24 Mr. Porter?

25 **A** I am not.

1 Q Okay. You just happen to share the same
2 name?

3 A Yes.

4 Q Where are you employed?

5 A The Pickens County Sheriff's Office.

6 Q And how long have you been there?

7 A I been with the sheriff's office since
8 August of 2005.

9 Q And how long have you been in law
10 enforcement?

11 A In some capacity since '93, but as a full-
12 time officer since June of 2000.

13 Q Prior to Pickens County, where did you
14 work?

15 A Clemson City Police Department.

16 Q Are you familiar with the area of Clemson
17 City?

18 A Yes, resident of the area, as well.

19 Q On August the 1st of 2015, were you in that
20 area?

21 A Yes.

22 Q And where exactly were you?

23 A At the time, I was traveling down 123 from
24 Easley coming into Clemson. I had heard radio traffic
25 from -- as a supervisor for the Sheriff's Office, I

1 monitor multiple agencies. I heard EMS being
2 dispatched to a shooting at the intersection of
3 Issaquena Trail and Cambridge Drive. I was able to
4 make a U-turn on 123. I was right there at it. I was
5 on scene in less than a minute.

6 Q And when you arrived on scene was any law
7 -- other law enforcement present yet?

8 A No.

9 Q Were there other cars present though?

10 A When I first arrived, there was a silver
11 Chrysler and then a white Ford Explorer that the
12 bystanders were pointing to me to my attention.

13 Q And that silver Chrysler, was that the
14 suspect's car or a witness' car?

15 A I believe that was the witness that was on
16 the phone with 911. She was the first person that I
17 saw. She was pointing me towards the white Explorer,
18 along with the other bystanders. I asked who was
19 driving that car. She said that's mine. Then she was
20 telling dispatch that the sheriff's deputy was here.

21 Q And when you arrived to the white Explorer,
22 what did you find?

23 A I first went to the driver's side. The
24 driver's side window was down. The gentleman that was
25 in the driver's seat wearing a red shirt was holding

1 the passenger's head with, like, a towel or a shirt.
2 He was trying to control the bleeding. There was
3 another bystander. When I asked what happened, he
4 described to me what he saw.

5 Q Were you able to obtain vehicle information
6 on the suspect?

7 A When I asked what happened, the white, male
8 gentleman that was --

9 MS. D. WHITE: Your Honor, I'm going to
10 object to any hearsay.

11 BY MS. HINTON:

12 Q Don't tell me what he said, but who
13 informed you of the vehicle?

14 A I'm sorry. Repeat..

15 Q Don't tell me exactly what he said, but
16 just tell me who gave you vehicle description
17 information. Was it the people in the white Explorer
18 or was it another witness?

19 A I believe it was another witness that had
20 given me the description.

21 Q Okay. Do you have any training in -- any
22 EMT or EMS training?

23 A Yes, prior to working for the sheriff's
24 office, from 1997 until 2005, I was employed by
25 several folks but, most recently, Pickens County EMS.

1 Then I moved to the sheriff's office full time.

2 Q So given that training, do you help at all
3 with the people on scene and their injuries?

4 A Yes, when -- shortly after I arrived, the
5 paramedic that I was familiar with, he arrived,
6 Mr. Thackston. And he removed the patient, the victim
7 from the passenger seat of the vehicle onto the
8 ground. Then I assisted him with doing the -- what we
9 call ventilations, what people see on TV as the bag
10 to provide air for the victim.

11 Q And in addition to assisting with the
12 victim, did you assist in securing the scene at all?

13 A After Mr. Thackston had more help come,
14 after about five minutes, and then we secured the
15 scene.

16 Q And what do you do to secure a scene? What
17 does that mean?

18 A Once deputy -- not deputy -- Sergeant
19 Bridgeman with the Clemson City Police Department
20 arrived, I told him what the bystanders had passed on
21 to me, in terms of description. Then, we used crime
22 scene tape to block off the Issaqueena end of
23 Cambridge Drive. Then we put crime scene tape closer
24 to the Ingles end of Cambridge Drive to limit the
25 traffic. Then, since my car was inside the crime

1 scene tape at that time, I offered my car available
2 for Clemson PD to give the witnesses an air-
3 conditioned car while they waited for the
4 investigation to continue.

5 Q Now, you said to help with traffic. Is this
6 a busy intersection?

7 A It's a very busy intersection. It's right
8 there next to the Lowe's there in Clemson. Then
9 there's a new student apartment complex right there
10 as well.

11 Q And you said there were multiple witnesses
12 on the scene. Did you interview any of those
13 witnesses?

14 A I, personally, just tried to collect very
15 basic information to pass on to the Clemson officers
16 and assist them with whatever they directed to me.
17 The majority of what I did was assist with patient
18 care and give them extra resources so they didn't
19 have to worry about traffic.

20 Q And are you in the vicinity of a lot of
21 these lay witnesses while you are on scene?

22 A Yes.

23 Q And do you hear them getting together and
24 getting their story together and getting their story
25 straight so they can all say the same thing?

1 **A** No, we try to keep them very separated,
2 mainly into -- the folks that were inside the vehicle
3 separate from the folks that were bystanders. And
4 then there was also folks that just happened to hear
5 the shot that were residents there in the area. We
6 didn't want those three groups to interact.

7 **Q** So you did not hear anybody say, hey, let's
8 get together and tell this story?

9 **A** No.

10 **Q** When you arrived, did you see any evidence
11 that there had been any sort of car accident or
12 anything like that?

13 **A** The white Ford Explorer had prior -- it
14 appeared to be old damage. At one point in time, the
15 gentleman that was the driver, I witnessed him, out
16 of frustration, punch his own car. That was after the
17 victim had already been taken with EMS.

18 **Q** At some point, are you aware that purple
19 gloves are placed on the hands of Hunter Raby, the
20 driver of the white Explorer? Are you aware of that
21 at all? You have any knowledge of that?

22 **A** I'm not aware of that, no.

23 **Q** Now, did you proceed with this
24 investigation as Pickens County or did you pass it on
25 to another jurisdiction?

1 **A** It was Clemson City's investigation. I just
2 gave them my -- I just gave them my contact
3 information. If they needed me, they could contact
4 me.

5 **Q** And were you equipped with a body cam that
6 day?

7 **A** I was.

8 **Q** Was it on?

9 **A** Yes.

10 **Q** Was it recording?

11 **A** Yes.

12 **Q** And did you turn that over?

13 **A** Yes.

14 **Q** Back in 2015, how long had you had a body
15 cam?

16 **A** I purchased the body cam myself after the
17 Ferguson, Missouri, incident happened. So probably --
18 I had it shortly two months after Ferguson, Missouri.
19 I'm not certain of the exact date, but I've been
20 using one since then.

21 **Q** So yours was not county issued?

22 **A** No, it was not.

23 **Q** How many road officers in the county had
24 body cams at that time?

25 **A** Right now, we're currently in a demo unit

1 of the ones provided through the State program. So
2 right now, all the Community Action Team has county-
3 issued body cameras.

4 Q And that is today, correct?

5 A That is today.

6 Q And how many people are on the Community
7 Action Team?

8 A Five.

9 Q All right. And back in 2015, other than
10 you, are you aware of anybody else in the Pickens
11 County Sheriff's Office that had a body cam?

12 A We had a previous deputy that worked for us
13 at the time that also had one of his own.

14 Q Was he on the scene?

15 A No, he was not.

16 Q Were you aware of anybody else in your
17 office that had one?

18 A No.

19 Q Sergeant Porter, that's all I have. Please
20 answer any questions that Ms. White may have.

21 THE COURT: Ms. White?

22 CROSS-EXAMINATION

23 BY MS. D. WHITE:

24 Q Yes, sir. Do you know when Clemson Police
25 Department got body cams?

1 A I do not know.

2 Q Okay. And there were a lot of Clemson
3 people there as well; is that correct?

4 A Sergeant Bridgeman arrived within a minute
5 of my arrival.

6 Q Now, it's good to see your face. I saw
7 everything you saw, and I never saw you. So during
8 your time there, you quickly start talking about
9 gunshot residue. You realized that was an important
10 issue, didn't you?

11 A Yes.

12 Q You remember that on the body cam you're
13 saying, preserve this, hurry up and swab this before
14 there's a bandage, et cetera. Do you remember doing
15 that?

16 A I did not -- I remember bringing to Clemson
17 PD who I believed was the driver. After a while, he
18 complained of having a headache, I guess after the
19 adrenaline worn off, is my opinion. So the EMS folks
20 looked at him. And when they parted his hair, they
21 saw what they saw as an injury.

22 Q But my question is, do you remember that
23 picked up on the body cam, you talking to people
24 about -- to other officers there, saying you need to
25 get GSR; you need to swab their hands; you need to

1 swab this for gunshot residue?

2 A I recall -- I don't know that I would have
3 gave that specific instructions because it wasn't my
4 investigation. I do remember speaking to EMS saying
5 if it's not a life-threatening injury, could they
6 wait for Clemson City's folks to make a determination
7 of what they want to do with him.

8 Q All right. And Sergeant Bridgeman from
9 Clemson Police Department was there just -- right
10 shortly after you; is that ---

11 A Yes.

12 Q --- correct? And you would -- this call
13 came in around 12:40, somewhere in there, that's
14 about the time that you got this call. It was right
15 after that; is that right?

16 A Approximate time, yes.

17 Q Now, you said that -- you said that you all
18 tried to keep the witnesses separated; is that
19 correct?

20 A The limited interaction that I had with
21 them was, you know, -- it was Clemson City's case. I
22 really tried to keep to an assistant role and not be
23 an active role in their investigation.

24 Q So are you aware that we actually, on the
25 body cam, can see Kalyn hugging one of the witnesses

1 who testified? I just took a still picture off your
2 body cam. The girl in the car talking to two
3 witnesses right here. Are you aware that that was
4 actually happening? I know you were busy doing lots
5 of different things, but are you aware that that was
6 happening at the time?

7 **A** I did not know at the time.

8 **Q** Okay. So you are not denying that they were
9 intermingling back there. You just had a lot going
10 on?

11 **A** I wasn't in the active role of trying to
12 keep them separated other than after things slowed
13 down, there was -- I noticed a group over here, a
14 group there, group there.

15 **Q** Okay.

16 **A** At what time was that body cam still image
17 taken, is my question?

18 **Q** It just -- we just took various ones off of
19 your body cam.

20 **A** But my question is -- that's very important
21 to point and time. If you're asking me to clarify
22 something, I need to know what time in the process.
23 Was that before EMS left with the victim or after?

24 **Q** About five minutes into the body cam.

25 **A** So while EMS is still there?

1 Q Yes.

2 A Okay.

3 Q So, sir, did you happen to notice if the
4 Explorer, the SUV, had tinted windows? Did you happen
5 to notice that?

6 A I know when I first got there, the driver's
7 side window was down.

8 Q And the other three were up is what you say
9 on your body cam. Does that sound fair?

10 A I'd have to review it to recall the answer
11 to your question.

12 Q Okay. Well, would you agree that it was a
13 very hot day that day?

14 A It's August.

15 Q If, in fact, it was a hot day, if, in fact,
16 this vehicle did not have air conditioning, if, in
17 fact, there were three people in that vehicle, do you
18 find it peculiar that the three windows would be up
19 and only the driver's window would be down on that
20 kind of day?

21 A I can't testify to you what the vehicle's
22 condition was before, about whether it would be up or
23 down. There's multiple reasons that folks may have
24 their windows up or down.

25 Q Well, if you have tinted windows, no one

1 could see into your vehicle at what you're doing, can
2 they?

3 **A** Depending on the tint level. I have tinted
4 windows, but you can still see inside my patrol car.

5 **Q** Have you seen the photos of this case?

6 **A** No, I have not.

7 **Q** Were you involved, at all, in searching the
8 vehicle?

9 **A** What would you define as searching? What I
10 personally recall is, I do remember one particular
11 point in time we were trying to identify the victim,
12 me trying to get back inside the vehicle, but the
13 door -- one of the occupants locked the vehicle once
14 we removed them out the car. I personally did not
15 enter inside the vehicle.

16 **MS. D. WHITE:** Just one minute, please.

17 (Pause.)

18 No further questions.

19 **THE COURT:** All right. Anything else for
20 this witness?

21 **MS. HINTON:** No, Your Honor. May he be
22 excused?

23 **MS. D. WHITE:** No objection.

24 **THE COURT:** Thank you, sir, for being
25 here. Any objection?

1 MS. HINTON: 12:30 or 1:00.

2 THE COURT: --- 12:30 or 1:00. So just so
3 you know, I get -- start to get hungry about
4 right now. So, I mean, I have to be honest.
5 Okay. All right. Ready to call your next
6 witness?

7 MS. HINTON: I am, Your Honor. Thank you.
8 The State would call Detective Mike Arflin.

9 MICHAEL ARFLIN

10 having first been duly sworn, testifies as follows:

11 THE CLERK: Thank you, sir. If you would,
12 have a seat and state your name for the record
13 please.

14 THE WITNESS: Michael Arflin.

15 DIRECT EXAMINATION

16 BY MS. HINTON:

17 Q Detective Arflin, where are you employed?

18 A Clemson City Police Department.

19 Q And how long have you been employed there?

20 A I've been there since 2008.

21 Q And did you have any prior law enforcement
22 experience prior to that?

23 A Yes, I did. I started at the Anderson
24 County Sheriff's Office in 1998.

25 Q Did you take any breaks in the law

1 enforcement career at all?

2 **A** For military service.

3 **Q** Were you a detective on August the 1st of
4 2015?

5 **A** Yes, ma'am. I was the on-call investigator.

6 **Q** And did you arrive to a scene at the
7 intersection of Cambridge Drive and Issaqueena Trail?

8 **A** Yes, ma'am.

9 **Q** How long after the initial call did you get
10 there? Do you recall?

11 **A** I believe I received a call about 10 til
12 1:00. It was probably 20 minutes max before I
13 arrived.

14 **Q** Were you coming from your house, the police
15 department? Where were you coming from?

16 **A** From my house.

17 **Q** How far is that location, that intersection
18 from the police department?

19 **A** In one direction down Issaqueena and up 123
20 is three miles. It takes approximately four minutes.
21 In the other direction, if you turned around and went
22 back down 93 to 123, it's 2.8 miles and about five
23 minutes because of traffic.

24 **Q** When you arrived on scene, had crime scene
25 tape already been put up?

1 **A** Yes, ma'am.

2 **Q** And when you arrived to the scene, what do
3 you find?

4 **A** The first thing I saw was Pickens County
5 patrol car, Pickens County Sheriff's Office patrol
6 car, parked inside the scene. There was a white male
7 bandaged, sitting in the back seat with his feet on
8 the ground. The door was open. He was sitting
9 partially in the car.

10 **Q** Which car?

11 **A** The Pickens County Sheriff's Office car. I
12 saw the white SUV, the white Ford Explorer, inside
13 the crime scene tape. To the left of them, on the
14 side of Cambridge Road, I saw a line of individuals.
15 Did not know who they were at that point. But they
16 were sitting along that woodline. In that
17 intersection, that was the only shade that could be
18 offered at all. It was August 1st and hot. Then, I
19 was met directly by my chief. He met me in the middle
20 of the road to ask me what I knew. I told him I knew
21 nothing at that point.

22 **Q** And we talked about -- to be clear, the
23 woodline that they were on, was that on Cambridge
24 Drive or on Issaqueena?

25 **A** It was on Cambridge.

1 Q And we talked about there was a woodline
2 and I'll show you a photo in a minute. But how deep
3 do those woods go before you get to the next --

4 A It was more like a hedge row straight
5 through, basically, a privacy area into another yard.

6 Q When you arrive, has Robby Porter already
7 been transported?

8 A Yes.

9 Q And, at some point, do you develop a
10 suspect?

11 A Yes.

12 Q And who -- don't tell me what they said,
13 but who develops that suspect for you?

14 A Sergeant Tim Bridgeman was the first to
15 bring his name to me. After that, in speaking with
16 witnesses on the scene, I learned that name by
17 nickname from Hunter Raby and then by full name and
18 nickname from Kalyn Meaders.

19 Q And when you first get there and you're
20 talking to Hunter Raby and Kalyn, how are they each
21 acting?

22 A Kalyn was visibly upset, crying, fairly
23 lucid and able to talk. Given her circumstance, she
24 was upset about her husband. Kept asking when she
25 could get to him. But she was able to describe the

1 events and maintain her composure well enough to
2 speak to me throughout.

3 Hunter Raby was also visibly shaken. By
4 that point, they had discovered the graze across his
5 head. But he seemed to be completely coherent. I
6 didn't see any signs of anything I would be concerned
7 about as far as head trauma.

8 Q Well, let me ask you to, as an officer, are
9 you trained, prior to speaking to someone, to
10 determine whether or not they are too intoxicated to
11 speak with you?

12 A It -- through experience and some training,
13 we are taught to recognize whether or not somebody is
14 intoxicated either by drugs or alcohol. It comes more
15 from experience.

16 Q Okay. And at that point, how many years of
17 experience had you had?

18 A 16.

19 Q And in your 16 years of experience, in
20 observing Mr. Raby and Ms. Meaders at that time, did
21 you notice either one of them to be intoxicated?

22 A No.

23 Q Were you also able to develop a suspect
24 car?

25 A Yes.

1 Q And how did you develop that?

2 A Through speaking with witnesses on the
3 scene. They all describe a similar car. The only
4 thing that ever changed in their descriptions is
5 silver or gray.

6 Q And did you personally speak to Fredricka
7 Gibson?

8 A I did.

9 Q And did you verbally speak with her prior
10 to getting a written statement from her?

11 A Yes.

12 Q Did you personally speak to Alex Saidat?

13 A Yes.

14 Q And did you get a verbal statement before
15 you got a written from him?

16 A Yes.

17 Q Did you personally speak to Lena Saidat?

18 A Yes, ma'am.

19 Q Did you get a verbal statement from her
20 prior to getting a written statement?

21 A Yes, ma'am.

22 Q What about Hunter Raby? Did you personally
23 speak with him?

24 A Yes, ma'am.

25 Q Did you get a verbal statement from him.

1 prior to getting a written?

2 A Yes, ma'am.

3 Q And what about Kalyn Meaders? Did you speak
4 with her?

5 A Yes, ma'am.

6 Q And did you also get a verbal statement
7 before getting a written statement?

8 A Yes, ma'am.

9 Q Is that your protocol to do it that way?

10 A That's how I normally practice, yes, ma'am.

11 Q Now, when you spoke to them, did you speak
12 to them all in one group?

13 A No, ma'am.

14 Q How did you do it?

15 A I go get one witness and take them back to
16 my patrol car or my police car, which was actually
17 parked on the side of Issaqueena Trail directly in
18 front of the Wesleyan Church across the street from
19 the incident location, and speak with them one on one
20 there.

21 Q And did you, at any point, see them
22 gathering together and huddling together to discuss
23 their stories so they could all tell the same one?

24 A No.

25 Q In fact, did their stories vary to some

1 degree?

2 A Yes.

3 Q Is that what you would expect when --

4 MS. D. WHITE: Objection to leading, Your
5 Honor.

6 THE COURT: Sustained.

7 MS. D. WHITE: This is her witness.

8 BY MS. HINTON:

9 Q Okay. I'll move on. You spoke about the
10 church. Is there a church in close proximity to the
11 intersection?

12 A Yes, there is.

13 Q Is there any cameras at that church?

14 A Not at the time.

15 Q Do you know when that church got cameras?

16 A I spoke with the pastor. He said about a
17 year ago. They had one directly outside their church
18 office.

19 Q So in 2015, were they equipped with
20 cameras?

21 A No, ma'am.

22 Q Did you instruct Kevin Shaw to take
23 photographs and process the scene?

24 A Yes, I did.

25 Q Did you guys look for a weapon at all?

1 A Yes.

2 Q Did you find one?

3 A No.

4 Q Did you look for shell casings?

5 A Yes.

6 Q Did you find one?

7 A No.

8 Q Are you familiar with firearms?

9 A Yes.

10 Q Are you familiar with it, both personally
11 and professionally?

12 A Yes.

13 Q Do you get training on firearms?

14 A Yes, ma'am.

15 Q Are you familiar with revolvers?

16 A Yes, ma'am.

17 Q Would you expect to find spent shell
18 casings when dealing with a revolver?

19 A No, ma'am.

20 Q At some point, when you're on scene, do you
21 get any notification about Autumn Gilstrap?

22 A Yes.

23 Q And prior to getting notification that she
24 wanted to speak with you, was she identified as
25 someone that had previously been on scene?

1 A Yes.

2 Q And did you go speak with her?

3 A Yes, ma'am. I did.

4 Q Where did you do that?

5 A At the police department.

6 Q When you got there, what's the first thing
7 that you did with her?

8 A Mirandized her.

9 Q And did she voluntarily speak with you?

10 A Yes.

11 Q Did you also ask for consent to search her
12 vehicle?

13 A Yes, ma'am. We did.

14 Q Where was her vehicle when you asked for
15 consent?

16 A It was in the front parking lot of the
17 police department.

18 Q And did you have anybody monitoring that
19 vehicle?

20 A Deputy Porter from Pickens County Sheriff's
21 Office was at the police department when Autumn
22 arrived. I was still on the crime scene. So between
23 the time that I -- my drive there, that four- or
24 five-minute drive to get to the police department, he
25 positioned his patrol car behind hers and she was

1 already inside the building in the interview room.

2 Q How did you determine that that car did, in
3 fact, belong to Autumn Gilstrap?

4 A By her statement.

5 Q And did you ever check the license plate?

6 A We did.

7 Q What did that come back to?

8 A Came back to her mother in North Carolina.

9 Q Autumn's mother?

10 A Yes.

11 Q When you searched -- when her vehicle was
12 searched, did y'all find a weapon?

13 A No.

14 Q Did y'all find a brown satchel?

15 A No.

16 Q Did y'all find any evidence of a crime
17 whatsoever?

18 A No.

19 Q Was there any blood in that vehicle?

20 A No, ma'am.

21 Q Prior to that shooting, did you receive any
22 911 calls from either Autumn Gilstrap or Jaron Gibbs?

23 A No.

24 Q After the shooting, did you receive a 911
25 call that this shooting had happened?

1 **A** No. Well, we had received a phone call -- a
2 911 call that the shooting had happened.

3 **Q** But were either of those phone calls from
4 Autumn Gilstrap or Jaron Gibbs?

5 **A** No.

6 **Q** Now, I want to briefly talk about the car,
7 the white Explorer. There were phones in that white
8 Explorer; is that right?

9 **A** Yes.

10 **Q** And how many phones did you collect from
11 that white Explorer?

12 **A** Two.

13 **Q** And tell me the types of phones that you
14 found.

15 **A** One was a flip phone and one was a Samsung
16 smartphone.

17 **Q** Let me back up just a little bit. Prior to
18 that, had anyone shown you any evidence of calling
19 the defendant?

20 **A** Hunter Raby had.

21 **Q** Okay. And tell me what he showed you.

22 **A** While we were in the back of the ambulance
23 speaking, I asked him to show me because he made
24 mention of making the phone calls to Jaron and that
25 Robby had given the number. I told him to show me the

1 number he called Jaron on. At which point, he held up
2 his phone. There was a phone number that he had
3 called multiple times listed on there.

4 Q Could you tell how many of those calls had
5 connected?

6 A No, I could just tell they were outgoing.

7 Q What kind of phone did Hunter Raby have?

8 A For lack of a better term, a dumb phone, a
9 flip phone.

10 Q And what was the -- did you write down the
11 phone number that he gave you?

12 A I did.

13 Q Did you attempt to trace that phone number?

14 A I did.

15 Q And what did you find when you tried to
16 trace it?

17 A That it came back as a singular number -- a
18 singular wireless number with no listed name on it.

19 Q Is that common or uncommon?

20 A It's more common -- it's not so common, but
21 it's common in the fact that a lot of times, burner
22 phones not -- the phones you can get like, the AT&T
23 go phones, stuff like that that are paid by the
24 month, Boost Mobile. Some Cingular Wireless, stuff
25 like that, won't have anything listed to them other

1 than a wireless number. If I checked my own phone
2 number and my family member's number or likely
3 anybody else in here, the probability is the number's
4 going to come back attached to their name with their
5 service provider.

6 Q And there was some talk about your -- the
7 Clemson Police Department's ability to extract
8 phones. Are you actually the phone extraction person?

9 A I am.

10 Q Let's talk briefly about what you do as far
11 as training to be able to extract phones.

12 A My training came through PATC, which is
13 Public Agency Training -- Training Counsel. They have
14 a technology wing. The first thing we have to do is
15 go to a week-long class. It's on cell phone
16 technology. Basically, in that class, they just teach
17 you the basics about how a cell phone works, how it
18 operates. And you learn a skill called mapping.

19 The next thing I had to do was go to a
20 couple-week class. Went to that class in Georgia.
21 That was cell phone forensics, in which they start
22 taking you through the different programs that
23 agencies across the country use to do their
24 extractions. Some of those were Cellebrite,
25 MOBILedit, and what we use at the police department

1 as Oxygen Forensics. You learn how to use those
2 softwares. You learn how to do some software -- there
3 are some softwares and some phone companies out there
4 that are, for lack of better terms, they are
5 indefeatable or undefeatable.

6 After that class was over with, I took
7 another class, specifically for Oxygen Forensics, to
8 get a certification in the Oxygen Forensics software
9 itself. At which time, we obtained a standard
10 license. In August of last year, the police
11 department finally went forward and got the full
12 software course.

13 Q Okay. And after all that training, did you
14 attempt to extract these two phones?

15 A The dumb phone, the flip phone, no. Those
16 software extraction programs are made for
17 smartphones. The reason is is smartphones, as has
18 been noted earlier in the trial, is a small computer.
19 They are a handheld computer, and the way they
20 operate is off of a database system. Every keystroke,
21 everything you search, every text message you send
22 gets added to a database which is stored inside that
23 phone.

24 Dumb phones, the old flip phones we have,
25 some of the other models, the slide out phones and

1 stuff like that, they are not operating on that
2 standard. All they are is an old cell phone
3 technology that all it does is log outgoing calls and
4 incoming calls. It doesn't maintain that database.
5 Therefore, those extraction softwares will not gather
6 any information on them. There's no use in even
7 attempting those.

8 Q Okay. So in short terms, can you extract a
9 flip phone?

10 A No.

11 Q Okay. I'm sorry. The Android?

12 A It was a Samsung Android phone.

13 Q The Android phone, were you able to extract
14 that one?

15 A No. Samsung is one of the few models --
16 Samsung is, if you don't have a password for it,
17 you're not going to defeat security.

18 Q Okay. And were you ever able to obtain a
19 password for that phone?

20 A No, because in speaking with Ms. Meaders,
21 the day of the incident, she advised me that she
22 didn't think there was a password on the phone. That
23 tells me she wasn't aware of that fact that it was.

24 Q Okay. And whose phone was it that you were
25 trying to extract?

1 A Mr. Porter's.

2 Q And at the point that you were trying to
3 extract it, was Mr. Porter alive?

4 A No.

5 Q There were multiple drugs in that Explorer;
6 is that correct?

7 A Yes.

8 Q Marijuana and controlled substances; is
9 that correct?

10 A Yes.

11 Q And those were not sent off for testing?

12 A No.

13 Q And why is that?

14 A The public safety interest for us -- yes,
15 they were illegal narcotics, no doubt on that, but at
16 this point, we were dealing with two people who had
17 been shot in the head. To us, that was more important
18 to deal with that, as opposed to dealing with what we
19 knew to be illegal drugs. They were seized and placed
20 into evidence. They weren't getting them back. Our
21 focus was on dealing with the shooting itself.

22 Q And did you have an opportunity to get
23 close to the Explorer that day?

24 A Yes.

25 Q And do you know whether the front windows

1 of that Explorer were tinted?

2 **A** No. They weren't tinted. They weren't
3 tinted.

4 **Q** And when I say the front windows -- when we,
5 say the front windows, which windows are we talking
6 about?

7 **A** The windshield and two front -- the front
8 driver's side door and the passenger side door on the
9 front.

10 **Q** Were you able to obtain any fingerprints
11 from the Chrysler?

12 **A** From the Chrysler, there was one.

13 **Q** Were they sent to testing?

14 **A** It was.

15 **Q** Okay. And those were not sent to SLED; is
16 that right?

17 **A** No, they were sent to Greenville.

18 **Q** Is Greenville certified to run prints?

19 **A** Yes.

20 **Q** And what was the result of that?

21 **A** I believe the result was no match found,
22 but it was not Mr. Gibbs' fingerprint.

23 **Q** You also didn't do a photo lineup in this
24 case; is that correct?

25 **A** No, I didn't.

1 Q And why is that?

2 A Because during the initial interviews, I
3 had planned to do several of the witnesses. I had
4 asked if they would be willing to look at a photo
5 lineup. That was actually prior to speaking with
6 Ms. Meaders or Mr. Raby. At that point, it kind of
7 went from being a whodunit to a we have a viable
8 suspect name. All the stories that we had been
9 receiving from all the witnesses more or less matched
10 each other as far as what they'd seen outside the
11 car. So based on all that, we kind of felt like we
12 knew who the -- who the suspect was at that point.

13 Q And other than Mr. Raby and Ms. Meaders,
14 did anybody else that you later talked to confirm the
15 suspect?

16 A When Ms. Gilstrap came to the police
17 department, she named the same suspect.

18 Q There's been some talk about whether or not
19 Clemson had body cams at that time. Do you know
20 whether or not Clemson was equipped with body cams?

21 A We did not. We did not receive body cams
22 until the law went into effect and our policy was
23 passed in January of 2016.

24 Q Once you had developed Mr. Gibbs as a
25 suspect, do you start looking for him?

1 **A** Yes.

2 **Q** And tell me about that process.

3 **A** At that point, several of the other
4 investigators that were working with us, SLED
5 themselves, all started checking addresses we knew
6 him to frequent, places we knew him to be as far as
7 away from -- as far as -- away as Greenville and
8 Spartanburg areas all the way into Seneca. At that
9 point, we kind of started hearing that he may have
10 been in Atlanta.

11 We contacted the U.S. Marshal Service at
12 that point. Initially, when we contacted them, we
13 were looking for him for attempted murder. When Mr.
14 Porter died the next day, that's when the one charge
15 was recalled and upgraded to murder. And again, U.S.
16 Marshal Service was contacted.

17 **Q** So where did you guys -- how did you end up
18 locating him?

19 **A** We received a Crime Stoppers tip that was
20 extremely specific. It not only said that he was in
21 Conway, Georgia, it gave an address and apartment
22 number he was in and advised that he was going to be
23 there until two o'clock in the afternoon. After that,
24 they didn't know where -- the caller didn't know
25 where he was going to be going, but he was scheduled

1 to leave.

2 Q Did you, in fact, find Mr. Gibbs at that
3 location?

4 A The U.S. Marshal Service did. We called
5 them immediately that morning and provided them with
6 that tip information. At two o'clock that afternoon,
7 they called back and said that Mr. Gibbs was in
8 custody.

9 Q I want to show you what's been marked as
10 State's Exhibit Number 2. Can you tell me if you
11 recognize what that is?

12 A Yes, ma'am. That's the intersection of
13 Cambridge Road and Issaqueena Trail.

14 MS. HINTON: Your Honor, at this time, the
15 State would move State's 2 into evidence.

16 MS. D. WHITE: No objection.

17 THE COURT: All right. It's so admitted.

18 (State's Exhibit 2 is admitted into the record.)

19 BY MS. HINTON:

20 Q Is this an aerial view of that area?

21 A Yes, ma'am, it is.

22 Q And just to orient everybody, what is this
23 right here?

24 A That's Trinity Wesleyan Church.

25 Q And the woodline where people were

1 standing, could you point that out?

2 A It would be right in that area right there.

3 Q Okay. And is there a house on that map
4 behind that woodline?

5 A There is. It's right there, ma'am.

6 Q So at any point, were any of the witnesses
7 standing over in this woodline?

8 A No, ma'am, not to my knowledge.

9 Q Now, can you tell me -- first, can you tell
10 me where the suspect -- where the defendant's vehicle
11 and where the victim's vehicle were located?

12 A The vehicle the defendant was in is right
13 here at Cambridge Drive. I apologize. The suspect or
14 the victim's vehicle was parked right behind it right
15 here.

16 Q So this was the area where ---

17 A Yes.

18 Q --- they were located?

19 A Yes, ma'am.

20 Q And can you tell me where the -- where Alex
21 and Lena Saidat's vehicle was?

22 MS. D. WHITE: Your Honor, I'm going to
23 object. From what I understand, he never saw my
24 client's vehicle there, and the witnesses she
25 just asked about testified earlier they moved

1 their vehicle immediately. So unless he can
2 testify ---

3 **THE COURT:** All right.

4 **MS. D. WHITE:** --- of what he saw, I'm
5 going to object.

6 **MS. HINTON:** Judge ---

7 **THE COURT:** Let's see where -- yes, ma'am.

8 **MS. HINTON:** Well, I was just going to say
9 that I will establish that through his
10 investigation, he, obviously, asked them what
11 direction they were coming and where they were
12 at the time that this happened.

13 **MS. D. WHITE:** Your Honor, you don't get
14 around hearsay by saying I got it in an
15 investigation.

16 **THE COURT:** I understand, but we've heard
17 a number of witnesses testify as to this. We're
18 just -- my understanding is we're just setting
19 the scene here. I'm going to allow this
20 testimony very briefly, but nothing further on
21 the matter.

22 **BY MS. HINTON:**

23 **Q** Can you tell me where in your investigation
24 you determined that the Saidats were located?

25 **A** They were coming in this direction right

1 here. (Indicating.)

2 **MS. D. WHITE:** Your Honor, I'm going to
3 object to her putting a mark where the vehicle
4 is. We've had no testimony as to where exactly
5 that vehicle was. Certainly on that road, but --

6 **THE COURT:** The mark is where?

7 **MS. HINTON:** Well, Judge, I think that the
8 Saidats did testify on a different map, which
9 was State's 1 -- this is just a closer up of
10 State's 1 -- of what direction they were coming
11 and where they were. I think there were even
12 questions of there's a stop bar, were you at the
13 stop bar, there's a stop sign. I think, on
14 cross-examination, especially, there was copious
15 amounts of testimony.

16 **MS. D. WHITE:** No, that was Keyin Shaw.
17 Actually, they did not. I don't have any problem
18 with saying they were on that road coming this
19 way. But as to where they were on that road,
20 they never --

21 **MS. HINTON:** That's fine. That's fine.

22 **THE COURT:** All right. All right. If you
23 will, just rephrase.

24 **MS. HINTON:** Sure.

25 **BY MS. HINTON:**

1 Q Which direction were the Saidats coming?

2 A They were coming from this side.

3 Q And which direction was Amelia Hood coming
4 from?

5 A She was coming from the low side.

6 Q And what about Fredricka Gibson?

7 A She would have been behind Ms. Hood coming
8 from the same direction.

9 MS. D. WHITE: I -- I -- well...

10 THE COURT: Yes, ma'am.

11 MS. D. WHITE: That's not correct. I'll
12 just wait.

13 THE COURT: We'll -- you can clear it up
14 on cross-examination.

15 BY MS. HINTON:

16 Q Okay. I'm going to show you other photos
17 that have already been entered into evidence. State's
18 6, what -- who's direction -- who was coming this
19 direction from this angle?

20 A The Saidats.

21 Q And just to be clear, on State's 8, there's
22 a sedan right there. Whose car is that?

23 A That's the Saidats'.

24 Q And then State's 7, there's a white truck
25 over there. Not saying that that's where they were

1 when this happened, but who would be coming from that
2 direction?

3 A Hood and Gibson.

4 Q I believe we've already established that
5 you are familiar with revolvers, correct?

6 A Yes, ma'am.

7 Q And are you familiar with whether revolvers
8 are single action or double action or both?

9 A They can be both or either. It depends on
10 the year, make and the model.

11 Q Are you familiar with how both single
12 action and double action work?

13 A Yes, ma'am.

14 Q Can you tell me --

15 MS. D. WHITE: I'm going to object. This
16 witness has not been qualified, Your Honor, as
17 an expert in firearms. I object to any firearms
18 testimony.

19 MS. HINTON: Judge, we've already
20 established that he's familiar with revolvers
21 through his training and experience as an
22 officer.

23 THE COURT: I'm going to allow -- I'm
24 going to allow him to testify to this. We'll
25 just see how far it goes. I don't know if we're

1 going much further with this.

2 MS. D. WHITE: Your Honor, I'm not aware of
3 any officers that are trained on revolvers.
4 There are semi-automatic weapons and rifles.

5 THE COURT: He says he understands so I'm
6 going to allow him to testify to it. If we go
7 much further, then we'll revisit your objection.

8 MS. D. WHITE: May I have a standing
9 objection to all of this, Your Honor?

10 THE COURT: Yes, ma'am. Absolutely. No
11 need to re-object.

12 BY MS. HINTON:

13 Q Detective Arflin, how do you fire a single
14 action gun?

15 A The hammer has to be cocked and then you
16 fire -- you pull the trigger and it discharges.

17 Q Will it fire without you cocking it?

18 A That's kind of the rule behind single
19 action. It has to be cocked.

20 Q A double action?

21 A When you pull the trigger, the hammer both
22 cocks and discharges.

23 Q Does it have a light trigger pull, a heavy
24 trigger pull?

25 A In double action, it's going to be a long,

1 heavy trigger pull.

2 Q And do you shoot weapons?

3 A I do.

4 Q Are you right-handed or left-handed?

5 A I'm right-handed.

6 Q And do you shoot with your right hand only?

7 A No.

8 Q Detective Arflin, that's all I have. Please
9 answer any questions that Ms. Gibbs -- I'm sorry --
10 Ms. White may have.

11 THE COURT: Ms. White.

12 CROSS-EXAMINATION

13 BY MS. D. WHITE:

14 Q During your investigation, you were looking
15 for a girl named Chance; is that correct?

16 A Her name was brought up as somebody Gibbs
17 would be staying with in Atlanta.

18 Q And did you ever send these phones -- well,
19 let's back up -- did you get Hunter Raby's phone?

20 A No.

21 Q Okay. So -- when you're telling the jury
22 that you can't search these phones, did you ever send
23 them to SLED to see if their unit could search them?

24 A SLED's Fusion Center has the exact same
25 capabilities I do. I talk to them more than -- more

1 often than not.

2 Q Okay. Well, let's talk about the phone
3 itself then.

4 A Okay.

5 Q Even if you can't do a forensic search on a
6 phone, you could certainly pull a phone open and go
7 back and look at the text messages, anything that
8 hasn't been deleted, the phone calls, all of that,
9 even on a flip phone; is that right?

10 A Yes, ma'am.

11 Q Okay. All right. And in fact, you did that.
12 You said Hunter Raby showed you his phone.

13 A Yes, ma'am.

14 Q And did you keep his phone?

15 A No, ma'am.

16 Q So his phone was in a -- what y'all thought
17 was a crime scene, and he was allowed to walk out
18 with his phone?

19 A He was being transported to the hospital,
20 yes, ma'am.

21 Q Well, I mean, his phone didn't need to be
22 treated at the hospital.

23 A No, ma'am. It didn't.

24 Q And you said you looked at his phone. I
25 believe in your report, you say you saw the first

1 call at 12:15 to Jaron; is that correct?

2 A I believe that's accurate. I'd have to look
3 specifically.

4 Q Okay. Take your time.

5 A Yes, ma'am. The first call started at
6 12:15.

7 Q And then, I believe, you say that you see
8 about three or four more calls.

9 A Yes, ma'am.

10 Q And those are all calls from them out; is
11 that correct?

12 A Yes, ma'am. They're all outgoing.

13 Q And there's no question it started at
14 12:15. You wrote it in your report, but you did not
15 keep this phone so we could go back and look at text
16 messages and other things in the history of this
17 phone?

18 A Correct, ma'am.

19 Q Now, in your experience as a police
20 officer ---

21 A Yes, ma'am.

22 Q --- does every purchase of a firearm
23 involve going to a gun store to buy one?

24 A No, ma'am.

25 Q In fact, are millions, probably, of

1 weapons, firearms traded on the street, basically,
2 kind of used as cash?

3 A Yes, ma'am.

4 Q That's very common with a lot of people,
5 isn't it?

6 A Yes, ma'am.

7 Q And that's why a lot of us who deal with
8 criminal law think it's funny about gun control,
9 because anybody who wants to buy a weapon can go to a
10 bad area of town and buy one any time they want to.
11 They are, basically, used as currency.

12 A Yes, ma'am.

13 Q So how many homicides have you worked?

14 A I'm sorry, ma'am.

15 Q How many homicides have you worked?

16 A As a lead detective?

17 Q Yes, sir.

18 A One. This one. As an officer,
19 unfortunately, too many.

20 Q As a uniform officer?

21 A Yes, ma'am.

22 Q Kind of testifying like some of the -- like
23 the Pickens County officer just testified.

24 A Yes, ma'am.

25 Q And isn't it true that normally there are

1 hundreds and hundreds of pictures taken, every single
2 thing is documented in a scene?

3 **A** Yes, ma'am.

4 **Q** And in fact, if I want to document this
5 cup, I'm going to put a cone by it with a number and
6 then I'm going to chart number 1 was a glass of
7 water. I take a close picture. I take a far picture.
8 And that way, when we get to trial, anything that's
9 important is very well documented with hundreds of
10 pictures?

11 **A** Yes, ma'am.

12 **Q** Have you ever heard of a case of a homicide
13 having 40-something pictures, and that includes not
14 just the scene, but also Autumn's car later?

15 **A** No, ma'am. I can't say I have.

16 **Q** To your knowledge, did anybody ever measure
17 -- and I'm going to put a few exhibits up here. We're
18 going to start with State's Exhibit 7 -- measure from
19 here to here?

20 **A** No, ma'am.

21 **Q** We've got some different angles, so we'll
22 just have to go off the pictures. Just look at
23 State's Exhibit 9. From here to here?

24 **A** No, ma'am.

25 **Q** Did you ever look at the body cam tape?

1 A No, ma'am. I didn't.

2 Q Here's another one that shows that, State's
3 Exhibit 6. From here to here?

4 A No, ma'am.

5 Q Now, I'm going to show you some -- some
6 yellow tape was put up at the scene. Is that correct?

7 A Yes, ma'am. It was when I arrived.

8 MS. HINTON: Judge, can we approach?

9 THE COURT: Sure.

10 (Bench conference is held off the record.)

11 BY MS. D. WHITE:

12 Q Now, I believe you told this jury that this
13 scene was pretty well-secured; is that correct?

14 A I said it was secured.

15 Q Well, secured is more than just putting
16 yellow tape up; isn't it?

17 A It should be. Yes, ma'am.

18 Q And also, witnesses should be immediately
19 separated; is that correct?

20 A I would agree.

21 Q Are you aware that there are pictures and
22 still pictures taken off of the body cam that show
23 Hunter Raby and Kalyn together near the tree line up
24 at the car, Kalyn up at the car. Are you aware of all
25 that?

1 A Just from statements made in court, ma'am.

2 Q Are you aware that there are pictures of
3 them walking up and down together -- up and down the
4 road?

5 A Again, only from statements made in court,
6 ma'am.

7 Q Are you aware that there are pictures that
8 you all took, actually, of the white SUV and, behind
9 it, there's Kalyn sitting right there with a bunch of
10 the witnesses?

11 A Again, that was the only place that offered
12 shade, so I can -- I do believe they were sitting
13 over in the same area.

14 Q Well, you've looked -- you've looked at the
15 scene pictures, right, that you all took?

16 A Yes, ma'am.

17 Q And you recall seeing that?

18 A Yes, ma'am.

19 Q Now, what is the reason that one does not
20 let witnesses sit together and talk together before
21 statements are taken?

22 A You don't want them to mix stories.

23 Q They can be influenced?

24 A Yes, ma'am.

25 Q Are you aware that there were over 250

1 pills in this vehicle?

2 A Yes, ma'am.

3 Q Now, you said that you've had training on
4 how to look at intoxication; is that correct?

5 A Training and experience, yes, ma'am.

6 Q Are you an officer who is trained -- you
7 did special training for that and, in fact, can
8 testify in court. Are you one of those officers?

9 A I didn't go to DRE School.

10 Q Okay. Please tell the jury what that is.

11 A That's Drug Recognition Expert. It's people
12 who actually get sent out. It's six weeks in Arizona.
13 They actually look at people when they are brought in
14 and determine what they're on. They can look at
15 certain signs and symptoms and tell them specifically
16 what drugs they're on.

17 Q Please list the symptoms of each one of
18 these drugs that we found in the car -- tell the jury
19 what all of those symptoms are and what you should be
20 seeing in the individual who has been using those.

21 A Most people using benzos would be
22 lethargic, state of euphoria, drunken state.
23 Marijuana would be the same thing, glassed over eyes,
24 in addition, cotton mouth, lot of times seeing
25 bloodshot in their eyes.

1 Q Okay. There's a bunch of different ones in
2 here. Do you want to go over the rest of them that
3 were in the car?

4 A No, ma'am.

5 Q The bottom line is, though, you have not
6 gone to that school. You are not qualified in court
7 to render that until you do, is that correct, as an
8 expert?

9 A I'm not testifying as an expert. I'm saying
10 off my training and experience.

11 Q But the bottom line is, if their blood had
12 been taken, we would know exactly; wouldn't we?

13 A Yes, ma'am.

14 Q Now, would you agree that Six Mile, where
15 Hunter Raby and the other two lived is, actually,
16 according to MapQuest, about 11.5 miles, about 15 to
17 20 minutes from this area?

18 A Yes, ma'am.

19 Q Are you aware that the defense actually
20 asked, repeatedly, in writing for the State to run a
21 lot of these tests that we're talking about?

22 A I'm not. No, ma'am.

23 Q Did you hear the testimony of Hunter Raby
24 that this was a drug deal gone bad, he received some
25 kind of threats, Jaron got out of the car with a gun

1 walking toward him. Did you hear that testimony?

2 A Yes, ma'am. I did.

3 Q Did you think it was odd that when all this
4 was happening, threatening, drug deal gone bad,
5 weapon, coming toward him in a menacing manner, that
6 he put his car in park?

7 A It's hard to say how people are going to
8 react.

9 Q Well, that would be one way you wouldn't
10 expect them to react, wouldn't you, if they were at
11 all afraid?

12 A No, ma'am. Actually not. I see more often
13 than not, in Clemson, people stop in the middle of
14 the road, put their cars in park and have
15 conversations, even heated ones.

16 Q When someone's coming toward you with a gun
17 and threatening you?

18 A Again, it's all individually specific as to
19 how that person's going to react.

20 Q Was there ever a report to the police of
21 Jaron robbing any of these three a few weeks before
22 this?

23 A No, ma'am.

24 Q And that would have presented a real
25 problem coming in here to a jury saying there had

1 been a prior robbery because there was no report; is
2 that correct?

3 A Not all victims report that, but I
4 understand what you're saying.

5 Q There was no report; is that correct?

6 A No, there wasn't.

7 Q When do you think -- during this time that
8 the scene was secure and Hunter Raby and Kalyn were
9 in the scene in these pictures, when do you think
10 that they got together and made up this story that
11 they admit -- well, actually, only one admitted?

12 A I can't say, ma'am. As I said before, the
13 only thing I can say is that when I arrived, Hunter
14 Raby was sitting in the back of the Pickens County
15 Sheriff's Office car and Ms. Meaders was on the other
16 side of the victim's vehicle.

17 Q But then, after that, they're walking
18 together all over, punching cars, going up to the
19 vehicle --

20 A No, it was not after that. I can tell you
21 that wasn't. When I arrived, Hunter was in that
22 vehicle. To the best of my knowledge -- I started my
23 interviews ---

24 Q Yes, sir.

25 A --- and Hunter was moved to that ambulance

1 when I interviewed him and he was transported from
2 the scene.

3 Q Are you aware that the body cam shows that
4 that was way into the -- into this? The body cam went
5 for like an hour or more.

6 A Okay.

7 Q Are you aware of that?

8 MS. HINTON: Judge, I'm going to object
9 because I ---

10 THE WITNESS: I'm not.

11 MS. HINTON: --- don't think that that's
12 what the body cam shows.

13 MS. D. WHITE: Your Honor, I have still
14 pictures right here.

15 MS. HINTON: In the still pictures, he
16 hasn't been treated yet by EMS. His statement
17 was, when he got there, he was bandaged and he
18 was in the back of the car. The pictures that
19 she has handed me, he's not bandaged yet.

20 MS. D. WHITE: How long into this --

21 THE COURT: That's a -- that would be a --
22 that would be a question for the jury to
23 determine.

24 BY MS. D. WHITE:

25 Q All right. You agree a body cam is ticking

1 off time. You can sit there and watch it and say it's
2 been five minutes, the body cam has run 10 minutes.
3 now, it's run 15 minutes now. It's accurate, right?

4 A Yes, ma'am.

5 Q And you are aware there's a body cam that
6 this officer actually arrived at the scene before you
7 arrived?

8 A Well, before I did, yes, ma'am.

9 Q All right. So you would agree that if, in
10 fact, these things are happening on the body cam, way
11 after you get there, that would be accurate?

12 A Yes, ma'am.

13 MS. D. WHITE: Your Honor, I'm sorry. I'm
14 going a little slowly. But the reason why is I'm
15 skipping over a whole bunch because I know we're
16 trying to finish with lunch. So I'm actually
17 saving time, believe it or not.

18 THE COURT: No doubt.

19 BY MS. D. WHITE:

20 Q Now, sir, you -- we had a preliminary
21 hearing in this case, is that correct, on
22 September 18, 2015?

23 A Yes, ma'am.

24 Q That was how long after August 1st?

25 A Tell me the date again, ma'am? September?

1 Q September 8th -- 18th ---

2 A About a month and a half.

3 Q --- 2015.

4 A Month and a half.

5 Q And certainly, by that date, you all had
6 taken all of the statements, is that correct, the
7 witness statements?

8 A Yes, ma'am.

9 Q I think the witnesses testified they gave
10 their statements that day or the next day, I think,
11 was the latest one; is that right?

12 A Yes, ma'am.

13 Q And during a preliminary hearing, you --
14 the lead officer testifies; is that correct?

15 A Yes, ma'am.

16 Q No one else is allowed to testify -- it's
17 about 15 minutes -- only the lead officer?

18 A Yes, ma'am.

19 Q And you gave sworn testimony in that; is
20 that correct?

21 A Yes, ma'am.

22 Q And those are recorded by the magistrates;
23 is that correct?

24 A Yes, ma'am.

25 Q Are you aware that we got a copy of that

1 tape from the judge and that we had a court reporter
2 transcribe it?

3 **A** Okay. Yes, ma'am.

4 **Q** So I'm going to ask you --

5 **MS. HINTON:** Judge, I'm going to object
6 again. This is not the proper way to do this. If
7 she's trying to impeach him on something, she
8 can ask him about it. But throwing a transcript
9 up there and going through his entire testimony,
10 unless it's inconsistent, I don't think this is
11 appropriate. His testimony is what it is here.

12 **THE COURT:** All right. Just ask him what
13 you want to ask him about it.

14 **MS. D. WHITE:** Yes, sir -- I mean, yes,
15 ma'am.

16 **MS. HINTON:** We also do not have a copy of
17 that transcript.

18 **MS. D. WHITE:** Your Honor, that's the
19 State's proceeding.

20 **BY MS. D. WHITE:**

21 **Q** And in the preliminary hearing, were you
22 asked by me on September 18th, 2015, so we do not
23 know whose hand actually hit the trigger at that
24 time? Would you like to tell the jury your response?

25 **A** My answer was no.

1 Q You're the lead officer on this case; is
2 that correct?

3 A Yes, ma'am.

4 Q And I also said nobody -- nobody is
5 claiming --

6 MS. HINTON: Again, objection. I think
7 she's got to ask him the question first and if
8 he says something --

9 THE COURT: Just ask him the question and
10 get him to lock into his answer. If it's
11 different than what was provided --

12 BY MS. D. WHITE:

13 Q And I also asked if there was just one
14 shot; is that correct?

15 A Yes, ma'am.

16 MS. HINTON: Judge, this is the same
17 thing.

18 THE COURT: No, I -- I -- I'm alright with
19 her doing this. But let's just --

20 BY MS. D. WHITE:

21 Q And what's your response as to whether
22 there was one shot and only one shot?

23 A Yes, ma'am.

24 Q I said only one shot or more.

25 A One shot. There was one shot.

1 **MS. D. WHITE:** No further questions.

2 **THE COURT:** Any follow-up with this
3 witness?

4 **MS. HINTON:** Briefly, Your Honor.

5 **THE COURT:** Sure.

6 (State's Exhibits 19 through 21 are marked for
7 identification.)

8 **REDIRECT EXAMINATION**

9 **BY MS. HINTON:**

10 **Q** Detective Arflin, I'm going to show you
11 these still photos that Ms. White was referring to. I
12 know you said you hadn't watched the body cam, but do
13 you notice that as the scene?

14 **A** Yes.

15 **Q** And does it appear to accurately depict the
16 scene?

17 **A** For the most part, some of these pieces
18 were not where they are now when I arrived.

19 **MS. HINTON:** Your Honor, the State would
20 move State's 19, 20 and 21 into evidence.

21 **MS. D. WHITE:** No objection.

22 **THE COURT:** All right. They are so
23 admitted.

24 (State's Exhibits 19 through 21 are admitted
25 into the record.)

1. BY MS. HINTON:

2. Q And I believe it was your testimony that
3. when you got to the scene, that Hunter Raby had
4. already been initially treated by EMS. Is that what
5. you said?

6. A Yes, ma'am.

7. Q And when you said that he was already
8. initially treated, what did that entail?

9. A Had a bandage.

10. Q All right. So I'm going to show you -- I
11. think Ms. White asked you -- they were walking all
12. over the place after you saw them; was that correct?

13. A No.

14. Q But did she ask you that?

15. A Yes.

16. Q State's 19, is Mr. Raby located on that
17. photo?

18. A The shorts and the red shirt.

19. Q Okay. And is he bandaged at that point?

20. A No.

21. Q And what's the time -- I know it's not --

22. A Looks like 15:02.

23. Q And then on State's 20, where is the yellow
24. tape in the rear of that photo? Can you tell?

25. A It looks like it's back behind -- I can't

1 tell if it runs in front of that fire truck or behind
2 it.

3 Q Let me show you State's -- let me ask you
4 this, can you see Kalyn on that photo?

5 A I think that's her beside the vehicle.

6 Q Okay. Well, can you see a woman beside that
7 vehicle?

8 A I can.

9 Q Are they inside that vehicle or outside
10 that vehicle?

11 A Outside.

12 Q And then, State's 21, do you see the crime
13 scene tape? Can you see it up there on that one? I
14 can bring it closer.

15 A Please do.

16 Q Okay.

17 A (Reviewing.)

18 Looks like crime scene tape running right
19 across that yard.

20 Q Okay. If you will, use the laser pointer.
21 Where is the crime scene tape on that photo?

22 A Looks like that's it running right across
23 that yard.

24 Q And is Hunter Raby in that photo as well?

25 A He is.

1 Q What's the time stamp on that one?

2 A 15:54.

3 Q And is he bandaged in that photo?

4 A No, he's not.

5 Q So the crime scene tape, you said, is
6 behind the fire truck?

7 A What it looks like, yes, ma'am.

8 Q So was this tape -- was this crime scene,
9 for lack of a better term, from the corner all the
10 way back to 93?

11 A No.

12 Q Okay. About how many yards do you think the
13 entire crime scene was?

14 A 75, 100 yards, around in that area.

15 Q So to your knowledge, at least when you
16 were on the scene, did Kalyn and Hunter ever exit
17 that crime scene tape?

18 A No, ma'am.

19 Q So no disputing that they walked around, I
20 guess, State's 21?

21 A No, ma'am.

22 Q But in this picture, were they within that
23 crime scene tape or outside of it?

24 A They're within.

25 Q And on State's 20, are they within the

1 crime scene tape or outside of it?

2 A Within.

3 Q And on State's 19, are they within the
4 crime scene tape or without of it?

5 A Within.

6 Q And there was some questions about, every
7 homicide has 100 photos. You recall that line of
8 questioning?

9 A Yes, ma'am.

10 MS. D. WHITE: There wasn't testimony that
11 it was 100, Your Honor. It's hundreds.

12 THE COURT: Okay.

13 MS. HINTON: Okay.

14 BY MS. HINTON:

15 Q If you don't have hundreds of things to
16 take photos of, do you have hundreds of photos?

17 A No, ma'am.

18 MS. HINTON: That's all I have. Thank you.

19 THE COURT: Yes, ma'am.

20 MS. D. WHITE: Yes, Your Honor.

21 RECROSS-EXAMINATION

22 BY MS. D. WHITE:

23 Q So let's go back to these photos. Since
24 when are witnesses and alleged victims allowed to
25 walk all over a crime scene, allegedly?

1 **A** Again, ma'am, if I'm not on scene yet, I
2 can't tell -- I don't have control over what I'm not
3 there to control. ;

4 **Q** Okay. You would agree that at least 15
5 minutes plus into the scene, you have them walking
6 around, punching the alleged vehicle, in the scene
7 tape?

8 **A** Yes, ma'am.

9 **Q** You also have all of these alleged
10 witnesses in the scene tape; is that correct? On the
11 other pictures, right along in here, you can see
12 that.

13 **A** Yes, ma'am. Yes, ma'am.

14 **Q** Isn't the purpose of putting up scene tape
15 -- and let's look at this. Who are all these people?
16 Here's the tape. It goes all the way around. The tape
17 came up here. Who are all these people -- and
18 vehicles -- walking around in the middle of the
19 scene?

20 **A** More than likely, from appearance, it looks
21 like probably volunteer firefighters or firefighters.

22 **Q** Why is there a fire truck in the middle of
23 this thing? And whose vehicle is that?

24 **A** Ma'am, again, at 14 minutes, I wasn't on
25 the scene yet.

1 Q So these last three exhibits actually prove
2 the alleged victims, the witnesses are together,
3 traipsing around the scene for at least 15 minutes;
4 is that correct?

5 A I would assume, yes, ma'am.

6 Q Do you see anybody in any of these
7 pictures, any law enforcement officers -- let's look
8 at -- I think that's 20 -- right here, 19, right
9 here, 21, right here. Do you see any law enforcement
10 officers dividing them, supervising them, doing
11 anything else?

12 A No, ma'am. I don't.

13 Q Well, you heard their testimony that they
14 got together in the tree line and made something up
15 to tell the police within minutes of the husband and
16 the best friend getting shot?

17 A Yes, ma'am.

18 Q Once something is contaminated -- once a
19 scene is contaminated, once an investigation is
20 contaminated, there is no uncontaminating it; is
21 there?

22 A No, ma'am.

23 MS. D. WHITE: No further questions.

24 THE COURT: Anything else for this
25 witness?

REDIRECT EXAMINATION**BY MS. HINTON:**

Q Were these pictures initially asked to you by the defense -- did Ms. White initially ask you about these still shots?

A Yes, ma'am.

Q Okay. So to be clear, these are three one-second still shots from an hour-long body cam; is that correct?

A Yes, ma'am.

Q And was there any indication in your investigation, either at this point or back when you were investigating it, that anything occurred outside of the driver's side door of this Explorer?

A No, ma'am.

MS. HINTON: That's all I have, Your Honor.

THE COURT: Anything else for this witness?

MS. D. WHITE: Just one more.

THE COURT: Sure.

RECROSS-EXAMINATION**BY MS. D. WHITE:**

Q And there were probably 100 other still shots that could have been done off of this body cam;

1 is that right?

2 MS. HINTON: Judge, I'm going to --

3 THE WITNESS: I don't know, ma'am. I
4 haven't seen the -- I haven't see the body cam.

5 THE COURT: All right. Anything else?
6 All right, sir. You can step down.

7 THE WITNESS: Thank you, ma'am.

8 MS. MCCALL: At this time, the State calls
9 Dr. Michael Ward to the stand.

10 MICHAEL WARD

11 having first been duly sworn, testifies as follows:

12 THE CLERK: Thank you, sir. If you would,
13 have a seat and state your name for the record
14 please.

15 THE WITNESS: Michael Eugene Ward..

16 DIRECT EXAMINATION

17 BY MS. MCCALL:

18 Q Good morning --

19 MS. D. WHITE: Your Honor, we would
20 certainly stipulate that Dr. Ward is an expert
21 in the area of forensic pathology.

22 THE COURT: Okay. Any other areas you're
23 seeking to qualify him in?

24 MS. MCCALL: No, Your Honor, that is it.

25 THE COURT: Ladies and Gentlemen, I:

1 explained an expert witness to you yesterday.
2 Dr. Ward is qualified as an expert witness to
3 give his testimony in the area of forensic
4 pathology. As I told you earlier, you may -- he
5 can also give his reasons for his opinions. You
6 can use that testimony any way that you see fit.

7 Yes, ma'am.

8 MS. MCCALL: Thank you, Judge.

9 DIRECT EXAMINATION

10 BY MS. MCCALL:

11 Q Dr. Ward, what is forensic pathology?

12 A Pathology is the study of disease and
13 disease processes and how they affect man. Forensic
14 pathology takes that one step further. It's diseases
15 and injuries, how we die, and then the presentation
16 of that information in a court of law.

17 Q During your observations in your field,
18 what is -- let me ask it this way, do you conduct
19 autopsies?

20 A Yes, I do.

21 Q And will you briefly explain what you do
22 during an autopsy?

23 A Well, an autopsy is a detailed physical
24 examination performed on a person who has died. It
25 includes an external examination where we look for

1 any evidence of injury or natural disease, an
2 internal examination where we document the internal
3 consequences of those injuries that we noted on the
4 outside or any natural disease that may be processed
5 -- that may be present. This includes a microscopic
6 examination of tissues and, in this case,
7 toxicological analysis of blood or blood products
8 that may have been acquired prior to death or at the
9 time of autopsy.

10 Q Did you conduct an autopsy on Robby Porter
11 in August of 2015?

12 A Yes, I did.

13 Q And what were your findings during that
14 autopsy?

15 A Mr. Porter had had a post-injury survival
16 interval. Then he lived in the hospital for a period
17 of time. After being pronounced brain dead had
18 undergone organ and tissue harvesting. So the major
19 organs of the thorax and abdomen to clear the heart,
20 lung, liver, kidney, adrenal glands and part of the
21 small intestine, to include the pancreas, had been
22 previously removed, as were his eyes. So any
23 indication of natural disease that was present was
24 lost. But if they -- if they used those organs in
25 other donors, then you can generally assume that they

1 were functioning.

2 Mr. Porter did have a gunshot wound to his
3 head which entered above the left ear, passed through
4 the left side of his brain and impacted the left side
5 of the back of his skull, right here to the back. We
6 documented the injuries associated with that.

7 Q Did you determine what type of entry wound
8 he had, if it was atypical, normal?

9 A Yes, so when a bullet is fired from a gun,
10 the rifling or the grooves that are cut of the barrel
11 -- into the barrel of the gun caused that bullet to
12 spin. The spin or the ballistic nature of that bullet
13 helps it to travel in a straight line, nose first. As
14 long as it does that, when it hits the skin, it
15 generally creates a round hole through the skin and,
16 in this case, in the underlying bone.

17 Mr. Porter had, what we call, an atypical
18 gunshot wound of entry, in that instead of being
19 round, it was rectangular, and that the hole that it
20 punched through, his left parietal bone or the left
21 portion of his skull, was rectangular as well. So you
22 would surmise from that that this bullet has lost its
23 ballistic capacity or its ballistic ability and was
24 no longer spinning, but was, indeed, tumbling, as
25 opposed to going nose first. So Mr. Porter had an

1 atypical gunshot wound of entry.

2 Q Could an atypical gunshot wound be caused
3 from the bullet hitting another object before going
4 into the victim's head?

5 A That would be the most likely explanation,
6 yes.

7 Q Were you able to determine the trajectory
8 of the bullet?

9 A I can determine the trajectory of the
10 bullet through Mr. Porter. I can not describe that
11 trajectory outside of the body. But through
12 Mr. Porter, it went from his left to his right and
13 from his front to his back and slightly downward. And
14 if you would allow me, it entered from the left side
15 about two inches above the ear hole to about right
16 here. It passed through the bone through the back
17 part of the left cerebral hemisphere and then
18 impacted the bone in the left, back portion of his
19 skull. It's from there that it's removed by hospital
20 personnel prior to autopsy.

21 A Would you be able to determine how far away
22 Mr. Porter was from the gun that fired this bullet?

23 A There are times -- besides the bullet
24 exiting the barrel of the gun, other things come out
25 the barrel of the gun as well: hot gas; burned

1 gunpowder, which we call soot; and unburned
2 gunpowder, which can strike the skin. And the
3 presence of these objects on the skin helps us to
4 determine range of fire or the distance from the
5 muzzle of the gun to the target.

6 This bullet, having impacted what we would
7 call an intermediate target or passed through or into
8 something else, would have blocked all of those
9 things. So for me to be able to determine range of
10 fire was not possible in this instance. There was no
11 gunshot residue on the skin. That could be because it
12 was greater than the distance those things will
13 travel or it could be because it was filtered out by
14 whatever the bullet hit first.

15 Q You mentioned earlier that Mr. Porter died
16 in the hospital. Did he undergo surgery before
17 actually donating his organs and having passed away?

18 A He underwent procedures. I'm not sure that
19 I would particularly call them surgery. They had made
20 an incision through the gunshot wound of injury and
21 had sutured -- sewn that up. They had made a small
22 incision in the back of his scalp to remove the
23 bullet, which was between the skin and the bone. It
24 almost exited. They had placed a -- a drain into the
25 ventricle of his brain, so they created a little burr

1 hole and inserted a drain into the ventricle to help
2 relieve some of the pressure there.

3 Q Would these procedures have hindered your
4 ability to perform the autopsy?

5 A They made interpretation a little bit more
6 difficult by incising or cutting through the entrance
7 wound, but it did not prohibit -- pro -- they didn't
8 prohibit me from being able to make my determination.

9 Q Let's turn to the toxicology. Did you run a
10 blood test on Mr. Porter?

11 A Yes, I did.

12 Q And what did that test -- what did those
13 test results show?

14 A This blood was admission blood from when he
15 was first admitted to the hospital. So the first draw
16 of blood was recovered. It demonstrated that he had
17 two separate benzodiazepines called Lorazepam and
18 clonazepam. He also had marijuana.

19 Q Would any of those drugs be something that
20 was administered at the hospital, possibly?

21 A The marijuana certainly was not. The
22 benzodiazepines possibly. I'm not sure about those.
23 Clonazepam, I don't think is a -- certainly is not a
24 resuscitative drug. Lorazepam could be used as a
25 minor tranquilizer to -- to -- if there was any

1 anxiety or to relieve stress.

2 Q Was there cocaine found in that toxicology
3 report?

4 A There was not.

5 Q The drugs that were found in Mr. Porter's
6 system, did those contribute to his death at all?

7 A No, ma'am.

8 Q And what did you determine was the cause
9 and manner of Mr. Porter's death?

10 A Mr. Porter died as the result of a gunshot
11 wound to the head.

12 Q And what was the manner of his death?

13 A The manner, in this case, would be
14 homicide.

15 Q Thank you, Dr. Ward. Please answer anything
16 Ms. White has.

17 CROSS-EXAMINATION

18 BY MS. D. WHITE:

19 Q Yes, sir. An average juror thinks that when
20 a pathologist says homicide, that means murder. Will
21 you please explain to the jury exactly what that
22 means, actually, when a pathologist says homicide?

23 A There are five categories of manner of
24 death. Most common would be natural. Then there's
25 accident. Suicide, which is death at the hands of

1 yourself, you do something to cause your own death.
2 Then homicide, deaths at -- as a result of another
3 individual's actions. So this was a non-accidental
4 death. It was a homicide. Someone else shot
5 Mr. Porter. As to intent, I do not know.

6 Q All right, sir. And when you use the term
7 "accident", what you're talking about is he didn't
8 trip and fall on his own gun?

9 A That's correct. This is not an act of God.
10 This is not things that were considered to be an
11 accident.

12 Q This wasn't like he walked in his house and
13 his roof fell on his head.

14 A That's correct.

15 Q All right. When you use the term "accident"
16 then, that is not the legal definition of accident.
17 Do you even know the legal definition of accident?

18 A I could not quote it.

19 Q Okay. All right. So you're just talking in
20 forensic -- you've never seen a witness in this case,
21 talked to a witness in this case. You did the autopsy
22 that that was it; is that right?

23 A That's correct.

24 Q Now, sir, you also said that if the bullet
25 went through an intervening object, let's say it went

1 through a hat before it ever got over here to Robby,
2 you would actually have to test the hat to be able to
3 look at distance; is that right? That would be the
4 thing that kind of collected this stuff.

5 A That's correct. If the initial object that
6 it impacted was a hat, then you would look at the hat
7 for gunshot residue to help determine range of fire.

8 Q And you're a doctor; is that right?

9 A Yes, ma'am.

10 Q Say you're too experienced or a few
11 decades?

12 A A couple, yes.

13 Q And as a doctor, in order to be sure, if
14 you're trying to determine if a person has been using
15 drugs, even as a doctor, to be sure of that, would
16 you have to take their blood and analyze it?

17 A Yes.

18 Q There would be no way you could say I'm 100
19 percent certain somebody has not be using drugs,
20 unless that's done; is that correct?

21 A That's correct.

22 Q Now, the hospital record shows positive for
23 -- sorry. Let me put my glasses on -- for benzos, for
24 marijuana -- I know they call it something else in
25 the hospital -- and for cocaine. Did you look at that

1 report?

2 A I don't recall that, no.

3 Q Would you like to look at it?

4 A Yes. (Reviewing.)

5 Q But that was taken at -- well, they do it
6 in military time -- 3 o'clock p.m. the day that the
7 shooting occurred; is that correct?

8 A I'm sorry. I'm still ---

9 Q Oh, I'm sorry.

10 A --- trying to figure out what they're
11 testing. (Reviewing.)

12 Okay. Thank you. I'm sorry.

13 Q Okay. And this was -- I believe that this
14 sample was taken at 15:00, which would have been
15 3 o'clock p.m. That's military time, 3 p.m.; is that
16 correct?

17 A That's correct. This is -- was on
18 August 1st, 2015 at 15:00. I believe that to be a
19 urine drug screen, as opposed to blood.

20 Q And you did blood; is that correct?

21 A That's correct.

22 Q Let's talk a little bit about the
23 difference between urine and blood. If something --
24 you said you found marijuana, for instance, and
25 benzos; is that correct?

1 A That is correct.

2 Q If you heard that, in the vehicle from
3 which this young man was removed, there was -- well,
4 different ones -- clonazepam, several other things
5 like that, would that be a positive for a benzo?

6 A Clonazepam is a benzodiazepam, yes.

7 Q I never can pronounce all these things. All
8 right. So those type of things, there are several
9 different pills that could actually make you positive
10 for benzos; is that correct?

11 A That is correct.

12 Q And Doctor, let's go back to what we were
13 talking about about, urine versus blood. Now, you
14 said that you found, in blood, marijuana, plus
15 benzos; is that correct?

16 A Yes.

17 Q And if you are -- you can test hair in a
18 forensic setting, you could test urine or you can
19 test blood; is that correct?

20 A That's correct.

21 Q Now, if I'm positive, if you take my hair
22 and you test an entire strand this long, then you're
23 going to find any drugs that I may have taken over
24 however long it took me to grow this hair; is that
25 right?

1 **A** That's correct.

2 **Q** I mean, you may not find it right up here
3 because it takes a few days to grow if I used it
4 yesterday, but basically, however long my hair is,
5 that's how long you're testing; is that right?

6 **A** Yes, ma'am.

7 **Q** All right. Now, urine is, actually, most
8 things, within a couple of days. Marijuana can go
9 back a little while longer; is that correct?

10 **A** That's correct.

11 **Q** And urine is, I've already used it. It's
12 passed through my body and it's going out or being
13 held until it goes out.

14 **A** The presence of a drug on a urine drug
15 screen, to me, indicates two things: one, it is a
16 urine drug screen performed in the hospital and,
17 basically, for medical purposes only. I don't believe
18 that it was confirmed by any other testing, so I
19 would not say that unequivocally that these drugs
20 were present in urine unless they were confirmed.
21 Secondly, the presence of any medication or drug in
22 the urine means that if it has been confirmed means
23 that that drug was, at one time, used by that
24 individual.

25 Cocaine, to me, means that it had been

1 recently used within the last day or two. The absence
2 of cocaine in the blood means he has not recently
3 used it, not within the last several hours. The
4 presence of cocaine in the urine only indicates that
5 he has used it within the last day or two.

6 Q Okay. You kind of took me to my next one,
7 which is blood. So if it's actually in the blood,
8 which is why you like to test blood; is that right?

9 A That's correct.

10 Q The reason for that is if I have drugs in
11 my blood, my blood is coursing through my organs.
12 It's affecting my brain right now. It's in my blood
13 that's going through my organs; is that correct?

14 A That's correct.

15 Q So if I'm positive for a drug in blood, I
16 am under the influence of that drug to whatever level
17 I happen to have been using that drug; is that right?

18 A That's correct.

19 Q So when you say you tested the blood, you
20 found benzos and you found marijuana?

21 A That's correct.

22 Q And that means you're actively under the
23 influence at the time that that blood is drawn, which
24 was about an hour or two -- no, about 3 o'clock p.m.
25 on the day of the shooting?

1 **A** The blood was collected at 13:45, so 45
2 minutes after the urine was collected.

3 **Q** Wait a minute. 13:45 or 15:45?

4 **A** I'm sorry. 13:45, which is about an hour
5 and 15 minutes before urine. My apology.

6 **Q** And Doctor, the other thing is we have no
7 idea where -- how Robby was positioned in that car,
8 do we? I mean, we don't know if he's turned this way,
9 if it's turned this way, if he was looking up, if he
10 was bent down. We have no way of knowing that; is
11 that correct?

12 **A** To say that I would be able to put him in a
13 particular position would be wrong. Certainly,
14 certain scenarios would fit. Knowing where the
15 shooter was supposed to be or what the bullet had to
16 have passed through before it got to Mr. Porter and
17 his trajectory through his head, but to position him
18 exactly would not be possible.

19 **Q** Especially if it hits an intermediate
20 object; is that correct?

21 **A** That's correct.

22 **THE COURT:** Any redirect?

23 **MS. MCCALL:** Just briefly, Your Honor.

24 **REDIRECT EXAMINATION**

25 **BY MS. MCCALL:**

1 Q Dr. Ward, specifically going to that point,
2 if a gun is being held in the driver's window and the
3 bullet grazes the top of the driver's head and then
4 passes over to the passenger, would it be consistent
5 for Mr. Porter to have the injury that he had from
6 that gunshot, if he were sitting in that passenger
7 seat?

8 A Yes, ma'am.

9 Q Just briefly going back to the blood test
10 versus the urine screen, is it safe to say that you
11 prefer the blood test because it is more reliable
12 than the urine screen?

13 A It's not particularly more reliable. For my
14 purposes, it's more pertinent. As was stated by
15 Ms. White, the presence of a drug in blood indicates
16 to me that's what the individual's under the
17 influence of -- if he's under the influence at that
18 time. The urine, which is a very good screening tool.
19 It's quick. It's relatively cheap. It's easy to do.
20 It gives you an indication, especially if you're a
21 physician, what you may need to anticipate that this
22 person may have been exposed to.

23 So to use a urine drug screen, which is
24 quick and easy to do, to anticipate that this person
25 may be undergoing -- may be under the influence of a

1 drug -- may undergo withdrawal from that drug if we
2 don't treat them longer in the hospital and this may
3 be a reason -- I mean, he has a gunshot wound. That's
4 not the reason in this case. That may be what they
5 need to treat. So they both are very useful. But for
6 me, as far as helping to determine cause and manner
7 of death or whether something was contributory to
8 death, we'd prefer to have blood.

9 Q So to confirm, Dr. Ward, regardless of what
10 drugs Mr. Porter was under the influence of, he died
11 from a single gunshot wound; is that ---

12 A That is correct.

13 Q --- correct? Thank you, Dr. Ward.

14 THE COURT: Anything else?

15 MS. D. WHITE: No, Your Honor.

16 THE COURT: Dr. Ward, thank you.

17 MS. MCCALL: May he be excused, Your
18 Honor?

19 MS. D. WHITE: No objection, Your Honor.

20 THE COURT: Thank you for being here.

21 MS. HINTON: Thank you, Your Honor. At
22 this time, the State rests.

23 THE COURT: All right. Ladies and
24 Gentlemen, there are, necessarily, some legal
25 matters that I have to take up with the

1 **THE COURT:** All right. Very well then. Any
2 other questions from the State?

3 **MS. HINTON:** No, Your Honor.

4 **THE COURT:** Anything else the defense
5 would like me to ask the client? All right.
6 Thank you.

7 All right then. We are ready to proceed, I
8 believe. Anything else we need to bring up?

9 **MS. HINTON:** No, Your Honor.

10 (Jury enters at approximately 11:49 a.m.)

11 **THE COURT:** Thank you, Ladies and
12 Gentlemen, so much for your patience with us. We
13 are now ready to proceed.

14 **MS. D. WHITE:** Thank you, Your Honor. We
15 call Jaron Gibbs.

16 **JARON GIBBS**

17 having first been duly sworn, testifies as follows:

18 **THE CLERK:** Thank you, sir. If you would,
19 have a seat and state your name for the record.

20 **THE WITNESS:** Jaron Gibbs.

21 **DIRECT EXAMINATION**

22 **BY MS. D. WHITE:**

23 **Q** All right. I'm going to kind of -- I don't
24 want to block you, but you don't speak very loudly.
25 I'm going to stand here so you're not blocked, but

1 you really are going to have to speak up. Okay. You
2 don't talk very loudly.

3 A Yes, ma'am.

4 Q Okay. You okay?

5 A I'm terrified.

6 Q All right. Well, just take a deep breath
7 and let's just say what happened on this day. Okay.

8 A Yes, ma'am.

9 Q All right. So Jaron, what's your full name?

10 A Jaron Lamont Gibbs.

11 Q And Jaron, where did you go to high school?

12 A Daniel High.

13 Q And how old are you?

14 A 25.

15 Q After high school, did you go anywhere for
16 any additional education?

17 A I did two semesters at Greenville Tech.

18 Q And I believe you said you went to Daniel
19 High School. Did you know Robby Porter?

20 A Yes, ma'am.

21 Q How did you know him?

22 A We been friends for a while. We played on
23 little leagues and played basketball together.

24 Q And after you all graduated -- when did you
25 all graduate from high school? What year did you

1 graduate?

2 A 2010.

3 Q After you graduated from high school, did
4 you remain in contact, sometimes play basketball
5 together, video games, that sort of thing?

6 A Yes, ma'am.

7 Q And did you know where he lived? We heard
8 that he and Kalyn and some other members lived
9 together. Do you know where they lived?

10 A Not exact address, but in Six Mile.

11 Q In Six Mile. And if you look at where Six
12 Mile is compared to sort of where Autumn picked you
13 up, that area, would you agree that's about --
14 according to Map Quest, about 11 and a half miles
15 away, somewhere in there?

16 A Yes, ma'am.

17 Q Now, did you know Kalyn?

18 A Through Robby.

19 Q And did you know Hunter Raby?

20 A Not as well, but also through Robby.

21 Q I believe we heard some testimony about a
22 few weeks before, August 1st, 2015, that you had been
23 accused of robbing Kalyn and Hunter Raby. Did that
24 ever happen?

25 A No, ma'am.

1 Q Will you please tell the jury a few weeks
2 before August 1st, 2015, what happened?

3 A Me and Robby were hanging out --

4 Q Hold on one minute. You keep having to go
5 forward. Let's do this. Okay.

6 A Me and Robby and Hunter were hanging out.
7 We were playing basketball at the apartments. Me and
8 Robby bet on games and stuff like that. So we had
9 placed a lil friendly bet that day. Hunter had joined
10 in. It was the first time Hunter had been with us to,
11 like, bet or anything like that. So --

12 Q Who won?

13 A Hunter and Robby both won.

14 Q And so at the end of that, did you owe them
15 money?

16 A Yes, ma'am.

17 Q And I think you said it was about \$100
18 between the two of them?

19 A Yes, ma'am.

20 Q And this was a few weeks before?

21 A Yes, ma'am.

22 Q And did you pay them what you owed them
23 that day?

24 A No, ma'am.

25 Q All right. And had you and Robby ever

1 engaged in bets back and forth on video games,
2 basketball games, that sort of thing?

3 A Yes, ma'am.

4 Q If one of you didn't have the money right
5 then, was it ever a problem just to pay somebody
6 later?

7 A No, ma'am.

8 Q Now, had Hunter Raby ever engaged in any of
9 these bets up until that time?

10 A No, ma'am.

11 Q So this was the first time with him?

12 A Yes, ma'am.

13 Q Had you paid them for the bet that you lost
14 on the basketball game? By August 1st, had you paid
15 them?

16 A No, ma'am.

17 Q Now, August 1st was a Saturday; is that
18 correct?

19 A Yes, ma'am.

20 Q And that morning, what did you decide to
21 do?

22 A To go to Atlanta!

23 Q We've heard a name, Chance.

24 A Yes, ma'am.

25 Q Does that name sound familiar to you?

1 A Yes, ma'am.

2 Q Who is Chance?

3 A Chance is one of my friends. She lives in
4 Atlanta.

5 Q And you know when you hear the word Chance
6 or Jasmine, some of these other names, what did she
7 do for a living?

8 A She was a dancer. She danced at night
9 clubs.

10 Q Like a stripper dancer?

11 A Yes, ma'am.

12 Q And did she -- did she dance at one night
13 club or would she do like a lot of them do and go to
14 various strip clubs?

15 A She would go to different ones.

16 Q And were you going to Atlanta to see her
17 and some other people?

18 A Yes, ma'am.

19 Q Did you go to Atlanta -- had you been there
20 on previous occasions to see her?

21 A Yes, ma'am.

22 Q So who did you call to get to Atlanta?

23 A I called Autumn.

24 Q And did you call her that day or another
25 day?

1 A Same day.

2 Q And did she agree to take you to Atlanta?

3 A Yes, ma'am.

4 Q So did y'all set a time where she was going
5 to pick you up or what?

6 A No, ma'am.

7 Q She just knew where you were?

8 A Yes, ma'am.

9 Q And so about -- she arrived there about
10 12:30; is that right?

11 A Yes, ma'am.

12 Q Okay. Let's back up a few minutes. At
13 12:15, did you receive a call from anyone?

14 A I think that's around the time that Robby
15 called me.

16 Q And was he calling on Hunter's phone then?

17 A Yes, ma'am.

18 Q And what, if anything, did you all discuss?

19 A Robby had asked me for the money I --

20 MS. HINTON: Objection, Your Honor.
21 Hearsay.

22 MS. D. WHITE: Your Honor, just that he
23 asked him for the money. That's not --

24 MS. HINTON: That's hearsay, Your Honor.

25 BY MS. D. WHITE:

1 Q Let me do it this way. As a result of what
2 he asked you, what did you tell him?

3 A I told him that I didn't -- that I was
4 going to Atlanta. I didn't have the money but I would
5 give it to him when I got back.

6 Q All right. And did he seem at all upset?

7 A No, ma'am.

8 Q Again, had this been kind of a common thing
9 between you? Nobody ever got upset about that?

10 A Yes, ma'am.

11 Q So after he made that phone call, were you
12 picked up by anyone to go to Atlanta?

13 A Autumn came and picked me up.

14 Q Now, I think we've heard there's some
15 pictures of the car. And is that the car in which she
16 picked you up? Hold on a minute. (Pause.)

17 I'm showing you State's Exhibit 15. Is that
18 the car?

19 A Yes, ma'am.

20 Q All right. Who was driving that car?

21 A Autumn.

22 Q And where were you?

23 A In the passenger seat, front passenger.

24 Q Now, did you take anything with you that
25 you were going to take to Atlanta with you?

1 **A** A brown bag.

2 **Q** And tell me about the brown bag. What all
3 did you have in that?

4 **A** Clothes that I normally take with me if I
5 might decide to stay down there.

6 **Q** And so was there -- had you taken this
7 brown bag to and from Atlanta before?

8 **A** Yes, ma'am.

9 **Q** And the last time that you had gone to
10 Atlanta, what, if anything, had you purchased in
11 Atlanta?

12 **A** I purchased a gun.

13 **Q** And why did you purchase that?

14 **A** Cause the clubs that Chance danced at
15 weren't always in the best places.

16 **Q** Did she normally strip in the daytime or
17 did she -- dance in the daytime or at late time,
18 night?

19 **A** Late at night.

20 **Q** And from whom did you purchase this gun?

21 **A** I don't know his name. One of Chance
22 friends.

23 **Q** Okay. One of Chance's friends. And what did
24 you do with the gun when you came back from Atlanta
25 that time?

1 **A** It was -- I didn't do anything with it. It
2 was just in my bag.

3 **Q** Now, I believe we talked to -- well, let me
4 back up. Okay. So you're in the car. Did you have the
5 brown bag in your car?

6 **A** Yes, ma'am.

7 **Q** And as you and Autumn started to drive off,
8 who did you see?

9 **A** I see Hunter, Robby and Kalyn.

10 **Q** And tell me about them. Where were they?
11 What were they in?

12 **A** They were in a white SUV.

13 **Q** And could you tell who was seated where?

14 **A** Hunter was driving. Robby was in the
15 passenger. Kalyn was somewhere in the back.

16 **Q** Somewhere in the back. You're not sure
17 where?

18 **A** I'm not sure where.

19 **Q** And when they saw you all, what did they
20 do?

21 **A** They were, like, pointing at me. I think
22 that's when Hunter started calling.

23 **Q** And so he started calling you?

24 **A** Yes, ma'am.

25 **Q** How did he act when he was calling you?

1 A He was kind of upset first.

2 Q Okay. And what was he requesting?

3 A He was asking for his money.

4 Q What did you tell him?

5 A I told him that I didn't have it, but as
6 soon as I got back from Atlanta, I'd give it to him.

7 Q Did he take that as an answer?

8 A No, ma'am.

9 Q What did he begin doing?

10 A He began to get angry.

11 Q And tell me what he was doing with his --
12 well, let me ask you this. We've looked at a route. I
13 think Autumn mapped it out, the route that you all
14 took. Would you agree with the route that she said,
15 that approximately one and a half miles?

16 A Yes, ma'am.

17 Q So tell me about Hunter Raby and what is he
18 doing with his car while you all are driving.

19 A He's following close behind. He's driving
20 aggressively.

21 Q And did he stay very calm or did he call
22 you repeatedly?

23 A Called repeatedly.

24 Q Were you a little surprised by this?

25 A Yes, I was confused at why he was so upset.

1 Q Now, were you under the influence of
2 anything?

3 A No, ma'am.

4 Q So how did Autumn react when they were
5 driving this way and calling repeatedly?

6 A She was scared and trying to figure out
7 what was going on.

8 Q Did you, at all -- I think we heard Hunter
9 Raby, for the first time in two and a half years, say
10 that you were threatening or doing something like
11 that while you all were talking. Did you ever
12 threaten him in any manner or threaten anything?

13 A No, ma'am.

14 Q What were you saying?

15 A I was just telling him that as soon as I
16 got back from Atlanta, I would give him the money.

17 Q Did you tell him repeatedly you did not
18 have the money?

19 A Yes, ma'am.

20 Q Now, did that work? Did he stop following
21 you and stop chasing you and stop doing these things?

22 A No, ma'am.

23 Q So when you got to the four-way stop, and I
24 think we've all heard that's the one at Cambridge and
25 Issaqueena, when you all got there, what happened?

1 What did Autumn do?

2 A Autumn stopped at the four-way.

3 Q And were they in front of you, behind you,
4 beside you? Where were they?

5 A They were behind us.

6 Q And had they stopped following you in
7 approximately a mile and a half?

8 A No, ma'am.

9 Q Were they taking no for an answer?

10 A No, ma'am.

11 Q At that point, what did you decide to do?

12 A I decided to try to give them something. So
13 I looked in my bag, saw the gun and figured I could
14 give them that for payment.

15 Q Now, I want to ask you something about this
16 gun. Did you think that it was loaded or unloaded?

17 A I thought it was unloaded.

18 Q And I believe we heard Detective Arflin
19 talk about how, sort of, on the streets, guns for
20 cash, cash for guns. Did you think they might take
21 this and leave you alone?

22 A Yes, ma'am.

23 Q Are you right-handed or left-handed?

24 A I'm left-handed.

25 Q What kind of day was this?

1 A It was a bright day.

2 Q Were -- was this a public place or a
3 private place?

4 A It was a pretty busy intersection.

5 Q Was this something that -- well, let me
6 back up a minute. Did you expect them to be following
7 you and not stop and make all these phone calls? Did
8 you know this was coming?

9 A No, ma'am..

10 Q So when you got out of the car, what did
11 you do?

12 A I walked back to the driver's side window.

13 Q And we've heard a little bit about how
14 Hunter was yelling and you were yelling. Tell me
15 about that. What was happening?

16 A Hunter was yelling. I was trying to tell
17 him I don't have your money. Take this gun.

18 Q Okay. And were you, in fact, yelling and
19 was he, in fact, yelling?

20 A Yes, ma'am.

21 Q Now, you said you had this gun in which
22 hand?

23 A My right hand.

24 Q How were you holding this firearm?

25 A Just by the grip.

1 Q And by the grip, if this is a gun, this
2 would be the grip?

3 A Yes, ma'am.

4 Q Was your finger, at any time, on the
5 trigger of this firearm?

6 A No, ma'am.

7 Q Now, when you got to the window, what did
8 you do with this firearm?

9 A I pushed it inside the car.

10 Q And where did you put it?

11 A In front of Hunter's face.

12 Q What were you saying when you did that?

13 A I was telling him I didn't have the money.

14 Q And what did he do?

15 A He pushed the gun back out, so I pushed it
16 back in. He pushed it back out, and it went off.

17 Q Now, Jaron, on a scale of 1 to 10, how
18 positive are you that your finger was not anywhere in
19 that trigger guard?

20 A As in, like, 10 being that it wasn't?

21 Q Yes.

22 A 10.

23 Q What happened when you pushed it the second
24 time?

25 A It went off.

1 Q When it went off, did you have any idea
2 that anyone had been hit?

3 A No, ma'am.

4 Q Did Hunter appear to be fine?

5 A Yes, ma'am.

6 Q Was it obvious he wasn't going to take the
7 gun?

8 A Yes, ma'am.

9 Q So where did you go?

10 A I walked back to Autumn's car and got in
11 the passenger seat.

12 Q Now, do you understand you should have
13 stayed there?

14 A Yes, ma'am.

15 Q You said you got in the passenger seat; is
16 that correct?

17 A Yes, ma'am.

18 Q And so, did you all leave?

19 A Yes, ma'am.

20 Q Now, did Autumn ask you what happened?

21 A Yes, ma'am.

22 Q And what did you tell her?

23 A I told her that nobody was hurt, that the
24 gun just went off in the roof.

25 Q How many times do you think you ended up

1 telling her that?

2 A At least three or four times.

3 Q Now, did you end up going to Atlanta?

4 A Yes, ma'am.

5 Q And, in fact, were you picked up in Atlanta
6 two days later?

7 A Yes, ma'am.

8 Q And did you waive extradition?

9 A Yes, ma'am.

10 Q And you came back to South Carolina?

11 A Yes, ma'am.

12 Q And you been in jail since that day; isn't
13 that correct?

14 A Yes, ma'am.

15 Q Jaron, are you positive your finger was
16 nowhere near that trigger and you did not pull that
17 trigger?

18 A Yes, ma'am.

19 MS. D. WHITE: Just one minute please.

20 (Pause.)

21 No further questions.

22 MS. HINTON: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. HINTON:

25 Q Mr. Gibbs, why were you at Curtis Circle

1 that day?

2 A I was just at a friend's house.

3 Q Let me do one thing.

4 A I was at a friend's house.

5 Q Slide your chair up just a bit. Did your
6 friend live on Curtis Circle or on Abel?

7 A I think on Curtis Circle.

8 Q Are you familiar with that area?

9 A Yes, ma'am.

10 Q You said you went to Daniel High School.
11 Have you always lived in that area?

12 A Yes, ma'am.

13 Q You have one friend on Curtis Circle or a
14 few?

15 A A few.

16 Q What about any friends on Abel?

17 A Yes, ma'am.

18 Q So is it safe to say that you have a lot of
19 friends in that area?

20 A Yes, ma'am.

21 Q And you admit that you had a gun on you
22 when you got in the car with Autumn; is that correct?

23 A Yes, ma'am.

24 Q And you were sure that it was not loaded at
25 the time?

1 A Yes, ma'am.

2 Q And you, eventually, got into a verbal
3 argument with Mr. Raby; is that correct?

4 A Yes, ma'am.

5 Q Did that start on the phone or did that
6 start when you got out of the car?

7 A On the phone.

8 Q All right. And you walked to the driver's
9 side of the car at the four-way stop; is that
10 correct?

11 A Yes, ma'am.

12 Q And y'all were yelling at each other; is
13 that correct?

14 A Yes, ma'am.

15 Q In your words, you pushed the gun in
16 Hunter's face; is that correct?

17 A Yes, ma'am.

18 Q Okay. And that meaning you had the barrel
19 of the gun in Hunter's face; is that correct?

20 A I don't know if the barrel was in Hunter's
21 face.

22 Q Well, you said you were holding the grip.
23 Ms. White asked you, if this is it. Is that how
24 you're holding it?

25 A Yes.

1 Q Then the barrel was in his face; is that
2 correct?

3 A The barrel was, like, in his face. The
4 whole barrel was in front of his face.

5 Q Okay. So you put the gun in his face?

6 A Yes, ma'am.

7 Q And a shot was fired; is that correct?

8 A Yes, ma'am.

9 Q And you go back to the car with the gun?

10 A Yes, ma'am.

11 Q And you put the gun back in that brown
12 satchel?

13 A Yes, ma'am.

14 Q And you put it back in that brown satchel
15 before you get in the car; is that correct?

16 A Yes, ma'am.

17 Q Then you guys leave, right?

18 A Yes, ma'am.

19 Q And you never call 911?

20 A No, ma'am.

21 Q And you heard the shot go off, I would
22 guess?

23 A Yes, ma'am.

24 Q And you said you are familiar with the
25 area, so you are familiar that the Clemson City

Jaron Gibbs - Cross-Examination by Ms. Hinton

1 Police Department is just three miles down the road,
2 correct?

3 A Yes, ma'am.

4 Q And you never went to the police
5 department, correct?

6 A Yes, ma'am.

7 Q And you got a very good friend, I would
8 assume, in Robby Porter, correct?

9 A Yes, ma'am.

10 Q And he was in that vehicle when the shot
11 went off, correct?

12 A Yes, ma'am.

13 Q And you never went back to check on him?

14 A Yes, ma'am.

15 Q Okay. And you never called him to see if he
16 was okay; is that right?

17 A Yes, ma'am.

18 Q You never called back the number that had
19 called you repeatedly to see if everyone was okay; is
20 that correct?

21 A Yes, ma'am.

22 Q Speak up a little for me.

23 A Yes, ma'am.

24 Q And, in fact, you receive a phone call on
25 the way to the Greenville Hospital -- well, let me

1 back up. After y'all left there, you went to Edgewood
2 Apartments; is that correct?

3 A Yes, ma'am.

4 Q And you went inside?

5 A Yes, ma'am.

6 Q Did you take that brown satchel with you
7 when you went inside?

8 A No, ma'am.

9 Q Then you went to Greenville Hospital?

10 A Yes, ma'am.

11 Q Okay. And at some point in Greenville
12 Hospital, you receive a phone call that says I think
13 somebody was shot -- I'm sorry -- I think you shot
14 that boy in the head. Is that what you received?
15 Phone call?

16 A Yes, ma'am.

17 Q Okay. And you never call 911 after that
18 either?

19 A No.

20 Q Okay. And you didn't know if you had shot
21 Hunter Raby or Robby Porter or what had happened, did
22 you?

23 A No, ma'am.

24 Q Okay. You didn't call your dear good
25 friend, Robby Porter, to see if he was okay, did you?

1 **A** No, ma'am.

2 **Q** And you never called the police to say
3 y'all have got this all wrong. I was trying to hand
4 them what I thought was an unloaded gun; did you?

5 **A** No, ma'am.

6 **Q** In fact, when you got back in the car with
7 Autumn, according to Autumn's testimony, the first
8 thing that you told her was, no, I shot the roof,
9 everything is --

10 **MS. D. WHITE:** Your Honor, I object. That's
11 not according to her testimony. She said she
12 thought that was a mistake. That's exactly -- I
13 cleared that up. She said no, that was actually
14 a mistake.

15 **THE COURT:** I'll allow you -- I'll allow
16 you to cross him on this. If there's anything
17 you want to redirect on this, that's certainly
18 permissible.

19 **BY MS. HINTON:**

20 **Q** You were in here when I asked Autumn, at
21 minute 14:50 of her tape -- videotaped testimony, if
22 she said, no, I shot the roof, everything is okay,
23 drive off. Were you here when she said that?

24 **A** Yes, ma'am.

25 **Q** And then the other thing that she said that

1 you potentially said was that I hit the -- hit the
2 roof, everyone is okay. Is that right?

3 A Yes, ma'am.

4 Q And what you didn't say when you got in
5 there is I was just trying to give him what I thought
6 was an unloaded gun, I don't know what happened,
7 right? You didn't say that.

8 A Yes, ma'am, right.

9 Q You said that you purchased this gun on the
10 street. Was that in Atlanta or in Clemson?

11 A Atlanta.

12 Q Okay. And is that a legal purchase of a
13 firearm? Do you know?

14 A I don't know.

15 Q Do you have a concealed weapons permit?

16 A No, ma'am.

17 Q But safe to say, you bought that gun for
18 protection; is that right?

19 A Like I said, Chance work in some pretty
20 weird places. I bought it so we would feel better.

21 Q Okay. In the event that something happened
22 in Atlanta and someone approached you, you can defend
23 yourself. Is that why you bought it?

24 A Yes, ma'am.

25 Q Okay. And you were heading to Atlanta when

1 you had that gun in your bag, correct?

2 A Yes, ma'am.

3 Q Okay. And you were -- you would admit that
4 having an unloaded gun when you are trying to protect
5 yourself doesn't do you much good, right?

6 A Yes, ma'am.

7 Q And you were positive that it was unloaded
8 when you got out of that car?

9 A No, not positive.

10 Q So you have a potentially loaded gun. You
11 don't know whether it was loaded or unloaded. You go
12 and stick in the face of someone who was yelling at
13 you. Is that your testimony?

14 A At the time, I didn't think the gun had
15 bullets in it.

16 Q Okay. So my question was, when you got out
17 of that car, you did not know whether that gun was
18 loaded or unloaded and you went to the driver's side
19 of the door of someone yelling at you and stuck it in
20 his face? Is that your testimony? Is that correct?

21 A I don't think I understood your question.

22 Q You did not know whether the gun was loaded
23 or unloaded, correct?

24 A I thought it was unloaded.

25 Q Okay. But you either thought -- you either

1 knew it was unloaded, you didn't know or you knew it
2 was loaded or you weren't sure. Which one is it?

3 A I thought it was unloaded. I didn't use
4 that gun. I never shot it.

5 Q Okay. So you don't know whether or not the
6 gun was loaded or unloaded? I'm confused.

7 A I thought that it was unloaded.

8 Q Okay. And so an unloaded gun is going to do
9 you no good when you go to protect yourself in
10 Atlanta; is that correct?

11 A Yes, ma'am.

12 Q The gun fires and you take off; is that
13 correct?

14 A I walked back to Autumn's car.

15 Q Okay. So you walked back. You didn't run or
16 anything?

17 A No, ma'am.

18 Q So when the gun goes off and Hunter Raby
19 starts screaming, F you, F you, and there are screams
20 from Kalyn Meaders, you just get in the car and drive
21 off; is that correct?

22 A I didn't hear anyone screaming. I started
23 to walk away. Nobody said anything.

24 Q Nobody said anything?

25 A No, ma'am.

1 Q That's your testimony?

2 A (Nods head.)

3 Q So your testimony is no one yelled, F you,
4 like the independent witnesses said --

5 MS. D. WHITE: Your Honor, I'm going to
6 object. They were yelling that when they got to
7 the car.

8 THE COURT: Okay. I don't -- I just need
9 "Objection. Pitting."

10 MS. D. WHITE: Yes, Your Honor.

11 THE COURT: Sustained.

12 BY MS. HINTON:

13 Q And your testimony is you never heard
14 Hunter Raby say you shot Robby?

15 A No, ma'am.

16 Q But you do not deny that you were informed
17 at some point that there's a good possibility
18 somebody was shot in that car?

19 A Yes, ma'am.

20 Q And when you got that phone call, you never
21 turned to Autumn and said, "I don't know how anyone
22 was shot. I thought the gun was unloaded. I was just
23 trying to hand it to Hunter," correct?

24 A Correct.

25 Q And you had a phone on you that day; is

1 that correct?

2 A Yes, ma'am.

3 Q So you could have very easily called 911 if
4 you wanted to, correct?

5 A Yes, ma'am.

6 Q And in fact, you are the one that told
7 Autumn to drive off; is that correct?

8 A Yes, ma'am.

9 Q And then you took off to Autumn; is that
10 correct?

11 A Yes, ma'am.

12 Q And you have a 2014 conviction for False
13 Information to Police; don't you?

14 A Yes, ma'am.

15 Q So you could have gone to the police
16 department, correct?

17 A Yes, ma'am.

18 Q And you actually could have pulled into the
19 police department when they were tailgating you,
20 correct?

21 A Yes, ma'am.

22 Q Okay. And they never ran you off the road,
23 hit the car or anything like that, correct?

24 A No, ma'am.

25 Q Okay. And you could have called 911,

1 correct?

2 A Yes, ma'am.

3 Q And you also could have gone back to Curtis
4 Circle and Abel Drive where all your friends were,
5 correct?

6 A Yes, ma'am.

7 MS. HINTON: That's all I have, Your
8 Honor.

9 THE COURT: Anything on redirect?

10 MS. D. WHITE: Just one more.

11 THE COURT: Sure.

12 REDIRECT EXAMINATION

13 BY MS. D. WHITE:

14 Q When you bought that firearm, was that a
15 newer firearm or an older firearm?

16 A No, ma'am. It was old.

17 Q Was it like a really nice firearm or a
18 piece of crap firearm?

19 A Piece of junk.

20 Q Did you buy some ammo with it too?

21 A Yes, ma'am.

22 Q And in fact, in that same bag, did you have
23 ammo in there?

24 A Yes, ma'am.

25 Q Was it in a box?

1 **A** Yes, ma'am.

2 **MS. D. WHITE:** No further questions.

3 **THE COURT:** All right. Any other questions
4 for this witness?

5 **MS. HINTON:** No, Your Honor.

6 **THE COURT:** Sir, you can step down.

7 **MS. D. WHITE:** Your Honor, I know we
8 haven't been going for long, but may we take a
9 break?

10 **THE COURT:** Sure.

11 **MS. D. WHITE:** Thank you.

12 **THE COURT:** Ladies and Gentlemen, I'm
13 going to ask you to step to your jury
14 deliberation room. We're not quite there yet, so
15 thank you.

16 (Jury exits at approximately 2:35 p.m.)

17 **MS. D. WHITE:** Your Honor, may I have one
18 minute?

19 **THE COURT:** Oh, absolutely.

20 (There is a pause.)

21 **MS. D. WHITE:** Your Honor, the defense
22 rests.

23 **THE COURT:** Okay. I'll tell you what,
24 let's take a 10-minute break, and I'll let you
25 rest in front of the jury and then we will send

1 then home for the day. That will give us time to
2 have a charging conference and get ready for
3 tomorrow morning. All right -- unless you have
4 any reply testimony.

5 MS. HINTON: I do not.

6 THE COURT: All right. I didn't ask you.

7 MS. HINTON: Thank you. That's okay.

8 (Court goes off the record at approximately
9 2:36 p.m.)

10 (Court goes on the record at approximately
11 2:44 p.m.)

12 THE COURT: Y'all ready to bring the jury
13 back in?

14 MS. HINTON: Yes, Your Honor.

15 MS. D. WHITE: Sure.

16 THE COURT: All right.

17 (Jury enters at approximately 2:45 p.m.)

18 THE COURT: Ms. White?

19 MS. D. WHITE: Yes, Your Honor. Your Honor,
20 the defense rests.

21 THE COURT: All right. Ladies and
22 Gentlemen, there is a judge, who died recently,
23 but he was far, far more wise than I can ever
24 hope to be. He would always say don't ever
25 charge a jury on the law after 3:30. I've come

1 arguments. Then you'll have my charge on the
2 law. We're going to have some natural breaks in
3 between hearing arguments and my charge on the
4 law. If anybody needs a break at any time, you
5 just signal and we'll do it. All right.

6 All right. Yes, ma'am.

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

9 **THE COURT:** Yes.

10 **MS. HINTON:** Ms. White and Ms. White.

11 One and a half miles, four minutes. That's
12 all it took for Jaron Gibbs to become so
13 enraged that he murdered Robby Porter. Hunter,
14 Kalyn and Robby were headed to the lake that
15 day. They decided that they wanted to purchase
16 drugs from the defendant. They called him. They
17 determined that they would meet him on Abel
18 Road. They pulled up. They exchanged money.
19 They received those drugs in a cigar wrapper,
20 and they went to Walmart to weigh it.

21 When they got to Walmart, they realized
22 that they had been shorted, and they wanted
23 their money back. They go back to where the
24 defendant is because the defendant was walking.
25 They figured he was probably still in the same

1 area. They find him, and he's getting into a
2 vehicle. So they try to block his vehicle so
3 they could talk to him. The vehicle speeds
4 around them, and they begin following the
5 vehicle.

6 They pull up to a four-way stop, four
7 minutes down the road at Cambridge Drive and
8 Issaquena Trail. The defendant exits the
9 vehicle on the passenger side, walks between
10 the two cars and puts a gun in Hunter Raby's
11 face. They had talked about money. They wanted
12 their money back. The defendant had said, I've
13 got your money. I'll give it to you later.

14 Puts a gun in Hunter Raby's face, "This is
15 not how you want this to go down." Hunter Raby,
16 in defense of his own life, pushes the gun.
17 Mr. Gibbs brings it back to his face, this
18 time, directly between his eyes. Hunter Raby,
19 again, in defense of himself, pushes the gun
20 off. Hunter Raby has disrespected Jaron Gibbs
21 for the last time. When he pushes the gun this
22 time, Jaron Gibbs fires. The State doesn't deny
23 that Mr. Gibbs intended to kill Hunter Raby
24 that day or at least injure him. But instead,
25 when Hunter Raby pushed that gun up, it grazed

1 Hunter Raby's head, it grazed the hat that he
2 was wearing; and it struck and killed Robby
3 Porter.

4 I want to briefly go over the law in this
5 case. The judge will charge you fully on the
6 law. What the judge says is the law in this
7 case. Just briefly, so you'll have an idea. I
8 want to first talk about what this case is not.
9 This case is not a case of accident. For a case
10 to be a case of accident, for the defendant to
11 claim accident, the act, first, must be
12 unintentional, which the State claims it is
13 not. Second, the defendant must be acting
14 lawfully. Getting out of a car with a gun and
15 putting it in someone's face is not acting
16 lawfully. Finally, reasonable care must be used
17 by the defendant when handling the weapon. Even
18 if you believe his story that he was trying to
19 give him payment for a gun, you do not pay
20 somebody with a gun by pointing it in their
21 face. So the law of accident does not apply.

22 Second, what you will not hear the judge
23 charge you on is self-defense. That's because
24 that does not apply in this case. That could
25 not be considered by you in your deliberations.

1 Next is the law of involuntary
2 manslaughter. This case is also not an
3 involuntary manslaughter. What that requires is
4 an unintentional killing of the victim without
5 malice -- I'll go through malice in much more
6 detail later -- while engaged in an unlawful
7 activity, not naturally tending to cause death
8 or great bodily injury. If you put a gun in
9 someone's face, you are naturally tending to
10 cause the death or great bodily injury of that
11 person.

12 Another option under involuntary
13 manslaughter is that the defendant
14 unintentionally killed somebody without malice
15 while engaged in a lawful activity with
16 reckless disregard for the safety of others.
17 This is not a lawful activity. Taking a gun
18 that you've illegally purchased and shoving it
19 in front of somebody's face is not a lawful
20 activity.

21 Now, I want to talk about what this case
22 is. This case is murder. Again, this is just a
23 summary of what the judge will fully charge you
24 on. Murder is the killing of another with
25 malice aforethought. Malice is hatred, ill

1 will, hostility, the intentional doing of a
2 wrongful act without just cause and with the
3 intent to cause an injury. Jaron Gibbs had no
4 just cause to get out of that car and put a gun
5 in Hunter Raby's face. He certainly did it with
6 the intent of inflicting injury.

7 Malice can be expressed or implied -- or
8 inferred, excuse me. All that means is there
9 could be direct evidence of malice and you can
10 also look at the circumstances surrounding the
11 case using your common sense to determine if
12 malice is in this case. It doesn't require that
13 there was some premeditated plan. It requires
14 that malice occurs just before the act and
15 during the act. It could be in a split second.
16 Malice can also be inferred from conduct
17 showing a total disregard for life. That's what
18 we have in this case, a complete disregard for
19 the life and safety.

20 Now, as we know, Hunter Raby was not
21 killed; Robby Porter was. The reason that is
22 still a murder is because there's something in
23 South Carolina called transferred intent. What
24 that means is that if the defendant, with
25 malice aforethought, intends to kill one person

1 and ends up killing someone else, then that is
2 still murder. The way that sometimes we
3 describe it is intent follows the bullet. If
4 you intend to kill one person and you kill
5 another, that's still murder under the law of
6 transferred intent.

7 Finally, if you find him guilty of murder,
8 it is also -- he is also guilty of possession
9 of a weapon during the commission of a violent
10 crime, that violent crime being murder. That
11 simply means that the defendant was in
12 possession, which I don't think anyone has
13 disputed, of a weapon, a firearm. And a
14 revolver, or any weapon that can expel a
15 projectile counts as a firearm.

16 The State has the burden of proof in this
17 case. We have told you that from the get-go. It
18 is a burden we gladly accept. It is beyond a
19 reasonable doubt. That's not beyond any doubt.
20 That's not beyond every doubt. We must leave
21 you firmly convinced of the defendant's guilt.
22 If you are firmly convinced that the defendant
23 murdered Robby Porter, then he's guilty. If you
24 are firmly convinced that he did that while in
25 the possession of a weapon during the

1 commission of that violent crime, then he is
2 guilty of murder. I want to talk briefly about
3 the defendant's case. Then I want to transition
4 into the specifics of our case.

5 The first thing that the defendant's case
6 was, is that law enforcement didn't do
7 anything. So I took the liberty of jotting down
8 some of the things that law enforcement did do.
9 They took photos. They took gunshot residue.
10 They obtained a phone number and attempted to
11 trace it.

12 They collected the hat that you have in
13 evidence and gloves that were sent to SLED, for
14 analysis along with a GSR kit. SLED determined
15 -- you heard the SLED agent -- he determined
16 not to test it. They were in a three-year
17 backlog. He found GSR, but the police collected
18 that.

19 There was a body cam. They searched for a
20 weapon. Of course, none was located, but they
21 looked for one. They searched for casings,
22 which is consistent with a revolver, that there
23 were no casings. They seized drugs. They seized
24 phones, phones they attempted to extract. One
25 of them is a flip phone, a burner phone. You

1 can't extract those, according to Detective
2 Arflin. The second one was password protected.
3 Kalyn Porter didn't know the password.
4 Unfortunately, Robby Porter wasn't around to
5 give it.

6 They spoke to eyewitnesses. They
7 interviewed Autumn Gilstrap, who was the driver
8 of the car the defendant was in. They got GSR
9 from her. They searched her vehicle. They ran
10 her tag to confirm that the car belonged to
11 her. They dusted her car for fingerprints. They
12 sent those prints off for analysis.

13 Remember, this is not a whodunit. This was
14 never a whodunit from the end -- from the
15 beginning. Lena Saidat says, from the minute
16 she walks up to the car, Kalyn Porter is
17 screaming, "It's Jaron. It's Jaron." That was
18 never a question. It was confirmed by Autumn
19 Gilstrap who showed up at the police department
20 two hours later, I was with Jaron and a shot
21 went off in the car.

22 There was no evidence that multiple weapons
23 had been used. And there's been absolutely no
24 testimony in this case that there would be
25 anything on anyone's cell phone, any prints,

1 any additional weapons, from the defendant's
2 own testimony. There is nothing that would have
3 shown anything different than what it was.

4 I want to talk quickly about testimony. The
5 judge will instruct you that what I say is not
6 evidence. What Ms. White says is not evidence.
7 That doesn't just end -- begin in this closing
8 argument. That's throughout the entire case.
9 What we have said is not evidence. The
10 testimony and evidence comes from this witness
11 stand. So if it wasn't said on this witness
12 stand and it's not in evidence and it's not
13 your own common sense, it's not to be
14 considered.

15 The defense does what I call a kitchen sink
16 case. They throw everything at you, hoping that
17 something will stick. The first thing that they
18 tried to convince you of is that there was some
19 sort of struggle with the gun. I think
20 Ms. White did this when she was trying to talk
21 about Hunter Raby swatting the gun. It was like
22 this, wasn't it? It was like this. No, it was
23 like this, which was confirmed by Lena Saidat,
24 this is what I saw.

25 And when that didn't work, when there was

1 no evidence of that, when that never developed,
2 they moved on to he was just trying to put it
3 in Hunter Raby's hands. That didn't work. That
4 didn't line up with anybody's testimony,
5 including the defendant's. The defendant didn't
6 say I tried to put it in his hand. The
7 defendant said I pushed it in his face.

8 The next thing that they tried was that if
9 you're left-handed, you can't shoot with your
10 right hand. I think that's pretty much common
11 sense that there are people out there that can
12 shoot with both hands. That's not uncommon. But
13 if you didn't know that prior to that, Alex
14 Saidat who has no law enforcement training or
15 anything like that told you that he was trained
16 to shoot with both hands and that he learned
17 that himself.

18 Now, the defendant's testimony. The
19 defendant tells you that they had a friendly
20 bet over a game of basketball and that Hunter
21 Raby won that basketball bet. Now, I'm not
22 commenting necessarily on the athletic ability
23 of Hunter Raby versus Jaron Gibbs, but Hunter
24 Raby is a tad shorter than me. My dad actually
25 made me quit my middle school basketball team

1 because he said that I was bringing the team
2 down, and I was. I am not a basketball player.
3 To put Mr. Raby up against Mr. Gibbs, I'm going
4 to bet that that's not true. That's not it.

5 Why would Hunter Raby and Kalyn Meaders get
6 up here and tell you that they participated in
7 a drug deal, if this was all over a basketball
8 bet? Why would they get up there and implicate
9 themselves in a crime, a crime that Detective
10 Arflin told you he still has the evidence of,
11 that they could still be charged with, if this
12 was all over a friendly bet? That doesn't make
13 any sense.

14 And how would they know where the defendant
15 was to find him about the money? He never
16 testified that there was any phone call that
17 they could come and get the money from Abel
18 Road. All he testified to was they just showed
19 up. How would they know that? He didn't live
20 there. That's where his friends were. There was
21 no testimony that there was a predetermined
22 location to meet them. No, that testimony came
23 from Hunter and Kalyn who told you, we called
24 him earlier and we wanted to buy marijuana and
25 that's where we were going to meet him.

1 The worse thing that Mr. Gibbs said that
2 the people in that Explorer did is point at
3 him, follow him too closely and call him
4 demanding money. That's all that was. If that's
5 all that they did, you do not have the right to
6 get out of your car with a loaded gun, put it
7 in someone's face and fire.

8 He also-- there was also testimony about
9 this brown satchel. And I'll tell you why
10 that's important and I'll go into more detail
11 in a minute, but he has the satchel. He was
12 going to Atlanta. We know he was going for at
13 least two days, because the marshals found him
14 two days later in Atlanta. I don't know how
15 long he was actually going.

16 But he was packing all these things in what
17 Amelia Hood calls a man purse. The State
18 maintains that that's not true. He couldn't
19 pack all of his clothes, guns, and ammunition
20 in this man purse. What he used that man purse
21 for was to put the gun in it and to hold the
22 marijuana that he sold to Hunter Raby and Kalyn
23 Meaders, because you can't just walk around in
24 the open with marijuana and a gun.

25 He wasn't sure if it was loaded. And again,

1 there has been no dispute that this was a
2 revolver. I think it's common sense, again. You
3 can tell if a revolver is loaded or unloaded.
4 That is the nature of a revolver.

5 He never said anything on the phone about
6 I'm going to give you guys this gun instead. I
7 don't have your money. Autumn Gilstrap said he
8 never said that. He never walks up to Hunter
9 Raby and says, hey, I'm just trying to give you
10 this gun in exchange for payment. No, instead
11 he pushes it in his face, a gun that the
12 defendant illegally obtained and that he does
13 not have a concealed weapons permit for.

14 They are yelling at each other. He says
15 he's holding it by the grip. Again, he pushes
16 it in Hunter's face. If you're trying to give
17 somebody a gun for payment, I could -- in any
18 number of ways, if somebody's yelling at me,
19 you know, whatever, I'm just going to go and
20 drop the gun, "Here. Take it. You're paid. I'm
21 done" or I'm going to put it on the hood of the
22 car or I'm going to put it on the ground or I'm
23 going to toss it to him. I'm certainly not
24 going to push it in his face when he's yelling
25 at me. That doesn't make any sense.

1 He didn't just push it in there once. He
2 pushed it twice. You push a gun in someone's
3 face once and they swat it away from you, "Hey,
4 man, I'm just trying to pay you. Chill out.
5 This is my payment. I don't have the money. I'm
6 trying to give you this gun." No, he pushes it
7 back in his face again. That is the intent to
8 kill. That's not an accident. That's not a
9 misunderstanding. This is the intent to kill.

10 The gun goes off. There's been absolutely
11 no testimony that there was a struggle. There's
12 been absolutely no testimony from anyone that
13 anybody else's finger was on that trigger.
14 Hunter Raby said he was 100 percent positive
15 his finger was not on that trigger. Jaron Gibbs
16 never testified from that witness stand that
17 anybody else's finger was put on that trigger.

18 And this is a revolver. It's either a
19 single action or a double action. As Detective
20 Arflin told you, he either had to cock it
21 before it was fired, meaning it's a single, or
22 a double, meaning that it has a long handle
23 trigger. I'm going to go into more detail about
24 the importance of that through a demonstration,
25 in just a minute.

1 And then he leaves. He walks to his car and
2 leaves. There's no dispute that a gun went off.
3 What the defendant wants you to believe is that
4 he thought the gun was unloaded, it,
5 surprisingly, goes off; his friend, who he's
6 known since little league, is seated in the
7 passenger's seat; and he doesn't call 911; he
8 doesn't go to the police station. He, instead,
9 hides the gun in his satchel before he gets
10 back in the car. That's what Autumn testified
11 to. That's what you do with a murder weapon.
12 You hide it.

13 And he drives off. And he goes to Atlanta
14 to hang out with a stripper. Even after he
15 received a phone call, he did not deny this,
16 that, I think you shot someone. He was as
17 emotionless on that stand as he was the day he
18 shot Robby Porter.

19 Our case, as I told you, is this all
20 started over a drug deal. That drug deal was
21 marijuana in a cigar. How do we know that
22 that's likely true? Well, in Autumn Gilstrap's
23 car, what Deputy Shaw testified to was that
24 there was an empty cigar package in that car.
25 It's the State's position that he had that

1 empty cigar package and had a roll of marijuana
2 with him and dumped it into Autumn Gilstrap's
3 car.

4 Autumn Gilstrap said they were having an
5 argument over money. I could hear that on the
6 phone. They told you that they followed him.
7 That's consistent with everyone's testimony.
8 Consistent that they called him multiple times.
9 Detective Arflin told you that he saw on Hunter
10 Raby's phone that they had called the same
11 number multiple times within that time frame.
12 They get to the four-way stop and the defendant
13 gets out and puts that brown satchel -- cause
14 he knows when he gets out of that car that he's
15 going to use that weapon. He knows that he
16 needs something to put that weapon back in.

17 So he makes a conscious decision to put
18 that satchel outside of the passenger's door,
19 to walk over to yell at Hunter Raby -- Hunter
20 Raby's yelling at him -- to put a gun in his
21 face. Lena Saidat said he put a gun in his
22 face. Autumn Gilstrap said the barrel of the
23 gun was in his face. Alex Saidat said he thrust
24 the gun at him. Hunter Raby told you that gun
25 was in his face. The defendant himself told you

1 he put the gun in his face. There is no doubt
2 that that gun was in his face.

3 There's no doubt that Hunter Raby made an
4 attempt to protect himself by pushing that gun
5 out of the way. How do we know that he didn't
6 grab it or struggle for it, try to rip it from
7 him? Because there's been no testimony to that.
8 The defendant himself did not testify to that.
9 Lena Saidat did not testify to that. She showed
10 you the motion that happened, which was the
11 same motion that Hunter Raby did.

12 They hadn't been sitting in here watching
13 each other's testimony. They've been
14 sequestered. They don't know what the other
15 person said. She said that because that's what
16 happened. Lena Saidat doesn't know anyone in
17 this case. She has nothing to gain or lose by
18 her testimony, but it's consistent with what
19 Hunter Raby said and what Kalyn Meaders said.
20 The defendant even said that he pushed it out
21 of his face.

22 Now, I'm going to ask Ms. McCaill to come up
23 here. And as I told you, if this was a single
24 action, this is what would have had to have
25 happened for this gun to go off because guns do

1 not accidentally go off. Guns go off when the
2 trigger is pulled. He would have had to have
3 gotten out of the car, cocked it before he put
4 it to his head. That's intent. That is a
5 conscious effort.

6 Now, if it's a double --

7 **MS. D. WHITE:** Your Honor, I'm going to
8 object to any of this testimony. Actually,
9 demonstrative evidence has to be based -- and
10 that's the Cantrell case. That was actually my
11 case that went to the Supreme Court -- has got
12 to be based on evidence and testimony. We have
13 no evidence whatsoever that a gun can't go
14 accidentally off, especially an old one that's
15 been traded on the street.

16 **THE COURT:** I'm going to allow you to
17 argue all of this in your closing coming up.
18 I'm going to allow this in a limited fashion.

19 **MS. HINTON:** Yes, Your Honor.

20 **THE COURT:** Thank you, but your objection
21 is noted.

22 **MS. HINTON:** Hunter Raby testified that he
23 pushes the gun up like this. He would have to
24 push the gun up like this, wrap his fingers
25 around where the trigger is, pull it back and

1 pull it up at the same time if this was a
2 double action revolver. That simply does not
3 make sense.

4 Thank you.

5 Jaron Gibbs leaves, leaving Robby Porter
6 there to die. Autumn Gilstrap told you that she
7 was scared. She was scared for the people in
8 the car. She was scared for herself. As
9 significant as what the defendant said was,
10 which was that there was no -- sorry -- I shot
11 the roof; everything is okay; drive off. That
12 was the first thing that he told Autumn
13 Gilstrap. The second thing he told her was, no,
14 I didn't shoot anyone. Everything's fine. It's
15 okay.

16 As significant as that is, showing that he
17 did, in fact, know that that gun went off, did,
18 in fact, initially admit that he shot that gun,
19 no, I shot the roof. I shot the roof. Not
20 somebody else shot or pulled the trigger -- as
21 significant as that is, it's equally
22 significant what he didn't say. I didn't know
23 the gun was loaded. That never came out of his
24 mouth. I was just trying to pay him by giving
25 him this gun instead of money. That never came

1 out of his mouth. That came out of his mouth
2 when he got up on this witness stand. He never
3 said that to Autumn Gilstrap. He never called
4 911 and said that.

5 **MS. D. WHITE:** Your Honor, I'm going to
6 object. May we approach?

7 **THE COURT:** Yes.

8 (Bench conference is held off the record.)

9 **THE COURT:** Overruled and preserved for
10 the record.

11 **MS. HINTON:** When Jaron Gibbs got back in
12 that car, he did not tell Autumn Gilstrap, I
13 thought the gun was unloaded. I don't know what
14 happened. I was just trying to give him the
15 gun. He tried to take it to me -- from me. He
16 never said those things. That is as significant
17 as what he did tell you.

18 Now, I told you I'd briefly talk about
19 malice. Hatred, ill will. Jaron Gibbs was
20 angry. They wanted his money -- they wanted
21 their money back. He's trying to get to
22 Atlanta, and they're irritating him.

23 He gets to that four-way stop and he's mad
24 and he's going to show them who's boss. So he
25 puts the brown satchel out the car, gets the

1 gun, walks over to the driver's side, points it
2 at him. "This is not how you want this to go
3 down." And Hunter Raby doesn't cower back. He
4 tries to defend himself. That ain't happening.
5 So he puts it back in his face. He's going to
6 show him who's boss. When Hunter Raby swats it
7 again, Jaron Gibbs is angry and he pulls that
8 trigger. And he intends to kill Hunter Raby,
9 but he kills Robby Porter instead.

10 Recklessness is leaving a gun on a table
11 and a kid picking it up and killing himself.
12 This is not recklessness. This is malice. This
13 is murder. Mr. Gibbs had a complete disregard
14 for everybody at that four-way stop that day,
15 for Lena and Alex Saidat and their two
16 children, for Amelia Hood and her nine-year-old
17 daughter, for Fredricka Gibson and her two
18 grandchildren, and certainly for Hunter Raby,
19 Kalya Meaders and Robby Porter.

20 There's been this whole talk of why did he
21 do it in broad daylight? Why did he do it? I
22 don't know. People do bad things. People do bad
23 things in front of other people. This is not
24 the first time that somebody's been shot in
25 broad daylight. This is not the first time that

1 somebody's been shot in front of other people.
2 It happens. He was enraged. I think the only
3 thing that Mr. Gibbs saw that day was red. He
4 was ticked. I don't think he was looking at his
5 surroundings when he made the conscious effort
6 to go over there and fire that gun into that
7 Explorer.

8 I have a daughter. She's almost three. That
9 means she does things bad and intentionally,
10 because that's -- she's that. That's what she
11 does. And when she does bad things, she does
12 whatever she can to try to distract me from
13 what she's done. She will try to talk to me
14 about something else. She will try to show me
15 something else. She'll hold my face so that I
16 literally can't look to see what she's done.
17 Because that's human nature. When we do
18 something bad, we want you to look over here
19 and over here and over here. We certainly don't
20 want you to look here.

21 Of course, there were drugs in this car.
22 This was a drug deal. Of course, Hunter Raby
23 had pills. He admitted that to you. That
24 doesn't matter. The drugs in Robby Porter's
25 system don't matter. Because where has there

1 been any testimony that Robby Porter did
2 anything wrong other than being a passenger in
3 the car? What police did or didn't do, that's a
4 distraction for you from what Jaron Gibbs did
5 do.

6 If I were to walk out of this courthouse
7 today with Ms. McCall and someone were to walk
8 up to me with ill will, with the intent to hurt
9 me and put the gun in my face and I were to
10 just stand there and they were to shoot me and
11 kill me or Ms. McCall, then they would be
12 guilty of murder.

13 What the defense wants you to believe is
14 that if someone walks up to me and Ms. McCall
15 outside of this courthouse and puts a gun in my
16 face because of hatred and ill will with the
17 intent to hurt me and I try to defend myself
18 and that gun goes off, then that person is not
19 guilty of murder. That defies logic. That
20 defies common sense and that defies the laws of
21 this state.

22 Ms. White told you, in the beginning,
23 there's more to this story. Well, I simply
24 haven't heard it. There was nothing credible
25 about the defendant's testimony. You will judge

1 the credibility of the witnesses in this case.
2 I want you to remember when you are judging the
3 credibility, who has something to gain and who
4 has something to lose. Hunter Raby lost his
5 friend that day. Kalyn Meaders lost the only
6 person she has other than her son, Clark. She
7 lost her husband, father to her child. They are
8 not in trouble. They've implicated themselves
9 in a crime in front of you.

10 You know who is in trouble? Jaron Gibbs.
11 You know who has everything to lose? Jaron
12 Gibbs. People lie for two reasons, to get out
13 of trouble and to get what they want. Jaron
14 Gibbs is in a lot of trouble. Jaron Gibbs wants
15 to get out of it.

16 Robby Porter had his whole life ahead of
17 him. He was a father. He was married to his
18 high school sweetheart. He'd just gotten a new
19 job and he wasn't perfect. I'm not perfect
20 either. But he certainly didn't deserve to lose
21 his life that day and certainly didn't deserve
22 to be murdered by the anger of Jaron Gibbs.

23 People don't kill people over basketball
24 games. People kill people over drugs. I would
25 ask that you find the defendant guilty of both

1 murder and possession of a weapon during the
2 commission of a violent crime. Thank you.

3 **THE COURT:** Thank you, Ms. Hinton.

4 **MS. D. WHITE:** Thank you, Your Honor.

5 **THE COURT:** Yes, ma'am.

6 **MS. D. WHITE:** Well, we've finally made it
7 to Day 4, and we very much appreciate you all.
8 Four days is a lot to give. It's a whole lot.
9 If it makes you feel any better, if it weren't
10 you, it would have had to be somebody else. I
11 know that doesn't help much, but thank you so
12 much for giving up four days of your life,
13 basically, to sit here.

14 In opening statement, I told you that the
15 problem with this case is law enforcement
16 assumed the conclusion of the case before it
17 ever got started. I think we saw that time and
18 time and time again. We just heard that it
19 isn't a whodunit. Even now, even now, when
20 we've been through four days of trial, you will
21 notice the law requires, before you find
22 anybody guilty of anything, the first words are
23 the defendant did this, the defendant did that,
24 the defendant pulled the trigger. Even now.
25 They don't get it. They just assumed he done

1 it.

2 Now, I'm going to talk to you a little bit
3 about the law in this case, and then I'll talk
4 to you a little bit about the facts. Let's
5 start first with the law. I'm going to warn
6 you, my handwriting is atrocious, but we'll see
7 what we can do here.

8 All right. First of all, their burden of
9 proof in this case is beyond a reasonable
10 doubt. What does that mean? What does beyond a
11 reasonable doubt mean? Well, it's a little bit
12 self-explanatory. If you have a reasonable
13 doubt that Jaron pulled this trigger, then it
14 must be beyond a reasonable doubt.

15 The judge is going to tell you that if you
16 -- a reasonable person would hesitate to act,
17 then that is not proof beyond a reasonable
18 doubt. So what I'm saying is -- of course,
19 you're going to discuss this -- but when it
20 gets to a time to vote on a verdict, if you
21 hesitate to act as to whether Jaron pulled that
22 trigger or not, you must find him not guilty.
23 That's the definition of beyond a reasonable
24 doubt. The State must prove beyond a reasonable
25 doubt that he pulled this trigger. If you

1 hesitate to act before you vote on whether he
2 pulled that trigger or not, you must find him
3 not guilty. Suspicion is not enough. The judge
4 will tell you that.

5 So first of all, this is kind of the
6 framework that you're going to apply to
7 everything you look at. Let me just kind of
8 explain to you what's going to happen. I'm
9 going to give the closing arguments. She can
10 certainly give a rebuttal. Then, the judge is
11 going to give you the law.

12 I know we deal with this arena every day.
13 When you come in for a first time, sometimes
14 it's hard to remember exactly what happened on
15 the first day. But the judge told you on the
16 first day, you're the finders of the fact, but
17 you have got to listen to her law. So you're
18 going to decide, okay, what do we think what
19 really happened. And then she's going to tell
20 you, this is the law and you must apply it. So
21 it doesn't matter what you think the law is,
22 you've got to go with what she says. So, again,
23 first, she's going to tell you what the burden
24 is. She's about to do that when we finish our
25 closing arguments.

1 At that point, all of this evidence that
2 we've introduced will go back with you to the
3 jury room. You'll go back there. You can look
4 at it all. You can pass it around. You can talk
5 as long as you want to decide the facts, but
6 you've got to decide your verdict based on the
7 law.

8 Now, the second thing that is important to
9 remember is the judge is going to tell you that
10 you can not find the defendant guilty unless
11 you find, again, beyond a reasonable doubt --
12 again, everything must be beyond a reasonable
13 doubt -- that there was criminal intent. What
14 is criminal intent? The judge will tell you
15 that it is conscious state of wrongdoing, a
16 conscious state of wrongdoing.

17 So let's take a look at murder. Murder has
18 certain elements. What do I mean by this? Any
19 crime, in South Carolina -- probably anywhere
20 -- the State must prove beyond a doubt
21 elements. If any one element is not proven, you
22 must find the defendant not guilty.

23 So murder, what are the elements of murder?
24 Again, the State must prove beyond a reasonable
25 doubt each and every element. The first element

1 is the defendant committed the act. If you go
2 back and you deliberate in that jury room and
3 you can not get past can we prove beyond a
4 reasonable doubt that he's the one that pulled
5 the trigger, it's over. That's the first
6 element that you must decide. First, the
7 defendant killed another. So the defendant
8 killed. He did the killing.

9 Number three, that there is malice. Let me
10 talk to you a minute about malice, because
11 malice can be a little bit hard to understand.
12 I'm going to read you a little bit of the
13 definition. It's hatred, ill will, hostility,
14 more importantly, an intent to kill or inflict
15 injury, serious bodily injury. You must have an
16 intent to do that. There are two different ways
17 to prove it.

18 I feel bad every time I do this for juries.
19 We're, basically, having to go through law
20 school and about 10 years of legal experience
21 because these are so complex. So I know -- I'm
22 trying to break it down as easily as -- I mean,
23 as much as I can, because I know it is
24 convoluted and it really is hard to understand.
25 So you've kind of got to think in your head in

1 elements so that you can kind of keep it
2 straight.

3 Okay. Again, beyond a reasonable doubt, the
4 defendant killed another with malice. That's
5 intent to kill, serious bodily injury, hatred,
6 ill will. There are two ways to prove malice.
7 Now, you still have to have a malice, but there
8 are two ways to prove it.

9 One is you can prove it by direct means.
10 For instance, I walk up to someone and say, "I
11 hate your guts. I'm going to kill you." Okay.
12 I've told you what I'm doing. The other way is
13 you may infer malice from someone's conduct.
14 So, again, direct or inferred.

15 Now, this is important. On the inferred --
16 so, again, direct, which, obviously, we don't
17 have here. Inferred, we don't have that either.
18 Why is that? I'm going to read you inferred.
19 You may infer conduct from a total disregard of
20 human life. A total. Not negligence, not gross
21 negligence, not incredible negligence, a total
22 disregard.

23 Now, again, you may infer if there was a
24 total disregard and it was so total that it
25 convinces you there was an intent to kill.

1 That's how total it must be. Not negligence.
2 It's so total that it convinces you he intended
3 to kill, and he killed. Now, if you can not
4 find beyond a reasonable doubt every element:
5 that the defendant pulled the trigger; he
6 killed; he had malice, which is intent to kill
7 -- again, hatred, ill will, hostility -- and it
8 was such a total disregard that it convinces
9 there was an intent to kill or an intent to
10 seriously -- commit serious bodily injury, than
11 he is not guilty of murder. Every element.

12 All right. So -- and then, of course,
13 you've got aforethought. That malice must
14 exist. Aforethought isn't like it was planned
15 out for two weeks. It was at the time. So,
16 again, must prove each one of these elements.
17 So if you hesitate to act on any one of those,
18 then he's not guilty.

19 Now, let's go to -- you've heard, in
20 certain states, they have, like, first degree
21 murder, second degree murder, homicides of
22 different degrees. We don't have that here.
23 What we have is you're going to be charged on
24 murder and then you're going to be given
25 another choice of what we call involuntary

1 manslaughter. And if you were in some other
2 state, they probably call it another degree,
3 but we call it involuntary manslaughter. So
4 let's talk about that. Again, we have this,
5 hesitate to act.

6 What do we have for involuntary
7 manslaughter? Involuntary manslaughter, again,
8 has elements. Remember, I told you there's no
9 crime in the state that doesn't have elements,
10 so let's go over those. There are two ways to
11 prove involuntary manslaughter.

12 I noticed something really important on the
13 State's law that they gave you on involuntary
14 manslaughter. On the first definition, they
15 skipped some important words. Number one, you
16 can get it -- again, there are two different
17 ways to get it. One is the defendant. Why is
18 this important? If that defendant did not pull
19 the trigger, you don't go any further. You must
20 prove first the defendant pulled the trigger.
21 Secondly, that he unintentionally. What does
22 that mean? Well, it wasn't intended.

23 So in this one -- remember the last one, I
24 said you've got hatred, ill will, all of that?
25 Here, we're starting to see a difference. This

1 is unintentional. So there's no intent to kill
2 here. Now, he still has to have done it. He
3 still has to do the killing, but it was
4 unintentional.

5 The next one is that it's without malice.
6 I'll put this together because it's the same
7 thing. Okay. So, again, both require that the
8 defendant pulled the trigger. All right. Then
9 we go to while engaged in an unlawful activity
10 -- while engaged in an unlawful activity -- not
11 naturally tending to cause of death or great
12 bodily injury. Again, let's look at those
13 words. Not naturally intending to cause death
14 or great bodily injury. That's involuntary
15 manslaughter. Two ways you can get it.

16 So, again, if you would hesitate to act
17 that the defendant pulled the trigger,
18 unintentional and without malice on this one,
19 unlawful act, and then not naturally tending to
20 cause of death or serious bodily injury, that
21 would be involuntary manslaughter.

22 Now, remember, I told you there are two
23 ways to do this. So the second way you can get
24 involuntary manslaughter is the same element as
25 up here. I'm just going to put -- that means

1 the same as the one above, the defendant. This
2 second one, the same as the second one up here.
3 This is another one that's unintentional and
4 without malice.

5 The third one is you're engaged in a lawful
6 activity. So you can see it's a little
7 different than that one. It's the same one.
8 It's still involuntary manslaughter. It's just
9 you can get it this way or you can get it this
10 way. That's the only difference. There's kind
11 of two different definitions for it. Finally,
12 the fourth one is engaged in a lawful activity
13 with reckless disregard for the safety of
14 others. So, reckless disregard for the safety
15 of others. Those are your two ways.

16 Again, you have to find that the defendant,
17 unintentionally and without malice, committed
18 an unlawful act not naturally intended to cause
19 death or serious bodily injury. We go down to
20 here, the other way, the defendant,
21 unintentionally and without malice while
22 engaged in a lawful activity with reckless
23 disregard for the safety of others. Those are
24 the two definitions of involuntary
25 manslaughter.

1 Of course, you've also got the third charge
2 of Possession of a Firearm during the
3 Commission of a Violent Crime. I don't think
4 anyone doubts that he possessed it. If you find
5 him guilty of the murder, then -- and you find
6 that he had a gun, then that would be that
7 charge.

8 So with this in mind, let's take a look at
9 the facts in this case. I'm going to start with
10 Jaron. Jaron told you that he was -- had gone
11 to Atlanta with a woman, Chance, who was a
12 dancer. Dancers, of course, dance in various
13 locations, not always the best areas of town,
14 not the best hours. And he got a gun. Why?
15 Because they were out at night in bad areas of
16 town while she dances.

17 Now, I want to start by saying do you
18 realize he could have come in here and he could
19 have said, I got a gun for my mom because I --
20 he could have come up with a great story that
21 didn't make him look bad at all. But,
22 unfortunately, that wouldn't have been true.
23 Why on earth would he ever say this when he
24 could come up with something that was really,
25 really innocuous, really nice and clean? Why

1 couldn't he say he got it from a family member?
2 Because it wouldn't have been true.

3 We know very well that there is a chance --
4 Detective Arflin told you they were looking for
5 him. She exists. We know she's in Atlanta.
6 Detective Arflin told you about that. We know,
7 from Autumn, he would go down to Atlanta on
8 weekends to see his friends down there,
9 including Chance.

10 Now, the prosecution said did he get it for
11 protection? Of course, you get a gun for
12 protection. What on earth do you think you get
13 a gun for? I've got one in my glove compartment
14 right now. I've got one in my desk drawer. I
15 was in the Marine Corps, so I'm a little -- I
16 might be a little bit more pro firearms than
17 others, but yeah, that's why we have firearms.
18 We have them for that reason, to protect
19 ourselves. We don't get them so we can put them
20 on the coffee table and make them look good as
21 a centerpiece.

22 You know, if you're not in this business,
23 you might say people don't buy guns on the
24 street. That's a crazy story. Millions of guns
25 are sold on the streets. If you want a gun

1 tonight in Pickens County, you go down to the
2 right street in Pickens County and, mark my
3 words, you can trade something or buy
4 something. It's as good as cash on the street.
5 Detective Arflin told you that's completely
6 true. If you think that that's a crazy story if
7 you're not in this business, but that's a fact.

8 He says, I got the gun. I put it in the
9 brown bag. We know he's taking the brown bag to
10 Atlanta. That's the bag he takes back and forth
11 to Atlanta. How do we know this? He is taking
12 the bag to Atlanta that day. No question.
13 Autumn said he called me. I was going to
14 Atlanta. That's where he went. He went to
15 Atlanta. This is the bag he takes. He gets the
16 gun. The gun is in the bottom of the bag, and
17 he has lots of ammo with it.

18 Now, he says there was a bet. Do you
19 realize that until this case came to court and
20 they sat here and told you about this drug deal
21 going bad, did you hear anybody who said -- did
22 you ever hear Autumn or anybody else ever say
23 there was anything besides Jaron saying I don't
24 have -- I don't have the money? I don't have --
25 I'll bring you the money when I get back from

1 Atlanta. Now, why would he be saying that if
2 they just had a deal? How believable would that
3 be if he had the money sitting right there and
4 they just did the deal, like, two minutes ago?
5 That didn't even make sense. No one said that
6 -- anything about them talking about drugs at
7 all during that time. Nobody.

8 So he says there's a chase. It's
9 interesting because Kalyn says, oh, no,
10 everybody was driving normal. Even Hunter Raby
11 says, no, we cut them off. Autumn says, I was
12 scared; it was aggressive.

13 Unfortunately, however, very simple to do,
14 if you watch the six o'clock news, you all will
15 learn about this. I'm sure you all know about
16 it. Guess what, we run videos now.
17 Establishments have videos. Do you know how
18 many crimes are solved by getting a video? Not
19 one word of evidence that anybody went to try
20 to say, well, who's telling the truth?

21 We know, according to Autumn, Jaron didn't
22 make any threats during this chase. We know
23 that Hunter Raby had never mentioned one word
24 of that until he got up here on the stand. We
25 know that they wouldn't stop following them,

1 and, again, that it was aggressive. "I don't
2 have your money. I'll pay you when I get back
3 from Atlanta." They wouldn't stop.

4 Again, you can look at the picture and see
5 how close they would have had to be in that
6 car. Jaron made a split decision. He didn't
7 have a lot of time. They weren't going to stop.
8 They were calling, remember, three or four
9 times after the initial call. This is in a mile
10 and a half. That many calls. They were not
11 going to stop following him. They were not
12 going to stop calling.

13 They didn't have -- you know, we sit in a
14 nice, sterile courtroom. We have all the time in
15 the world to examine everything. What would I
16 do? What's reasonable? That wasn't what was
17 happening that day. He went to a four-way stop
18 where other cars were waiting to go, and he has
19 one thing of value on him, and it is of value,
20 and it is used as cash very often. He makes a
21 split decision to go back. They say, well, it
22 was loaded. Well, he didn't have time to
23 examine everything.

24 He had one way of getting them to stop. He
25 tried everything else. They would not stop. So

1 he gets out on a bright sunny day at a four-way
2 stop, four people, and he takes the gun and
3 goes to execute. That is what the State wants
4 you to believe. They want you to find beyond a
5 reasonable doubt that he intentionally killed
6 somebody under these circumstances, because
7 they followed him for a mile and a half. Now,
8 were they being a pain in the neck? Yeah, they
9 were being a pain in the neck. Did he want them
10 to stop? Yeah. But he's going to execute people
11 in broad daylight?

12 So he puts the barrel of the gun in the
13 car. They say, well, that's really important.
14 He's holding it by this part of the weapon.
15 Handing it to them. Putting it in the car. Yes,
16 cause he's yelling about wanting this money and
17 he's saying take this. It is cash, basically.
18 He knew they'd take it from him. He knew they
19 understood that. We're not dealing with the
20 neighbor on the next street behind you. They
21 knew exactly that this could be cash. So he
22 goes back there.

23 Now, they say, well, how on earth could
24 this have happened? Very simple. Don't forget,
25 just because you put a gun and you're holding

1 it this way in a car, it's not pointing at
2 anybody. People are sitting here. If you've got
3 it out here in front of someone's face, it's
4 not pointing at anybody.

5 But if I'm swatting it, I'm going to push.
6 And when it goes off, I am going to open my
7 hand. I'm not going to keep my hand on a weapon
8 that's just fired. That is completely what he
9 was doing. I'm not taking that gun. I want
10 cash. That's exactly what happened in that
11 vehicle. And how do we know this? I'm going to
12 go through this, because you don't have to
13 believe Jaron. You can believe Hunter Raby when
14 he gave that first statement because that's,
15 basically, what he says happened. But we'll get
16 to that in a minute.

17 Okay. So Autumn, they say the first she --
18 she says the first thing that Jaron says is, I
19 shot the weapon. That is incorrect. This is not
20 what she said. Remember, she gave a taped
21 statement, a long taped statement. She gave a
22 written statement. What did she say? In the
23 written statement, the entire time throughout
24 the written statement, she says I asked him
25 what happened and if anyone got hurt or shot.

1 He said, "No, the gun just went off. It hit the
2 roof of the car. Everything is okay." In that
3 videotaped statement.

4 She says this all the way through as she
5 testified. One time she says the words that
6 they used. And what did she tell you up here?
7 "I was crying. I was upset. I don't think he
8 said that. I was right when I was saying the
9 other. I don't remember him ever saying that.
10 He did say it went off. That's a mistake. And
11 if you listen to my whole taped statement,
12 you'll hear that, because every time I'm saying
13 that. That was one time that I misspoke." She
14 says, "No, when I looked back on it, he did
15 not."

16 Now, let's look at her statement. Does it
17 confirm? Remember, she was there two hours
18 after this. And what does she say? "I received
19 a phone call from Jaron. He was asking for a
20 ride to Atlanta. I picked him up from Curtis
21 Circle. When I pulled up, there were people who
22 came in an SUV. They were pointing at Jaron. He
23 was getting calls during the drive. They were
24 still following us."

25 This was interesting. Listen to -- listen,

1 y'all. If somebody goes to rob somebody or kill
2 somebody, what do you say? "They put a gun to
3 my face. They pointed the gun at me. They shot
4 me." That's what you say. Listen to the
5 language that's used here. I seen him holding a
6 gun and he reached inside the car. I couldn't
7 see past that. A few moments later, I heard a
8 gunshot. She goes -- she doesn't say anywhere
9 in here that he ever shot anybody.

10 When she's riding and talking during that
11 entire video interview, every time, but once,
12 she says he said the gun just went off. It shot
13 the roof and everything is okay. Why did he say
14 that? He had no idea that anybody was shot.
15 Hunter Raby told you he was sitting right
16 there. He had no idea. I think he said for 30
17 seconds.

18 Okay. Then she goes on, in her statement, I
19 -- about the phone call -- I overheard that
20 someone might have been shot in the head. He
21 said, "No one got shot. It hit the roof of the
22 car. Everything's going to be okay." Never says
23 he shot anybody. All right.

24 So I want to talk for a minute about Hunter
25 Raby. But, first, I want to talk to you about

1 something else. I was a prosecutor. I was a
2 prosecutor for many, many years. I understood I
3 had to -- I had this burden of proof right
4 here. Right here. The jury is sworn to abide by
5 the law. You're under oath to abide by this.

6 Now, you're going to have witnesses in any
7 trial that differ. You wouldn't have a trial if
8 everybody agreed. I used to tell juries, you
9 know what, the witnesses can be mistaken. They
10 can be under the influence. They can be biased.
11 But there are witnesses in a case, if it's
12 worked properly, who are not biased; they are
13 not lying; they can't lie; they are incapable
14 of being mistaken. And those witnesses are the
15 physical evidence.

16 If the physical evidence is collected and
17 tested, then I didn't have to throw a bunch of
18 crap at a jury and say sort it out. You know
19 why? Because when somebody had gone on the
20 stand, they were up there, but then the
21 forensic person came right afterwards and said,
22 oh, no, no, no, the blood spatter shows
23 something else. Oh, no, no, no, gunshot residue
24 shows something else. No, the angle couldn't
25 have been that. No, we've got videos. We can

1 see on the chase what happened. That's why we
2 use physical evidence.

3 But remember what we just now heard, this
4 isn't a whodunit. You know what? When a person
5 is arrested and charged with murder, it's
6 pretty important. We're not in 1900 right now.
7 We've got to acknowledge it today. You've
8 charged somebody with the most egregious crime.
9 Anybody could be charged with anything. It's
10 only fair to a jury to get these unbiased,
11 impartial witnesses.

12 Did you see the pictures of the scene? Do
13 you remember hearing from law enforcement this
14 is a secure scene? Did you see the pictures?
15 Let me explain to you what a secure scene
16 means. It doesn't mean putting yellow tape
17 around it. It means keeping everything in
18 completely pristine. Nothing comes in or goes
19 out. It means keeping everything out of the
20 tape completely out so that these impartial
21 witnesses can be properly gathered. That's the
22 purpose.

23 Once anything is contaminated, it's over.
24 You've lost all impartial witnesses. It's very
25 important in this case. You wouldn't have heard

1 that that's not important in this case. It is
2 extraordinarily important in every single case.

3 Let's look at this scene. Do you remember
4 hearing all the witnesses were separated? Then,
5 lo and behold, we find out from pictures off
6 the body cam that, actually, the Saidats and
7 the other witnesses are there being hugged by
8 the people who were in the car. They are over
9 there sitting in the shade, this whole time,
10 hanging out together, hearing this version. The
11 first thing you do is separate everybody so
12 nobody is contaminated. People can be
13 contaminated too. For goodness sake, you have
14 the Saidats giving one of the people a ride to
15 the hospital afterwards. That taints testimony.

16 You know, some of these same people,
17 though, they really -- they, basically, all say
18 they don't know what happened inside that
19 vehicle. I don't know that they have a lot to
20 add anyway, but it would have been nice,
21 though, to do a very basic thing. Again, don't
22 take somebody's word for what they saw or
23 didn't. Wouldn't it had been nice if we just
24 stepped over here and said, sir, can you show
25 me where you were standing? Ma'am, can you show

1 me where you were standing? That's what happens
2 at a scene.

3 Now, let's go to Hunter Raby and Kalyn.
4 Okay. We've got some issues here. First issue,
5 let's say they don't want to lie at all --
6 which I'll get to that in a minute -- let's say
7 they want to tell the truth. Can someone who is
8 under the influence of drugs be an accurate
9 reporter?

10 If you want someone to tell something you
11 did -- you know, I say, look, I want you to go
12 tell somebody what I did today. Are you going
13 to pick the person who's stoned? Why not? Okay.
14 If you wouldn't believe them for that, would
15 you believe them on a murder case, where
16 somebody's being accused of murder, to be an
17 accurate historian of what happened? So let's
18 look at why we should even be worried as to
19 whether they even understood what was happening
20 or could accurately report it.

21 First of all, 250-plus pills in this car.
22 That isn't simple possession. That's
23 distribution under the law. 250 pills plus.
24 Three different areas of marijuana in a box
25 under the seat in a console in a pill bottle.

1 Three different areas of marijuana. So I'm
2 going to ask you this, why were they buying
3 marijuana? Three different things of marijuana
4 in there.

5 A pipe in the car. Okay. Let me ask you
6 something, did you know saliva has DNA? Do you
7 know we could have gotten that pipe? We could
8 have run DNA tests, touch DNA, saliva DNA,
9 fingerprints. We could have looked at the box.
10 Whose fingerprints are on that? We could have
11 looked at the pill bottles. Whose fingerprints
12 are on that? Whose touch DNA? That might have
13 told us. What did they say? Oh, we didn't even
14 know that stuff was there. Do you seriously
15 believe that?

16 Why are they buying marijuana? We only have
17 two choices. One is that's just not true. They
18 weren't buying marijuana because they had it in
19 three different locations. The other choice is
20 they were such potheads that they were running
21 late for the day and the three stashes of
22 marijuana weren't enough. They needed more.
23 Those are your choices.

24 Remember, they said the marijuana was in a
25 cigar. Remember, there's a little -- in the

1 picture, there's a cigar sitting on the seat.
2 That's probably how that came -- came to be,
3 that story. But remember, Kalyn said the reason
4 why they got ripped off is because they thought
5 he gave them the wrong bag.

6 I asked -- oh, why were the windows up in
7 August if nothing was happening? Why would you
8 have all the windows up if there's no air
9 conditioning in the car? We know Robby had
10 coke, barbs, marijuana in his urine. We also
11 know in his blood, which Dr. Ward told you, he
12 was definitely under the influence of marijuana
13 and barbiturates at the time of his death. Now,
14 we know that Kalyn has no idea how this
15 happened. Yes, she was living with him. They
16 were together the night before. All that
17 morning. She has no idea, but she was with him
18 all morning.

19 Remember how the officer said, that's okay,
20 I can tell they're weren't under the influence.
21 She's crying and hysterical and you can tell if
22 somebody's under the influence? He's not
23 trained as a drug recognition expert. Even a
24 drug recognition expert in law enforcement has
25 got to do tests.

1 You ever seen a DUI on TV? They give field
2 sobriety tests. Why? You've got to do that.
3 Nobody's watching them. You've seen the
4 pictures. They are wandering around. Nobody's
5 observing these people. But we do know one
6 thing, Dr. Ward, who is a trained doctor, a
7 medical doctor, says the only way you're going
8 to know that is if you give a blood test.
9 That's it. That's the only way you're going to
10 know if they've had any accurate idea of what
11 happened that day at all. We didn't get that.
12 Again, that would have been a nice impartial
13 witnesses to have.

14 I asked Hunter Raby if he was under the
15 influence that day. You remember what he said?
16 Uh, not that I recall. I'm almost 100 percent
17 sure I wasn't. Then it went to 100 percent.
18 Then it went, it was a long time ago. Okay.

19 Let's talk about this. The most traumatic
20 thing, probably, that's ever happened in your
21 life is you witnessed somebody being killed,
22 but it was a couple of years ago and I just
23 genuinely do not remember if I was under the
24 influence that day or not. I can't remember.

25 Okay. So the first issue is do they even

1 understand what's going on. Let's say they can.
2 Then we go to the second issue, bias. Hunter
3 Raby told you. Hunter Raby has been convicted
4 of breach of trust. He says he wants to shift
5 the focus to Jaron. He wants to shift the focus
6 to Jaron. He wants the focus off of him. That's
7 what he says.

8 So we do know this, we know he is perfectly
9 capable, and so is Kalyn, of lying to the
10 police during a police investigation, in fact,
11 this investigation. We also know that Kalyn is
12 perfectly capable of lying under oath in this
13 case. How do we know that?

14 Well, they talked to, at least, three
15 different officers at the scene. What did they
16 say? This was a robbery from a few weeks ago.
17 They didn't mention one word about a drug deal.
18 Why would they say it's a drug deal? They say
19 it's a drug deal because they want to tarnish
20 Jaron, if it helps get him convicted. Are you
21 kidding? They knew the robbery thing wasn't
22 going to work. All we had to do was read the
23 police reports. They don't say robbery report
24 at all.

25 So at any rate, they go through multiple

1 law enforcement interviews, never mentioned a
2 word about a drug deal gone bad until, guess
3 what, a few weeks ago, when they were being
4 prepped for their testimony. Do you notice how
5 many of these elements in here involve unlawful
6 or lawful? If it's a drug deal gone bad, all of
7 a sudden, it's an unlawful act, in which Jaron
8 was engaged at the time that this occurs. A
9 robbery from a few weeks ago wouldn't have
10 happened at the same time.

11 So how do we know they'll lie under oath?
12 Well, what did Kalyn tell you? Remember? I
13 asked her. I said, did you two get together --
14 when did y'all get together and concoct this
15 story about a robbery a few weeks ago? We
16 didn't. How did you know to tell the police
17 that multiple times? The very next witness,
18 Hunter Raby, got on the stand. He said, yes, I
19 made up the story. We were actually in that
20 tree line.

21 You remember that whole thing I was talking
22 to you about? Pristine scene, separating
23 witnesses. Right under the nose of law
24 enforcement, we were having a conspiracy by two
25 of the star witnesses to make up something. And

1 they did. Hunter told you that. Kalyn had just
2 testified that never even happened, we never
3 made up anything.

4 Now, I want you to understand. You do get
5 that they took the time to do this, to shift
6 focus over to Jaron while her husband was lying
7 there. This happened a few minutes before and
8 while his best friend was lying on the ground,
9 and you're going to believe what they tell you
10 in this case. Were they ever arrested for
11 having distribution of drugs? Was DSS ever
12 notified? There was a two-year old child. Of
13 course, they're going to cooperate with the
14 prosecution. Of course, they're going to say
15 what these people said. Never arrested a day.
16 It's been over two years..

17 Let's look at -- let's say they are
18 believable. What do they tell you? It's just
19 not even consistent. Hunter Raby says, yeah, I
20 called a maximum of two times. Well, the
21 officer says, I looked at the phone when he
22 called. There were like three or four more
23 within a very short period of time, 12:15
24 forward.

25 One of them says, yeah, there were pills

1 involved in the exchange. The other one says
2 no, they weren't. Kalyn, I think that what he
3 did was gave us the wrong bag, so we wanted to
4 go back. The other one, no, it was a cigar.
5 Kalyn, no, we were driving regular. Raby, no,
6 first thing we did was tried to cut them off.
7 Raby, yeah, he started to say threatening
8 things as we were talking. Never said that
9 throughout the entire police investigation
10 until we got in here.

11 This is the best one, though. So Hunter
12 wants you to believe -- now, remember, this is
13 a drug dealer who has just ripped them off.
14 He's been threatening Hunter Raby during the
15 chase. Remember this. He gets out of the car
16 with a gun and walks toward him, yelling,
17 threatening him some more. What does Hunter
18 Raby do? He put his car in park. Hunter Raby
19 knew good and well a gun is money and money is
20 a gun. He wasn't afraid. You don't put your car
21 in park under those circumstances. That's
22 ridiculous. It's the last thing you would do.

23 But I do want to look at some physical
24 evidence because, believe it or not, we
25 actually have a little bit. Remember the

1 officer who told you -- well, let's just look
2 at it. We have very little physical evidence,
3 but let's look at what we have. This is really
4 important. Let's look at these two things: Was
5 it this bet? Or was it this over here, a drug
6 deal gone bad?

7 All right. We know from the officer, on
8 Hunter's phone, the first call was made at
9 12:15. 12:15. Remember what Kalyn said. She
10 said, we set this drug deal up via text that
11 morning. We don't have a phone. We set it up
12 via text. We know that Hunter's phone was used
13 to call Jaron at 12:15.

14 She says there are no calls. We go. We make
15 the deal. Okay. Now, we know they live about
16 15, 20 minutes away. They were at the house.
17 She says we made the deal from the house. So
18 she says we go there, we meet. She says, we go
19 straight to Walmart, which is what? I think
20 they said a mile and a half down the road.
21 Anyway, not very far.

22 We look and we go -- and we weigh the
23 drugs, which there was no scale ever shown to
24 you in this case. Paraphernalia is not a scale.
25 Nothing was mentioned about a scale. And then

1 we realized, oh, no, we were ripped off. She
2 says he gave us the wrong bag, cigar, whatever.
3 So we realized we were ripped off. We go
4 straight back, but we call first. We call from
5 Walmart. That's the 12:15 call, that first
6 call.

7 So they go right back down the road, a
8 quarter to a half a mile. Let's give them five
9 minutes. Let's be generous. Five minutes to go
10 down the road. That would be 12:20. They
11 called. "You ripped us off. We're coming back."
12 12:20.

13 Now, we know that they immediately cut off
14 Jaron. Then they go on a mile-and-a-half,
15 approximately, chase that lasted about four
16 minutes. Okay. So, 12:15 to 12:20. The chase
17 puts us to 12:25. This shooting occurs at
18 12:40. Where -- how did that happen? How does
19 the independent witness who does not lie, how
20 does that support it? You've got missing time.
21 You've got way too much missing time.

22 Now, again, let's look at this independent
23 witness and look at it the other way. Jaron
24 says it's a bet gone bad. Jaron says that's not
25 what happened at all. "They called me. They

1 start asking for money." The times are
2 important. Why are they important? Let's go
3 through that time.

4 If they are at their house when they called
5 -- when Hunter called, he's picking them up,
6 that's about a 15-to-20-minute drive over. So
7 the call is made. That's what Jaron says. Yeah,
8 they were asking for money. I said I'm going to
9 Atlanta. So they head over there. They know
10 he's over there. When they get over there, that
11 puts us about 20 minutes down the road. They
12 confront him. They chase him.

13 That first call was not made from Walmart.
14 That would have been impossible. That could not
15 have happened. There are no statements. We have
16 no tests, of course, nice independent evidence
17 of DNA. None of that. No weighing of drugs. No
18 forensic searches of the phones. At least if
19 you can't do a forensic search, you can at
20 least look at the history. You have the
21 history. You don't have any of that. No
22 pictures of any of this stuff. Where is this
23 stuff? What is this stuff? Why don't we have
24 pictures of all this stuff? Drugs, scales,
25 whatever.

1 Then, let's look -- let's say you believe
2 Hunter Raby. All right. That's fine. I'll give
3 you that. Let's believe him then. This is what
4 he says. I'm going to read you his written
5 statement. He says, at the scene that day, we
6 were behind a silver car. We got to the stop
7 sign. The black male came out of the passenger
8 side with a gun. He was yelling at us, while
9 waving the gun in my face. Not pointing the
10 gun. He doesn't say that one time. He thrust
11 the gun toward me. I swatted it up, and it went
12 off. That's what he says. But wait a minute. He
13 crossed that out because officers said you can
14 cross that out. So he says, okay, we're going
15 to start again.

16 This time, he writes, Nice had robbed us.
17 We followed him while calling him to get the
18 money back. We followed him to a stop sign
19 where he jumped out with a gun. He came to the
20 driver's side and he thrust the gun in my
21 face. I swatted it away twice. The second time,
22 it went off.

23 Language is very, very important. Never
24 once he pointed the gun. Never once he shot the
25 gun. Never once any of that. He confirmed what

1 Jaron says. Remember what he testified to? He
2 says, I pushed the gun away and then -- and I
3 put quotation marks around this -- it was back
4 in my face dead center. Not to my head, back in
5 my face.

6 Remember what Raby said when I asked him
7 were you putting your hands through your hair?
8 This is what he said. He said, when I get
9 panicky, I run my hands through my hair. Why
10 was he panicky? I said, did you hit the car?
11 Yes, because, quote, I was furious at myself,
12 unquote. Why?

13 Remember what Kalyn said at the scene. She
14 couldn't see a thing. We know that, even though
15 we don't have pictures from her viewpoint. How
16 do we know that? Cause she told us I didn't see
17 anything. So she had to have gotten this from
18 Hunter. She said the gun was put through the
19 window. Raby swatted the gun and it went off.

20 Now, we heard about how there was a whack.
21 He did his hands like this and whacked the gun.
22 Do you know when you first heard that? Was that
23 in anywhere in the investigation? Nope. Right
24 up here, same time you heard this other first
25 stuff.

1 I said, wait a minute, how sure are you of
2 that, because this is the first time we're
3 hearing this? Did you swipe at the gun? Did you
4 -- could you have gone like this when you were
5 pushing it out? (Demonstrating.) Not that I
6 recall. Well, I'm almost 100 percent sure. No,
7 I'm 100 percent sure. I'm sure I told them that
8 I did not pull that trigger. No, sir, you did
9 not, actually. That's not true.

10 To believe the State, you've got to believe
11 that Jaron executed these people or tried to,
12 in daylight, in front of people at a busy
13 intersection -- it was his right hand, by the
14 way. He's not right-handed -- that he decided
15 to put the gun -- why stand outside of the car
16 and execute somebody when you can do it without
17 them grabbing the gun? Why would you put it in
18 the car where they can grab it and take it from
19 you and turn it on you? Why didn't you shoot
20 him? If he was trying to shoot you, why didn't
21 you shoot him?

22 So the State wants you to find Jaron guilty
23 of murder, but I have a question for you. If
24 Hunter Raby was the only one who actually saw
25 what happened inside the car, make no mistake

1 about it, this is Jaron's word versus Hunter
2 Raby's word. Pure and simple. We don't have
3 blood spatter. We don't have any of that.
4 Inside the car, just those two, one's word
5 against the other.

6 If Hunter Raby told you he had a really
7 great used car, it was fantastic, he didn't
8 need any independent verification of what he
9 said, 10,000 bucks, bring your 10,000 bucks,
10 you can rely on his word, would you rely on his
11 word? Would you buy that car? Would you buy
12 that car? If the answer to that is no, then how
13 on earth can you buy his word when he tells you
14 what happened inside that car?

15 I want to remind you of something. This
16 lead investigator testified under oath. You're
17 under oath too. Remember that. He was under
18 oath. This was on September 18th of 2015, long
19 after all of the evidence has been gathered in
20 this, all of the witnesses had been
21 interviewed. Remember what I told you? You
22 could not find Jaron guilty of one thing, if
23 you can't prove he did it. He told the truth.

24 I asked the officer, so do he know whose
25 hand actually hit the trigger at that time?

1. There was no hesitation. The answer was no.

2. This lead officer, who has the entire case file
3. at his disposal, had he personally talked to
4. these people and not under oath say that Jaron
5. Gibbs pulled this trigger. Yet, they are asking
6. you all under oath to do what he's not willing
7. to. Thank you for your attention.

8. **THE COURT:** Yes, ma'am.

9. **MS. HINTON:** Very briefly, Your Honor.

10. Thank you.

11. Ms. White told you, at the beginning of her
12. closing argument and at the very end, that the
13. State must prove that the defendant pulled the
14. trigger. I instruct you that that is not what
15. the judge will charge you that the law of
16. murder is.

17. What the judge will say is that the State
18. must prove beyond a reasonable doubt that the
19. defendant killed the victim with malice
20. aforethought. Malice is the intentional doing
21. of a wrongful act without just cause or excuse
22. and with the intent to inflict an injury. You
23. will not hear her charge you that the defendant
24. had to pull that trigger. Thank you.

25. **THE COURT:** All right. Ladies and

Jury Charge

1 duty and obligation to instruct you on the law
2 applicable in this case. It will then be your
3 duty and obligation to begin your
4 deliberations, through which process you will
5 decide the facts, apply the law as instructed
6 by the Court and determine whether or not the
7 State has met its burden of proof in this case.

8 It is your exclusive duty to determine the
9 facts in this case. You do that based upon your
10 own commonsense examination and evaluation of
11 the testimony and other evidence received
12 during the trial of this case. You 12 jurors,
13 alone, will decide what weight, value and
14 effect is to be given to any particular
15 testimony or other evidence received. Your
16 ultimate goal is to determine whether the State
17 has met its burden of proof in this case. And
18 in doing so, you will have fulfilled your
19 obligation as jurors and that is to give both
20 the State and the defendant a fair and
21 impartial trial based upon the evidence
22 presented and the law applicable to this case.

23 In this case, the State of South Carolina,
24 through the circuit solicitor, has charged the
25 defendant with the criminal offenses known as

Jury Charge

1 Murder and possession of the weapon --

2 Possession of a Weapon During the Commission of
3 a Violent Crime. The allegations charging the
4 defendant with these crimes are set forth in
5 the indictments that have been previously
6 explained to you. The indictments are not
7 evidence in this case and may not be considered
8 by you as evidence against the defendant.

9 As to each of the charges set forth in the
10 indictments, the defendant has entered a plea
11 of not guilty. That plea of not guilty has,
12 therefore, placed upon the State the burden of
13 proving the allegations that are set forth in
14 the indictments, the burden of proving each of
15 the essential elements of any crimes charged
16 and, therefore, the burden of proving the guilt
17 of the defendant to the satisfaction of you 12
18 jurors beyond a reasonable doubt before a
19 verdict of guilty could be returned as to any
20 indictment.

21 The burden is never upon a defendant to
22 prove that he is not guilty or to prove that he
23 is innocent because, in some cases, that might
24 not be possible. The burden is always upon the
25 State because they had made the allegation to

Jury Charge

1 prove the defendant guilty beyond a reasonable
2 doubt.

3 You are further instructed that it is a
4 vital, important and cardinal rule of law that
5 every defendant, in a criminal trial, no matter
6 how serious the offense for -- the offense
7 might be for which he stands charged, shall
8 always be presumed innocent of that charge.
9 That presumption of innocence shall be with the
10 defendant from the moment of his arrest and
11 throughout the course of the criminal process
12 and even throughout the course of the actual
13 trial.

14 The presumption of innocence shall be with
15 the defendant, even as you go into the jury
16 room to begin your deliberations, and that
17 presumption of innocence shall be with him
18 there and be with him forever, unless you 12
19 jurors determine that he is no longer entitled
20 to that presumption of innocence. It is only
21 if, unless, and until you are satisfied of the
22 defendant's guilt beyond a reasonable doubt
23 that he would no longer be entitled to the
24 presumption of innocence.

25 I remind you that during this trial, you

1 and I have certain duties to perform. As the
2 trial judge, it is my responsibility to preside
3 over the trial of this case. I also have the
4 duty to rule on the admissibility of the
5 evidence offered during this trial. You are to
6 consider only the competent evidence before
7 you. If there was any testimony ordered
8 stricken from the record in this case, you must
9 regard -- disregard that testimony. You are to
10 consider only the testimony which has been
11 presented from this witness stand, any exhibits
12 which have been made a part of the record in
13 this case and any stipulations of counsel.

14 I have the additional duty to charge you
15 the law applicable to this case. As the
16 presiding judge, I am the sole judge of the law
17 of this case, and it is your duty as jurors to
18 accept and apply the law as I now state it to
19 you. If you already have any idea as to what
20 the law is or what the law ought to be and it
21 does not agree with what I tell you the law is,
22 you must abandon this idea because you are
23 sworn to accept the law and apply the law
24 exactly as I state it to you.

25 In every case tried in this court before a

Jury Charge

1 jury, the jury becomes the sole and exclusive
2 judge of the facts in the case. A trial judge
3 can not intimate, state, comment on or make any
4 statement to a trial jury about the facts in a
5 case. Since you, the jury, are the sole judge
6 of the facts in this case, you are not to infer
7 from what I have said during the progress of
8 this trial in ruling upon the admissibility of
9 evidence or otherwise or anything that I say to
10 you now during the course of this instruction
11 to you that I have any opinion about the facts
12 in this case. I do not. The law does not allow
13 me to have an opinion about the facts in this
14 case. This is a matter solely for you, the
15 jury, to determine. As jurors, it is your duty
16 to determine the effect, value, weight and
17 truth of the evidence presented during this
18 trial.

19 The State has the burden of proving the
20 defendant guilty beyond a reasonable doubt.
21 Some of you may have served as jurors in civil
22 cases where you were told that it is only
23 necessary to prove that a fact is more likely
24 true than not true, such as, by the greater
25 weight or preponderance of the evidence. In

1. criminal cases, the State's proof must be more
2. powerful than that. It must be beyond a
3. reasonable doubt. Reasonable doubt is the kind
4. of doubt that would make a reasonable person
5. hesitate to act. Proof beyond a reasonable
6. doubt is proof that leaves you firmly convinced
7. of the defendant's guilt.

8. There are very few things in this world
9. that we know with absolute certainty. In
10. criminal cases, the law does not require proof
11. that overcomes every possible doubt. If, based
12. on your consideration of the evidence, you are
13. firmly convinced that the defendant is guilty,
14. of the crime charged, you must find the
15. defendant guilty. If, on the other hand, you
16. think there is a real possibility that the
17. defendant is not guilty, you must give the
18. defendant the benefit of the doubt and find him
19. not guilty. Facts and circumstances that merely
20. place upon the defendant a grave suspicion of
21. the crime charged or that merely raises
22. speculation or conjecture of the defendant's
23. guilt are not sufficient to authorize a
24. conviction of the accused.

25. There are two types of evidence which are

Jury Charge

1. generally presented during a trial: direct
2. evidence and circumstantial evidence. Direct
3. evidence is testimony of a person who claims to
4. act -- have actual knowledge of a fact, such as
5. an eyewitness. It is evidence which immediately
6. establishes the main fact to be proved.

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

12. Circumstantial evidence is based on inference
13. and not on personal knowledge or observation.

14. The law makes absolutely no distinction
15. between the weight or value to be given to
16. either direct or circumstantial evidence. Nor
17. is a greater degree of certainty required of
18. circumstantial evidence than of direct
19. evidence. You should weigh all of the evidence
20. in the case. After weighing all the evidence,
21. if you are not convinced of the guilt of the
22. defendant beyond a reasonable doubt, you must
23. find the defendant not guilty.

24. Necessarily, you must determine the
25. credibility of witnesses who have testified in

Jury Charge

1 this case. Credibility simply means
2 believability. It becomes your duty, as jurors,
3 to analyze and to evaluate the evidence and
4 determine if the State has met its burden of
5 proof in this case.

6 In determining the believability of
7 witnesses who have testified in this case, you
8 may believe one witness over several witnesses
9 or several witnesses over one witness. You may
10 believe a part of the testimony of a witness
11 and reject the remaining part of the testimony
12 of that same witness. You may believe the
13 testimony of a witness in its entirety or
14 reject the testimony of a witness in its
15 entirety. You may consider whether any
16 witnesses exhibited to you any interest, bias,
17 prejudice or other motive in this case. You may
18 also consider the appearance and manner of the
19 witness while on the witness stand.

20 There has been evidence presented that
21 witnesses have made prior statements which are
22 not consistent with the witnesses' present
23 testimony. You may use this evidence to decide
24 whether to believe the witnesses. You may also
25 use evidence of the earlier contradictory

Jury Charge

1 statement to determine the truth of those
2 statements. It is up to you to decide whether
3 to believe the earlier statements or the
4 testimony given at trial. If a witness is shown
5 to have knowingly testified untruthfully
6 concerning any material matter, you may
7 consider this in determining whether to trust
8 the witness' testimony as to other matters. You
9 may reject all testimony of that witness or
10 give all or part of the testimony the weight
11 you think it deserves.

12 The rules of evidence, ordinarily, do not
13 permit witnesses to testify to opinions or
14 conclusions. An exception for this rule exists
15 for witnesses we call expert witnesses. A
16 witness who, by education and experience has
17 become expert in some art, science, profession
18 or calling, may state an opinion as to the
19 relevant and material matter in which the
20 witness claims to be an expert. They also state
21 the reasons for the opinion.

22 You should consider any expert opinion
23 received in evidence in this case and, like any
24 other evidence, give it the weight you think it
25 deserves. If you decide that the opinion of an

Jury Charge

1 expert witness is not based on sufficient
2 education and experience, or if you conclude
3 that the reasons given in support of the
4 opinion are not sound or that the opinion is
5 outweighed by other evidence, you may disregard
6 the opinion entirely.

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

13 In order to establish criminal liability,
14 the State must also prove criminal intent. For
15 a particular crime, the mental state required
16 might be purpose, intent, knowledge,
17 recklessness or criminal negligence. The State
18 must prove criminal intent beyond a reasonable
19 doubt. Criminal intent is a matter that must be
20 determined by the jury from the facts of the
21 case.

22 There is no way to prove criminal intent to
23 a mathematical certainty, so the law says that
24 criminal intent may be inferred from the
25 circumstances shown to have existed. This is

Jury Charge

1 how you determine whether or not the element
2 requiring intent was present.

3 It is not necessary to establish intent by
4 direct evidence. Intent may be established by
5 circumstantial evidence or by taking into
6 consideration the acts of the parties and all
7 the facts and circumstances of the case.
8 Criminal intent is a mental state of conscious
9 wrongdoing. It is up to you to determine what
10 the defendant intended to do based on the
11 circumstances shown to have existed in this
12 case.

13 The defendant is charged with Murder. The
14 State must prove beyond a reasonable doubt that
15 the defendant killed another person with malice
16 aforethought. Malice is hatred, ill will or
17 hostility towards another person. It is the
18 intentional doing of a wrongful act without
19 just cause or excuse and with an intent to
20 inflict an injury or under circumstances that
21 the law will infer evil intent.

22 Malice aforethought does not require that
23 malice exists for any particular time before
24 the act was committed. Malice must exist in the
25 mind of the defendant just before and at the

1 time the act is committed. Therefore, there
2 must be a combination of the previous evil
3 intent and the act.

4 Malice aforethought may be expressed or
5 inferred. These terms expressed and inferred do
6 not mean different kinds of malice, but merely
7 the manner in which the malice may be shown to
8 exist. That is either by direct evidence or by
9 inference from the facts and circumstances
10 which are proved.

11 Expressed malice is shown when a person
12 speaks words which express hatred or ill will
13 for another or when the person prepared
14 beforehand to do the act which was later
15 accomplished. For example, lying in wait for a
16 person or any other acts of preparation going
17 to show that the deed was within the
18 defendant's mind would be expressed malice.

19 Malice may be inferred from conduct showing a
20 total disregard for human life.

21 If the defendant, with malice aforethought,
22 attempts to kill another person but, by
23 mistake, injures or kills a different person,
24 the defendant still has the intent to kill. The
25 intent to kill is merely transferred from the

Jury Charge

1 original person to the defendant -- excuse me
2 -- from the -- let me start that sentence
3 again. The intent to kill is merely transferred
4 from the original person the defendant
5 attempted to kill to the actual person killed
6 or injured. The defendant would be guilty of
7 assault and battery with intent to kill, just
8 as if the attempt had resulted in the death or
9 injury of the person the defendant attempted to
10 kill.

11 The defendant has raised the defense of
12 accident. An act may be excused on the ground
13 of accident if it is shown that the act was
14 unintentional, that the defendant was acting
15 lawfully and that reasonable care was used by
16 the defendant in the handling of the weapon.
17 For example, if the person is lawfully armed in
18 self-defense and the gun accidentally
19 discharges, the defense of accident would
20 apply. The burden is on the State to prove
21 beyond a reasonable doubt that the act was not
22 an accident, but was caused by the negligence
23 or carelessness on the part of the defendant in
24 handling -- in the handling of a dangerous
25 instrumentality or by unlawful activity by the

Jury Charge

1 defendant.

2 The defendant is also charged with
3 Possession of a Weapon During the Commission of
4 a Violent Crime. The State must prove beyond a
5 reasonable doubt that the defendant was in
6 possession of a firearm or visibly displayed
7 what appeared to be a firearm during the
8 commission of a violent crime or the attempt to
9 commit a violent crime. A firearm means any
10 machine gun, automatic rifle, revolver, pistol
11 or any weapon which will, is designed to, or
12 may readily be converted to expel a projectile.

13 In order to find the defendant guilty of
14 Possession of a Weapon During the Commission of
15 a Violent Crime or an attempt to commit a
16 violent crime, you must first find the
17 defendant guilty of either committing a violent
18 crime or committing a -- attempting to commit a
19 violent crime. Murder is defined as a violent
20 crime.

21 The State must prove beyond a reasonable
22 doubt that the weapon further advanced or
23 helped in the commission of the crime. If you
24 find that this -- excuse me -- I'm sorry.
25 Involuntary manslaughter. If you find that the

Jury Charge

1 State has failed to prove beyond a reasonable
2 doubt that the defendant committed murder, you
3 may consider whether the State has proved
4 beyond a reasonable doubt that the defendant
5 committed involuntary manslaughter.

6 To prove involuntary manslaughter, the
7 State must prove beyond a reasonable doubt that
8 the defendant unintentionally killed the victim
9 without malice, but while engaged in an
10 unlawful activity, not naturally tending to
11 cause death or great bodily harm or that the
12 defendant unintentionally killed the victim
13 without malice while engaged in a lawful
14 activity with reckless disregard for the safety
15 of others.

16 Unintentional means that the defendant did
17 not intend for anyone to be killed or seriously
18 injured. Reckless disregard for the safety of
19 others is more than mere negligence or
20 carelessness.

21 Mere negligence or carelessness is the
22 failure to use the care that a person of
23 ordinary reason would use under the same
24 circumstances. Recklessness is a conscious
25 failure to use ordinary care. Reckless

1 disregard for the safety of others means that
2 you are not interested in the consequences of
3 your acts or the rights and safety of others.

4 If a person who knows or should know that
5 ordinary care requires certain precautions be
6 taken for the safety of others when using a
7 dangerous instrumentality, such as a gun or a
8 car, but that person fails to use those
9 precautions without concern, the person's
10 actions are considered reckless. Excuse me. The
11 State must also prove beyond a reasonable doubt
12 that the defendant's act was the proximate
13 cause of death.

14 Proximate cause is the direct cause. It is
15 the immediate cause. It is the efficient cause.
16 It is the cause without which the death of the
17 victim would not have resulted. There must be a
18 chain of causation from the time of the injury
19 inflicted by the defendant --

20 **MS. D. WHITE:** Your Honor.

21 **THE COURT:** Excuse me. I'm sorry. That's
22 one thing that we -- we all agreed should be
23 taken out of my standard charge, so I want to
24 read you that paragraph one more time.

25 Proximate cause is the direct cause. It is

Jury Charge

1 the immediate cause. It is the efficient cause.
2 It is that cause without which the death of the
3 victim would not have resulted. The violation
4 of a statute, if it is the proximate cause of
5 an injury, is evidence of recklessness.

6 Ladies and Gentlemen, your verdicts must be
7 unanimous ones.

8 Mr. Foreperson, when the jury agrees on the
9 verdict, you will write the verdict on the
10 verdict form and sign your name as foreperson.
11 Then, knock on the door of your jury
12 deliberation room to signal to the bailiff that
13 you've reached a verdict. At that time, we will
14 receive you back into the courtroom for your
15 verdict.

16 I ask that you now return to your jury
17 deliberation room. Please do not begin
18 deliberations until you're told to do so. It
19 will be very shortly. But there are a couple of
20 legal matters I need to take up briefly with
21 the attorneys. Thank you so much.

22 (Jury exits at approximately 11:46 a.m.)

23 **THE COURT:** Any objection by the State to
24 my charge on the law other than those already
25 raised?

1 people in custody, period. I say that to
2 everybody in here. This jury has been attentive
3 and patient with us all week. They don't --
4 they don't deserve anyone giving any kind of
5 outbursts whatsoever. All right.

6 That being said, y'all ready to bring the
7 jury back in?

8 **MS. HINTON:** Yes, Your Honor.

9 (Jury enters at approximately 1:44 p.m.)

10 **THE COURT:** Mr. Foreperson, it's my
11 understanding that the jury's reached a
12 verdict; is that correct?

13 **THE JUROR:** Yes, ma'am.

14 **THE COURT:** Will you please hand the
15 verdict form to the bailiff?

16 (The verdict form is passed to the Court.)

17 **THE COURT:** All right. The verdict form
18 appears to be in order.

19 **THE CLERK:** This is State of South
20 Carolina versus Jaron Lamont Gibbs, Indictment
21 Number 2015-GS-39-1895 and 1893. As to the
22 charge of Murder Resulting in Death, we, the
23 jury, unanimously find the defendant guilty. As
24 to the charge of Possession of a Weapon During
25 the Commission of a Violent Crime, we, the

1 jury, unanimously find the defendant guilty.

2 Is this your verdict and still your verdict

3 so say you all by raising your right hand?

4 (Each juror responds.)

5 THE COURT: Anything from the State before
6 I release the jury?

7 MS. HINTON: No, Your Honor.

8 THE COURT: Anything from the defense
9 before I release the jury?

10 MS. D. WHITE: Your Honor, we would just
11 like them individually polled.

12 THE COURT: All right. All right.

13 THE CLERK: Mr. Reinovsky, is this your
14 verdict and still your verdict?

15 THE JUROR: Yes, sir, it is.

16 THE CLERK: Ms. Wilson, is this your
17 verdict and still your verdict?

18 THE JUROR: Yes, it is.

19 THE CLERK: Ms. Durham, is this your
20 verdict and still your verdict?

21 THE JUROR: Yes, it is.

22 THE CLERK: Mr. Weeks, is this your
23 verdict and still your verdict?

24 THE JUROR: (No response.)

25 THE CLERK: I got the wrong one.

1 he's very sorry about this whole situation.
2 Obviously, he's going to have some appellate
3 stuff ahead of him, so I have actually asked
4 him not to say anything himself at this --

5 **THE COURT:** I certainly do understand
6 that.

7 **MS. D. WHITE:** But, Your Honor, I know we
8 toss around 30 years like it's no big deal.
9 That would be 26 and a half years. He would be
10 over the age of 50 when he gets out.

11 **THE COURT:** Mr. Gibbs, as to Indictment
12 2015-GS-39-1895, the jury having found you
13 guilty of Murder, the sentence of the Court is
14 35 years, credit for 780 days. And on the
15 possession of the weapon during the commission
16 of a violent crime, 2015-GS-39-1893, the
17 sentence of the Court is 5 years, credit for
18 780 days. All right.

19 **MS. D. WHITE:** Thank you, Your Honor.

20 **THE COURT:** Good luck to you, ma'am.

21 **MS. HINTON:** And Your Honor, that five
22 years will run concurrent?

23 **THE COURT:** Yes.

24 **MS. HINTON:** Thank you.

25 **MS. D. WHITE:** Thank you, Your Honor.

1 **THE COURT:** Thank you.

2 And just for the record, marking the jury
3 instructions as Court's Exhibit Number 2.

4 (Court's Exhibit 2 is marked for identification.)

5 (Court goes off the record at approximately

6 1:59 p.m.)

7 (Court goes on the record at approximately

8 2:32 p.m.)

9 **THE COURT:** All right. If you'd like to
10 put some post-trial motions on the record, I'm
11 happy for you to do it. And I may -- I may or
12 may not rule on them all today. I'm not sure.

13 Yes, ma'am.

14 **MS. D. WHITE:** Judge, I am so sorry. We
15 would have just left. We said we would stay and
16 do it if you wanted to or if you wanted --

17 **THE COURT:** No, either way. No, I -- I --
18 I had thought y'all probably didn't want to do
19 it. I just made an assumption, and that's my
20 fault.

21 **MS. D. WHITE:** Well, we'll just go ahead.
22 Your Honor, we would move for a new trial and a
23 directed verdict at this point -- I guess
24 that's the wrong word, at this point -- but
25 based on several different things: Kalyn, Your

1 Honor, meeting with the jurors at the
2 restaurant and the possible taint there; also,
3 Your Honor, during the closing argument, the
4 comment on my client invoking his Miranda
5 rights and he never came forward and did this
6 and he never said this until he got on the
7 stand; also, Your Honor, the jury instructions
8 that we submitted that were not read to the
9 jury; also, Your Honor, the portions of the
10 jury instructions that dealt with the firearm
11 that I put on the record before that we
12 requested not be read to the jury; also, Your
13 Honor, the demonstration in the closing
14 argument, which was not based upon facts in the
15 -- reliable facts in the evidence; and finally,
16 Your Honor, insufficient evidence to support a
17 Murder conviction and Possession of a Firearm
18 During the Commission of a Violent Crime.

19 **THE COURT:** All right. And let me just
20 revisit one of those motions with regard to the
21 demonstration. I will say that the
22 demonstration itself was -- and I had
23 instructed the jurors that what the attorneys
24 said was not evidence in the case. It was the
25 jurors that -- excuse me -- attorney's

1 interpretation of what she was saying would
2 have had to have necessarily happened. I found
3 that the demonstration, which lasted all three,
4 maybe, seconds, three to five seconds, did not
5 go beyond the scope of what would just be
6 argument by counsel and, therefore, deny your
7 motion on that basis. As to your other issues,
8 I think we've talked about them before, and
9 they are, at this time, respectfully denied.

10 **MS. D. WHITE:** Thank you, Your Honor.

11 **THE COURT:** I just want to take just
12 another moment to say what an outstanding job
13 we thought both sides did in this case. It was
14 one of the best tried cases I've ever seen. I
15 really appreciate it. And now, my claw clerk
16 thinks that all trials are going to be this
17 good, so thanks for that. This is her first
18 one. All right. Thank y'all very much.

19 **MS. D. WHITE:** Thank you.

20 **MS. HINTON:** Thank you.

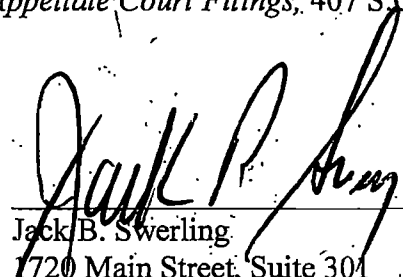
21
22 (Proceedings conclude at approximately

23 2:35 p.m.)
24
25

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g) of the South Carolina Appellate Court Rules, 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.

Counsel further certifies that this record on appeal complies with the Order of the Supreme Court of South Carolina entitled *Re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings*, 407 S.C. 607, 757 S.E.2d 421 (April 15, 2014).



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In the Court of Appeals

APPEAL FROM PICKENS COUNTY
General Sessions Court
Letitia H. Verdin, Circuit Court Judge

Case No. 2015-GS-39-01893
Case No. 2015-GS-39-01895

Appellate Case No. 2017-002042

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SC Court of Appeals

The State,

Respondent,

v.

Jaron Lamont Gibbs,

Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal, by mailing a copy, postage prepaid, to counsel for respondent, Caroline M. Scrantom, Senior Assistant Attorney General, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211-1549, on January 15, 2019.



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THE STATE OF SOUTH CAROLINA
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Jaron Lamont Gibbs,

Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in allowing a witness who was not qualified as an expert to testify as to how certain firearms function?
2. Did the trial court err in allowing an improper demonstration and improper closing argument that was not based on evidence presented during the trial?
3. Was the cumulative effect of the trial court's errors, in combination, so prejudicial as to deny appellant a fair trial?

STATEMENT OF THE CASE

Appellant, Jaron Lamont Gibbs, was indicted in Pickens County on charges of murder and possession of a weapon during the commission of a violent crime. R. pp. 1-4. He was tried by a jury September 18-22, 2017, in Pickens County General Sessions Court, with Judge Letitia H. Verdin presiding. The jury found him guilty of both charges. R. pp. 508-09. Judge Verdin sentenced him to concurrent terms of 35 years and five years, with credit for 780 days of time served. R. pp. 5-6, 510.

ARGUMENT

These two charges stem from events that occurred August 1, 2015, in daylight, at the intersection of two busy streets in an area of Pickens County between Central and Clemson, in proximity to multiple observers. A firearm went off in a vehicle stopped at the intersection, and Robbie Porter, who was in the front passenger seat, was struck with a single bullet, resulting in his death. The facts concerning what led to the discharge of the firearm were in serious dispute, and the credibility of the state's key witnesses and the integrity of the investigation and preservation of the evidence were in serious doubt.

Hunter Raby and Kalyn Meaders, who was Porter's wife, were the primary witnesses for the state. At trial, they claimed the shooting occurred as the result of a drug deal gone bad. Their testimony, however, was in sharp conflict with the statements they gave the police following the shooting. Following the shooting and before talking to the investigating officers, they manufactured a story to give to law enforcement, in which they claimed appellant had robbed them two weeks earlier and owed them money. Their story at trial, that the shooting was the result of a drug deal gone bad, did not emerge until almost two years later, just weeks before trial.

By all accounts, when the gun fired, appellant was outside the car at the driver's window, Raby was in the driver's seat; Porter was in the front passenger seat, and Meaders was in the back seat behind Porter.

The theory of the case woven by the state was that appellant had shorted Raby and Porter on the amount of marijuana in the purported drug deal, and they began calling appellant, then following the vehicle in which he was riding, in order to get their money back. When the two vehicles were stopped at an intersection, the state claimed, appellant got out with a gun, went to the driver's window, put the gun through the window, and intentionally fired it.

Appellant testified in his defense. By his account, no drug transaction had occurred. Nor had he robbed them weeks earlier. R. p. 400. A few weeks earlier, he had lost a bet to Porter and Raby over a basketball game but had not yet paid them. R. pp. 401-02. On August 1, he was in a car with Autumn Gilstrap, who was giving him a ride to Atlanta to see a friend who lived there. R. pp. 402-05. In his bag was an old gun he had purchased for his and the friend's protection, due to the friend's late-night work as a

stripper in what were not the best places. R. pp. 406, 421, 426. As they were leaving the area, appellant saw Raby, Porter, and Meaders in another vehicle, pointing at him. R. p. 407. Raby started phoning him, upset and asking for money. R. pp. 407-08. Appellant told him he didn't have the money but would give it to him as soon as he was back from Atlanta. R. p. 408. Raby became angry and started following closely behind them, driving aggressively and phoning repeatedly. R. pp. 408-09. Appellant decided he could give them the gun in payment and, when they stopped at the intersection, he got out and went to Raby's window to give him the gun, which he thought was unloaded. R. p. 410. Raby was yelling and appellant, also yelling, was telling Raby he didn't have the money but to take the gun instead. R. p. 411. Appellant, who is left-handed, was holding the gun in his right hand by the grip, and his hand was not on the trigger. R. pp. 410-12, 414. He pushed the gun inside the car, Raby pushed it back out, he pushed it in again, and it went off. R. p. 412. He did not know anyone was hit. R. p. 413. It was obvious Raby was not going to take the gun, so he went back to Gilstrap's car, he got in, and they left. R. p. 413. He told Gilstrap nobody was hurt, the gun just went off and hit the roof. R. pp. 413-14.

Meaders and Raby gave accounts that contradicted their initial statements to law enforcement, that were in certain respects contradictory of each other, and that were inconsistent with the other evidence gathered. Raby had prior convictions for breach of trust with fraudulent intent and shoplifting. R. p. 105. Raby initially claimed appellant had robbed them two weeks earlier and owed them money. R. pp. 101, 104-07. At trial, he admitted his statement was fabricated. R. pp. 106-07, 115-16, 123. He testified he and Meaders conferred immediately after the shooting and agreed not to tell of the drug

transaction that, at trial, they claimed had occurred. R. pp. 106-07. By his account, they intentionally lied to law enforcement and made no mention of drugs at all. R. pp. 106-08, 115-16, 123.

Both Meaders and Raby claimed they and Porter were headed to the lake that day and first wanted to get marijuana, and they arranged to meet appellant to purchase some. R. pp. 28-30, 84-86. However, this story does not square with the evidence. They already had marijuana – following the incident, officers seized quantities of marijuana from two places in the Raby vehicle and over 250 pills. R. pp. 62-64, 96, 120, 239-41, 247-51, 363-64. Raby was aware these substances were in the car. R. pp. 96, 120. He testified only part of the marijuana found in the car was what they claimed to have purchased from appellant. R. p. 96.

Raby's testimony was inconsistent with his prior statement in other respects. He admitted writing in his initial statement that "he thrust the gun toward me and I swatted it off and it went off, hitting my friend in the passenger side." R. p. 110, lines 13-15; p. 111, lines 18-22. He crossed that part of his statement out because "they said that that wouldn't count." R. p. 110, line 21 – p. 111, line 1. He acknowledged that his statement said, "I swatted it away twice and, the second time, it went off." R. p. 112, lines 18-21. His statement said only that appellant thrust the gun in his face and the gun went off, not that appellant pointed it or shot it or pulled the trigger. R. p. 114, lines 11-21. He did not testify that appellant pulled the trigger, instead stating he "assumed" he did. R. p. 114, lines 21-22.

Consistent with appellant's testimony that appellant did not know anyone had been shot, Raby also did not immediately know that Porter had been shot. R. p. 117, line 9 – p. 118, line 6.

Like Raby, Meaders contradicted at trial the statement she gave after the incident. She did not tell authorities it was a drug deal gone bad, stating only that appellant owed them money. R. pp. 48-49, 52. At trial, she stated she could not see what occurred and saw the gun only after it had fired. R. pp. 36, 52, 57. She affirmed that she did not see who pulled the trigger. R. p. 52. All she remembered was that appellant said something about money when he came to the car. R. p. 53. She testified that her prior statement was what Raby said and what she assumed happened. R. p. 52. She confirmed it stated the gun was "put through the window." R. p. 58. She did not deny having told an officer Raby swatted at the gun and it went off. R. pp. 58, 75-76. Both Meaders and Raby acknowledged that nothing prevented appellant from standing outside the vehicle and firing in, had he wanted to. R. pp. 58-60, 116.

Gilstrap, who was going to take appellant to Atlanta, testified that after she picked him up, another car arrived and tried to prevent them from leaving. R. p. 293. She got around it and they followed. R. pp. 293-94. They called appellant multiple times. R.p. 295. When they stopped at the intersection, appellant got out and walked to the other vehicle with a gun. R. p. 296. He was beside the driver's side window holding the gun toward the window. R. p. 297. Once his hand went into the car, she couldn't see what occurred but heard the gun go off. R. p. 298. In the statement she gave to police two hours after the incident, she said the vehicle following them was driving aggressively and tailing her car. R. p. 308. She described one of them calling about appellant having his

money. R. pp. 308-09. She said appellant got out, walked to the driver's side holding a gun and reached inside the car. R. pp. 309, 311. She testified she never heard appellant threaten anybody or act like he was going to harm anybody. R. p. 312. After he returned to the car, she asked him what happened. He told her the gun went off, hit the roof, and everything was okay. R. pp. 299-300, 310. Questioned about having previously made a conflicting statement that appellant said he shot into the roof, she testified the correct version of what appellant said, repeatedly, was that the gun went off, hit the roof, and everything was okay. R. pp. 314-15.

Various witnesses were in vehicles at the intersection when the incident occurred or shortly thereafter. By all accounts, the car driven by Gilstrap was at the stop on Cambridge Drive at its intersection with Issaqueena Trail, with the SUV driven by Raby stopped behind it. Opposite them and coming to the intersection with Issaqueena from Old Shirley Road was Frederica Gibson. On Issaqueena southbound was the vehicle of Alexander and Lena Saidat. On Issaqueena northbound was Amelia Hood. These witnesses all observed the Gilstrap and Raby vehicles in their position at the intersection and appellant at the driver's side window of the Raby vehicle and heard the gunshot.

Some of these witnesses described appellant and the driver arguing, having a heated discussion, or yelling, and they thought there had been a collision of some sort. R. pp. 134-35, 159-60, 165, 177-78. Some saw appellant with a gun, but no one testified he pointed it at anyone. R. pp. 160, 170, 177. What they described was consistent with appellant's account. Alexander Saidat testified he thrust his arm inside the vehicle with the gun. R. p. 161. He never saw the gun pointed at anybody but just saw it jammed inside. R. p. 170. Lena Saidat said he stuck it in the window. R. p. 178. She saw the

hand of the driver come out, saw the driver hit the gun, and the gun went off. R. pp. 178-79.

The only reference to pointing the gun was in the questioning of Frederica Gibson about a prior statement. Gibson testified she never saw a gun and did not see anyone point a gun. R. pp. 148, 152. She acknowledged her prior statement said she saw someone point a gun, but her trial testimony was that she did not. R. p. 148. All she remembered was a hand going up and down. R. p. 148. She questioned the statement's accuracy and testified she gave her statement when she had been talking to and hugging Kalyn Meaders, with Hunter Raby right there with them. R. pp. 148, 153. An officer's report of his questioning of Gibson confirmed she said she never saw a gun but heard a pow. R. pp. 152-53. Notwithstanding the other written statement, she was adamant that she never saw a gun, in keeping with what she told the officer that day. R. p. 154.

Gilstrap testified the barrel of the gun was toward the window, but she did not say it was pointed at anyone. R. p. 297. Her testimony was consistent with appellant's own account that when he tried to give Raby the gun, the barrel was in front of Raby's face. R. p. 417. No one testified he pointed at Raby or anyone else.

The lead investigator was Michael Arflin, who did not arrive until about 20 minutes after the shooting. R. p. 331. Crime scene tape was already up when he arrived. R. pp. 331-32. Porter had already been transported from the scene. R. p. 333. A video recording from one officer's body camera, some 15 minutes of which was filmed prior to Arflin's arrival, showed the witnesses were not separated but were milling around, talking to each other, and, as Gibson and Meaders both acknowledged, interacting with Raby and Meaders and even hugging them. R. pp. 69, 153, 323, 327, 363, 369, 378. The

video and still photos lifted from it showed that various people – Raby, Meaders, and witnesses – were within the crime scene tape, together, walking around the scene, for at least 15 minutes, with no law enforcement officers separating them. R. pp. 363, 378-79. The witnesses discussed what happened among themselves. R. p. 166. Two of the witnesses drove Meaders to the hospital where Porter had been taken. R. pp. 166-67, 181.

Arflin acknowledged that, in securing a crime scene, the witnesses should be separated. R. p. 362. He acknowledged that, once a crime scene has been contaminated, it cannot be uncontaminated. R. p. 379.

Raby and Meaders were depicted inside the crime scene tape that should have secured the scene and protected it from tampering. R. pp. 376-77. Raby went back to the vehicle and removed items. R. pp. 119-20. They were not separated from each other but were allowed to sit together along the edge of the woods, which is where and when they conferred and concocted the fabrication of a prior robbery and agreed not to reveal the purported drug transaction. R. p. 107.

Arflin had never before or since served as a lead detective in a homicide investigation. R. p. 360. The officers under his direction took only 40-something photographs, which included both the scene and Gilstrap's car. R. pp. 242, 361. Not all aspects of the scene were photographed. R. p. 252. Arflin acknowledged that ordinarily hundreds and hundreds of photographs are taken, documenting every single aspect of the scene. R. pp. 360-61. The drugs found in the Raby vehicle were seized but were never tested. R. pp. 239-41, 247-51, 346. Another substance, in the crack of a seat in Raby's vehicle, was not even taken into evidence. R. p. 243.

There had been multiple cell phones and one tablet device in the Raby vehicle, but the investigators did not seize all of them to forensically analyze them or to determine the calls and text messages that had been sent and received and their content; rather, they seized only two phones, but they did not attempt any extraction of information or forensic examination of those two phone. R. pp. 120, 235, 341, 344-46. Although Raby told Arflin there had been numerous calls between him and appellant, they did not seize Raby's phone. R. pp. 341-42, 358.

The investigators did not seize clothing from either Raby or Meaders for forensic analysis. R. pp. 71-72, 119, 122, 226. They did not obtain blood or urine samples from Raby or Meaders to test for drugs or alcohol. R. pp. 66-61, 118-19, 229, 365. Blood and urine testing from the hospital and autopsy revealed Porter had marijuana, benzodiazapines, and cocaine in his system. R. pp. 191, 387, 391-95.

After Raby was out of the vehicle and Porter had been transported from the scene, multiple witnesses observed Raby screaming and yelling, very agitated, and physically punching the vehicle. R. pp. 154, 171-72, 173, 322. Raby admitted he was furious with himself and slammed his fists into the vehicle. R. p. 119. This conduct occurred after the body-cam officer was present and was captured on the video. R. pp. 173, 322.

Raby was also depicted running his hands through his hair, and he testified he does that when he gets really panicky. R. p. 119. At some point, he was checked by EMS and his head was found to have been grazed, a wound that he had not been aware of and that was not serious. R. pp. 95, 195-96, 325.

Sometime after all this activity, someone put hospital-type gloves on Raby's hands. R. pp. 121, 207-08. Even later, those gloves were removed, and his hands and

face were swabbed for gunshot residue ("GSR"). R. pp. 205-08. Some GSR was found on his hands. R. pp. 267-69. Although the state attempted to elicit testimony from the GSR expert that the small amount of GSR on Raby's hands was more likely from touching an object with GSR than from firing the weapon, the expert did not express that opinion. R. pp. 270-74, 278. The expert did confirm that even a small quantity of GSR could be consistent with having fired the weapon. R. pp. 270-71. No GSR was found on Raby's face. R. p. 284.

The GSR expert testified concerning the best way to preserve GSR on a person's hands. R. p. 269. He confirmed that plastic bags are not the preferred method because they can cause the hands to sweat and GSR to be removed. R. pp. 269-70. He confirmed the gloves placed on Raby's hands could have removed some of the GSR. R. p. 270. His having gloves on in the August heat and his activities, including punching the car and running his hands through his hair, all could have contributed to the removal of the GSR that was initially there. R. pp. 277-78.

Arflin, the lead investigator, had testified in the preliminary hearing. R. p. 370. He confirmed at trial that he had testified they did not know whose hand hit the trigger. R. p. 371. He also verified there was only one shot. R. p. 372. He acknowledged in his testimony, consistent with appellant's testimony, that guns are very commonly traded on the street and used as cash. R. pp. 359-60.

I. THE TRIAL COURT ERRED IN ALLOWING A WITNESS WHO WAS NOT QUALIFIED AS AN EXPERT TO TESTIFY AS TO HOW CERTAIN FIREARMS FUNCTION.

No weapon was recovered from the scene. R. pp. 214, 337-38. Some witnesses referred to the weapon they saw generically as a revolver, but there was no testimony as

to what specific type of revolver the gun involved in this shooting was. Appellant testified the gun was old and described it as a piece of junk. R. p. 426.

Arflin, the lead investigator, was not offered and was not qualified as an expert in any field. He also did not testify that he had any training specifically with revolvers. R. p. 338. During his testimony, the state asked him to explain the functioning of single action and double action revolvers. R. p. 355. The defense objected, on the basis that the witness had not been qualified as an expert in firearms. R. p. 355. The state argued it had established the witness was familiar with revolvers through his training and experience as an officer. R. p. 355. The court allowed the testimony. R. p. 355. Defense counsel further argued the objection, stating her understanding that officers are not trained on revolvers, but the court adhered to its ruling that the testimony would be allowed. R. p. 356. Arflin then testified about the cocking and discharging of single and double action revolvers. As to single action, he said, "The hammer has to be cocked and then fire -- you pull the trigger and it discharges." R. p. 356, lines 15-16. He further testified, "That's kind of the rule behind single action. It has to be cocked." R. p. 356, lines 18-19. He stated that, with double action, "When you pull the trigger, the hammer both cocks and discharges," and "it's going to be a long, heavy trigger pull." R. p. 356, line 21 – p. 357, line 1. The court's admission of this testimony was both erroneous and prejudicial.

Matters of scientific, technical, or other specialized knowledge that will assist the trier of fact are a proper subject of expert testimony. *See* Rule 702, SCRE. To be admissible under Rule 702, such testimony must be given by a witness who has been "qualified as an expert by knowledge, skill, experience, training, or education." *Id.* In

determining whether to admit expert testimony, the court must make three inquiries: (1) whether the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain it to the jury; (2) whether the witness has the requisite knowledge and skill to qualify as an expert in the particular subject matter; and (3) whether the substance of the testimony is reliable. *See Graves v. CAS Medical Systems, Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012). These required inquiries were not conducted by the trial court before allowing Arflin's testimony.

The first of these inquiries is clearly met here. The manner and mechanics of the operation and functionality of a particular kind of firearm is a subject matter beyond the ordinary knowledge of the jury, a matter of technical and specialized knowledge, and properly a matter for expert testimony under Rule 702. As to the remaining inquiries, the South Carolina Supreme Court has clarified and explained the role of the trial judge in admitting testimony from an expert where the alleged basis of his expert qualification is experience and training. *See State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009). Addressing the distinction drawn in earlier decisions between "scientific" knowledge and "technical" or "other specialized" knowledge under the language of Rule 702, the Court outlined exactly what is required:

We hold that the trial courts of this state have a gatekeeping role with respect to all evidence sought to be admitted under Rule 702, whether the evidence is scientific or nonscientific. ***In the discharge of its gatekeeping role, a trial court must assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact.*** The familiar evidentiary mantra that a challenge to evidence goes to "weight, not admissibility" may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence.

White, 382 S.C. at 274, 676 S.E.2d at 689 (emphasis added). In later decisions, the appellate courts have further explained, “[t]he expertise, reliability, and the ability of the testimony to assist the trier of fact are all threshold determinations to be made prior to the admission of expert testimony.” See *State v. Tapp*, 398 S.C. 376, 388, 728 S.E.2d 468, 474-75 (2012); *State v. Rose*, 423 S.C. 382, 392, 814 S.E.2d 529, 534 (Ct.App. 2018). In this case, the mandated vetting of Arflin’s qualifications, the reliability of the proposed testimony, and its ability to assist the trier of fact did not occur.

The qualification of a witness as an expert and the admissibility of the expert’s testimony are within the trial court’s discretion. *State v. Chavis*, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015); *State v. Schumpert*, 312 S.C. 502, 505, 435 S.E.2d 859, 861 (1993); *Rose*, 423 S.C. at 392, 814 S.E.2d at 534. An abuse of discretion ordinarily occurs when the ruling of the court is controlled by an error of law or based on a factual conclusion that is without evidentiary support. See *Chavis*, 412 S.C. at 106, 771 S.E.2d at 338; *Rose*, 423 S.C. at 392, 814 S.E.2d at 534. However, the failure of the trial court to exercise discretion is in itself an abuse of discretion. See *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017); *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015); *Teseniar v. Professional Plastering & Stucco, Inc.*, 407 S.C. 83, 94, 754 S.E.2d 267, 273 (Ct.App. 2014); *CEL Products, LLC v. Rozelle*, 357 S.C. 125, 591 S.E.2d 643 (Ct.App. 2004); *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App. 1997). Here, the discretion to evaluate the qualifications of Arflin as an expert in firearms and, in particular, in revolvers, was vested in the trial court. By failing to exercise that discretion and conduct the requisite vetting of his qualifications and the reliability of his testimony, the court committed an abuse of its discretion.

Had that vetting been done, the court would have found that the testimony as to the basis of Arflin's purported expertise was woefully inadequate to support a finding that he was qualified to testify about the workings of revolvers. The only testimony about his training and experience with respect to firearms was brief and conclusory:

Q Are you familiar with firearms?

A Yes.

Q Are you familiar with it, both personally and professionally?

A Yes.

Q Do you get training on firearms?

A Yes, ma'am.

Q Are you familiar with revolvers?

A Yes, ma'am.

R. p. 338, lines 8-16. No testimony was offered as to the nature and extent of the firearms training he had received, and no testimony was offered to establish that he had received any training whatsoever specifically with revolvers. The only mention of revolvers was that he was "familiar" with them. There was no testimony to establish that he had an understanding of how they operated, where he gained that understanding, or the extent of his experience with such firearms. There was no testimony to establish that he had special knowledge of the different manners of operation of different varieties of revolvers. This passage of testimony about his "familiarity" with firearms was an inadequate evidentiary basis for a determination that he was qualified to render expert testimony about how revolvers function or that his testimony would be reliable and would assist the trier of fact.

Our courts recognize that there are no specific qualifications mandated by the evidence rules and a person may become skilled or knowledgeable in a field in a variety of ways. See *Teseniar*, 407 S.C. at 90, 754 S.E.2d at 270-71. What must be established is that the witness has acquired by study or practical experience such knowledge of the subject matter as will enable him to give guidance and assistance to the jury. *Rose*, 423 S.C. at 393, 814 S.E.2d at 534. In determining a witness's qualification as an expert, the court should make an inquiry broad in scope. *Teseniar*, 407 S.C. at 91, 754 S.E.2d at 271. Such inquiry was not performed in this case.

The state did not formally offer the witness as an expert, and the trial judge did not make a finding that he was an expert, simply stating, "I'm going to allow him to testify to this." R. p. 355. Had he been proffered as an expert, much more would have been required in establishing his qualifications than the conclusory passage of his testimony quoted above. The party offering a witness as an expert has the burden of showing the witness possesses the necessary knowledge, skill, experience, training, or education for him to be deemed qualified to testify as an expert. See *White*, 382 S.C. at 273, 676 S.E.2d at 688; see also *Schumpert*, 312 S.C. at 505, 435 S.E.2d at 861. That burden was certainly not met here. There was no vetting of the witness's qualifications through voir dire. The defense was not afforded an opportunity to question his experience, training, and basis of knowledge prior to his testifying about how revolvers operate, in an expert capacity. Indeed, in arguing her objection, appellant's trial counsel expressed her understanding that officers are not trained on revolvers. R. p. 356. The witness himself did not testify he had any training with revolvers. R. p. 338. Had he been offered as an expert and properly vetted through voir dire, his training or lack of

training and the nature and extent of his experience with revolvers could have been explored. The court's failure to conduct such vetting was an abandonment of its gatekeeping role and clear error. *See White*, 382 S.C. at 274, 676 S.E.2d at 689.

The court's error in allowing this testimony was extremely prejudicial. As detailed above, *supra* at 1-10, the evidence presented by the state and defense was in sharp conflict, and witnesses gave testimony that supported appellant's account. The state's witnesses were impeached through prior convictions and inconsistent testimony. The witnesses had the opportunity to confer with each other and influence each other's testimony. The state's two key witnesses conferred and concocted a lie to tell the authorities. The investigation was incomplete, due to failures of the officers to confiscate and analyze key pieces of evidence. The crime scene and the GSR testing were compromised in numerous ways. The evidence was such that the jury could have accepted appellant's account and found the shooting occurred either through recklessness or accident. Arflin's description of the functionality of the two types of revolvers suggested to the jury that a person would have to affirmatively act to make either type of weapon discharge. This testimony suggested to the jury that it should reject appellant's account that the gun went off during the pushing and swatting of the gun by Raby, and it likely contributed to the jury's finding him guilty as to the murder charge rather than returning a verdict of involuntary manslaughter or an acquittal on the basis of accident. The prejudice from the court's erroneous admission of this evidence is clear, and this Court should reverse and remand for a new trial.

II. THE TRIAL COURT ERRED IN ALLOWING AN IMPROPER DEMONSTRATION AND IMPROPER CLOSING ARGUMENT THAT WAS NOT BASED ON EVIDENCE PRESENTED DURING THE TRIAL.

In its closing argument, the prosecution conducted a brief demonstration based on Arflin's testimony about revolvers and argued to the jury: "this is what would have had to have happened for this gun to go off because guns do not accidentally go off." R. p. 445, line 22 – p. 446, line 1. Appellant's trial attorney objected to this argument and demonstration, on the basis that a demonstration must be based on evidence and testimony and there was no evidence that a gun cannot go off accidentally, especially an old one that had been traded on the street. R. p. 446, lines 7-15. The court overruled the objection and allowed the argument. R. p. 446, lines 16-18. This ruling was error.

It is a fundamental and long-held principle of our jurisprudence that a solicitor may not in closing argument argue facts that are not in evidence. It is the duty of the prosecuting attorney to treat the defendant in an impartial manner and at all times to confine himself to the evidence adduced in the trial. *State v. Cannon*, 229 S.C. 614, 618, 93 S.E.2d 889, 891 (1956). The state's closing argument must be confined to the evidence in the record and the reasonable inferences that may be drawn from that evidence. *Vasquez v. State*, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010); *Vaughn v. State*, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004); *State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997); *State v. Copeland*, 321 S.C. 318, 326, 468 S.E.2d 620, 625 (1996); *cf. Clark v. Cantrell*, 339 S.C. 369, 384, 529 S.E.2d 528, 536 (2000) (demonstrative evidence must be "a fair and accurate representation of the evidence to which it relates"). In this case, the state's argument that guns do not accidentally go off and its related demonstration were not supported by the evidence.

If the testimony of Arflin was erroneously admitted, as argued above, there was no testimony whatsoever about the operation of revolvers on which the state's argument and demonstration could have been properly based. However, if, contrary to appellant's argument, this Court determines Arflin's testimony was properly admitted, that testimony does not provide the necessary evidentiary support for the state's argument that guns do not go off accidentally. While Arflin testified to the mechanics of cocking and pulling the trigger to fire different types of revolvers, he was not asked and did not express the opinion that a revolver cannot fire accidentally. Nor was he asked about malfunction that could occur due to the age or condition of a revolver, such as the one appellant had that was old and a "piece of junk." Nor did he testify that the gun could not have discharged as the result of someone's pushing or swatting it. In fact, his testimony about how a revolver fires was not absolute but was qualified as "kind of the rule," and no testimony was elicited as to conditions that might create exceptions to that so-called rule and allow for a revolver to discharge accidentally. The record is completely devoid of evidence related to the possibility of malfunction or an accidental discharge, and the solicitor's argument was absolutely improper.

This argument was also highly prejudicial. The entire case turned on whether the jury believed appellant intentionally fired the weapon or it simply went off in the back-and-forth with Raby. The solicitor's improper argument went to the heart of what the jury was to determine and likely influenced its deliberations and verdict. This case is unlike *Copeland*, where objections to the solicitor's arguments were either properly overruled or, where objectionable, were corrected by a curative charge. *Cf. Copeland*, 321 S.C. at 324-26, 468 S.E.2d at 624-25. Rather, the argument in this case is comparable

to the improper argument in both *Huggins* and *Cannon*, which in each case pertained to the very theory of the state's prosecution and therefore could not be deemed harmless. *See Huggins*, 325 S.C. at 107-08, 481 S.E.2d at 116-17 (reference to statement, not in evidence, that defendant had a plan and offered money to someone to kill the victim was highly prejudicial and fundamentally unfair in her trial for his murder and for conspiring to commit his murder); *Cannon*, 229 S.C. at 617-19, 93 S.E.2d at 890-91 (argument that insurance existed and the defendant had murdered the deceased for the purpose of collecting \$4,000, where there was no evidence from which that conclusion could be drawn, was prejudicial because the case was tried on the theory that insurance was the motive). Similarly, in this case, where the case turned on the jury's determination of whether appellant fired intentionally or the gun simply went off, the state's argument that guns do not go off accidentally, unsupported by the evidence adduced at trial, cannot be deemed harmless. The prejudice is especially clear in this case where the evidence was in conflict, the credibility of the state's witnesses was seriously called into question, and the integrity of the investigation was compromised in so many respects, all as detailed above, *supra* at 1-10. This Court should find the trial court committed reversible error in allowing the state's closing argument that was outside the evidence in the record.

III. THE CUMULATIVE EFFECT OF THE TRIAL COURT'S ERRORS WAS SO PREJUDICIAL THAT APPELLANT WAS DENIED A FAIR TRIAL.

If this Court finds error in the admission of Arflin's testimony and in allowing the state's closing argument based on facts not in evidence but further finds neither error sufficiently prejudicial, standing alone, to warrant reversal, it should review the cumulative effect of these two errors and find they were so prejudicial as to deny appellant the fairness required by due process. *See* U.S. Const. amends. V, XIV; S.C.

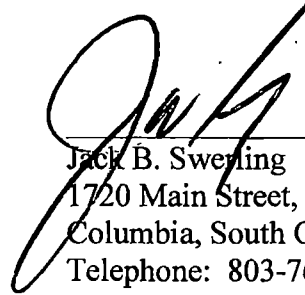
Const. art. I, § 3; *State v. Blurton*, 342 S.C. 500, 512-13, 537 S.E.2d 291, 297-98 (Ct.App. 2000) (finding cumulative effect of improper comments in closing argument and erroneous exclusion of evidence warranted reversal), *rev'd on other grounds*, 352 S.C. 203, 573 S.E.2d 802 (2002) (finding additional error with respect to a jury charge); *State v. Freeman*, 319 S.C. 110, 123-24, 459 S.E.2d 867, 875 (Ct.App. 1995) (reversing conviction based on combined effect of court's limitation of cross-examination and court's improper comments interjected during the trial).

The cumulative error doctrine requires reversal when multiple errors, which may be found harmless in isolation, in combination prevent the defendant from receiving a fair trial and affect the outcome of his trial. In this case, the first error resulted in admission of expert testimony without the proper qualification of the witness and the other inquiries required under Rule 702 and case precedents, and that improperly admitted evidence served as the basis for the state's improper demonstration and argument outside the record. The cumulative effect of these two errors was to give the jury an improper basis on which to reject appellant's defense. These errors viewed together so tainted these proceedings that they denied appellant a fair trial. This Court should reverse and grant appellant a new trial.

CONCLUSION

For all the reasons set out above, this Court should reverse appellant's convictions and remand for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jack B. Swerling', is written over a horizontal line.

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
General Sessions Court
Letitia H. Verdin, Circuit Court Judge

Case No. 2015-GS-39-01893
Case No. 2015-GS-39-01895
Appellate Case No. 2017-002042

The State,

Respondent,

v.

Jaron Lamont Gibbs,

Appellant.

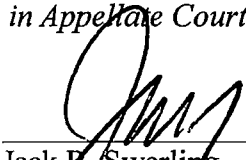
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CERTIFICATE OF COUNSEL

Counsel hereby certifies that the final brief and final reply brief of appellant comply with Rule 211(b) of the South Carolina Appellate Court Rules. Counsel further certifies that the final brief and final reply brief of appellant comply with the Order of the Supreme Court of South Carolina, *Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings* (April 15, 2014).



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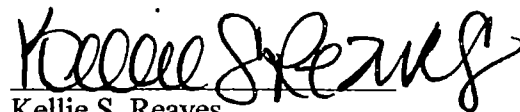
Jaron Lamont Gibbs,

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PROOF OF SERVICE

I certify that I have served the appellant's final brief and final reply brief, by mailing a copy of each, postage prepaid, to counsel for respondent, Senior Assistant Attorney General Carolina M. Scranton, Office of the Attorney General, P.O. Box 11549, Columbia, South Carolina 29211-1549, on February 4, 2019.



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**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

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Letitia H. Verdin, Circuit Court Judge**

THE STATE,

Respondent,

v.

JARON LAMONT GIBBS,

Appellant

Appellate Case No. 2017-0002042.

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APPELLANT'S STATEMENT OF THE ISSUES ON APPEAL

- I. Did the trial court err in allowing a witness who was not qualified as an expert to testify as to how certain firearms function?
- II. Did the trial court err in allowing an improper demonstration and improper closing argument that was not based on evidence presented during the trial?
- III. Was the cumulative effect of the trial court's errors, in combination, so prejudicial as to deny appellant a fair trial?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES ON APPEAL

- I. Did the trial court abuse its discretion when it allowed a detective with the Clemson City Police Department to testify, without being qualified as an expert, that he was personally familiar with revolvers and that a revolver would fire either with one trigger pull or by cocking the hammer and then pulling the trigger?
- II. Did the trial court abuse its discretion when it allowed the State to argue at closing that guns do not accidentally discharge and to briefly demonstrate the types of trigger pulls that the detective with the Clemson City Police Department testified would discharge a revolver, where both statements were supported by properly admitted evidence?
- III. Did Appellant argue or invoke the cumulative error doctrine argument at any time before the trial court, and does the doctrine apply where no errors exist for a combined review?

STATEMENT OF THE CASE

The Pickens County Grand Jury indicted Appellant Jaron Lamont Gibbs for the August 1, 2015 murder of Robby Porter and for possession of a weapon during the commission of a violent crime. (R. pp. 1-4). Druanne White, Esquire, and Ashlea White, Esquire, represented Appellant on the charges. Assistant Thirteenth Circuit Solicitors Brandi Hinton and Britni McCall prosecuted the case. (R. p. 7).

The Honorable Letitia H. Verdin presided over Appellant's trial which began with jury selection on September 18, 2017. (R. p. 8). Four days later, the jury convicted Appellant of murder and the weapons charge. Judge Verdin sentenced Appellant to 35 years for murder and a concurrent five years for the weapons charge, each with credit for 780 days' time served. (R. p. 510, lines 11-23). By and through trial counsel, Petitioner served a notice of appeal the day after sentencing. (R. p. iv).

STATEMENT OF FACTS

Hunter Raby, Robby Porter, and Kalyn Meaders were going to the lake on August 1, 2017, when they contacted Appellant Jaron Gibbs to buy some marijuana. (R. p. 28, line 9 – p. 29, line 6). Hunter drove Robby and Kalyn in his white Ford Explorer. (R. p. 28, lines 14-20). Kalyn sat in the back passenger seat behind Robby, her husband and high school sweetheart. (R. p. 26, line 20 – p. 28, line 21). The parties, all in their twenties, met near Abel Road in Clemson. (R. p. 29, lines 10-13). Appellant gave Robby some weed and Kalyn saw Appellant and Hunter trade “some kind of pills.” (R. p. 29, line 24 – p. 30, line 6). Money exchanged hands as well. (R. p. 30, lines 7-8). After the transaction, the Explorer parted ways from Appellant and its occupants weighed the marijuana they had just purchased. (R. p. 30, lines 11-21). Believing they had been shorted, the friends in the Explorer returned to the place where they bought the marijuana to look for Appellant and saw him in a Chrysler. (R. p. 30, line 24 – p. 33, line 20; R. p. 85, line 22 – p. 87, line 5; R. p. 87, lines 8-25). The boys in the Explorer made contact with Appellant on the phone and began following him. (R. p. 33, line 23 – p. 34, line 22; R. p. 54, lines 14-15).

According to Hunter, they got Appellant on the phone and tried to reason with him but anger ensued as the phone calls wore on. (R. p. 89, lines 3-22). They got to a stop sign at a four-way stop at Issaqueena Trail and Cambridge Road in Clemson. (R. p. 141, lines 22-24). Appellant exited the front passenger seat of the Chrysler, walked behind the Chrysler, and walked right up to the driver’s side window of the Ford Explorer. (R. p. 35, line 12 – p. 36, line 8). Appellant pulled a gun at the driver’s side window where Hunter was seated. (R. p. 36, lines 9-12). Hunter had the Explorer in park. (R. p. 102, lines 13-22). Appellant put the gun inside Hunter’s window, “yelling and telling” Hunter he had messed up and “was really close to losing

[his] life over it.” (R. p. 91, lines 2-13). Hunter recalled Appellant held the gun, a silver revolver of average length, in his right hand along the left side of Hunter’s face. (R. p. 91, lines 16-22; R. p. 113, line 18 – p. 114, line 14). Nobody else had a gun. (R. p. 36, lines 22-23). Hunter testified that, as Appellant threatened him, Hunter used both of his hands to push the gun up but did not put his fingers on the trigger. (R. p. 93, lines 3-16). “The gun goes off.” (R. p. 95, line 7). Kalyn could not see the gun from her seat and only realized what it was after it fired. (R. p. 36, line 11 – p. 37, line 9). Kalyn testified that she assumed that Hunter swiped the gun away. (R. p. 52, lines 7-15).

The bullet first grazed the top of Hunter’s head, leaving only a minor injury treated with gauze by EMS. (R. p. 194, lines 2-17). Robby, the front seat passenger, sustained a gunshot wound to the left side of his temple just above the ear. (R. p. 383, line 15 – p. 385, line 6; R. p. 388, lines 10-11). Appellant retreated to the Chrysler, which left the scene. (R. p. 40, lines 11-19). Robby was unconscious when EMS arrived and died at the hospital the following day. (R. p. 187, lines 7-19; R. p. 383, lines 15-18). Robby’s toxicology report showed that he had benzodiazepines and marijuana in his system at the time of death. (R. p. 387, lines 9-18). A urine screen taken when he was admitted to the hospital also showed positive results for cocaine. (R. p. 390, line 22 – p. 391, line 19). The forensic pathologist listed the manner of death as homicide, further testifying that the results of the urine and blood screening did not contribute to Robby’s death. (R. p. 388, lines 5-14).

The shooting occurred close to noon on a hot, sunny day. (R. p. 42, lines 5-9; R. p. 140, lines 8-13). Collectively, three other cars were at the four-way stop at the time of the shooting. (R. p. 143, lines 9-25). Occupants of these cars each offered corroborating testimony at trial. Each witness recalled being stopped at the four-way in broad daylight waiting for a silver sedan,

a Chrysler 300, to proceed through the intersection. They each witnessed a man exit the passenger side, walk up to the driver's side of the white SUV behind him, and address the driver of the SUV. (R. p. 132, line 21 – p. 178, line 24). These witnesses heard the gunshot. (R. p. 134, line 14; R. p. 146, lines 1-5; R. p. 161, line 3). One occupant noticed a dark satchel on the ground beside the passenger door of the silver sedan. (R. p. 133, lines 15-25). Another occupant remembered "seeing a hand go up and down." (R. p. 148, lines 24-25).

An EMT in the car with his wife and children were stopped at the four-way stop just to the left of the Chrysler. (R. p. 169, lines 6-22; R. p. 176, lines 19-20). He and his wife witnessed the encounter in its entirety and the EMT left his vehicle to render aid. (R. p. 161 lines 17-25; R. p. 163, lines 1-25; R. p. 178, lines 18-24). Her husband, the EMT, recalled waiting for the Chrysler to proceed through the intersection "when the passenger of the silver 300, he got out and he walked to the back of his vehicle." (R. p. 159, lines 16-25). Thinking there had been a fender bender, he "noticed he had a gun in his right hand" that looked like a silver revolver. (R. p. 160, lines 1-4 and 10-12). His wife witnessed yelling. Then she "saw the hand of the driver come out, and the gun went off." (R. p. 178, lines 3-22). "When the gun went off, the male who was in the Chrysler who had shot ran back to the Chrysler and they drove away." (R. p. 178, lines 22-24). Prior to the shot, the EMT characterized the interaction between the driver of the SUV and the passenger of the Chrysler 300 as "an argument" and "a heated discussion" lasting "between five and ten seconds." (R. p. 160, lines 23-25). He witnessed the man on foot "thrust his right arm inside the vehicle with the gun" and heard the gunshot. (R. p. 161, lines 1-3). Then the man on foot "quickly retreated back to his vehicle and they drove off." (R. p. 161, lines 4-5).

Law enforcement arrived and processed the scene led by Detective Arflin. (R. p. 201, lines 1-24). One officer collected Hunter's hat as evidence because it "had a hole somewhere in

the top of it from where he had been shot” (R. p. 205, lines 1-10). Law enforcement also collected the latex medical gloves given to Hunter by a first responder at the scene. (R. p. 207, line 22 – p. 208, line 10). They conducted gunshot residue (GSR) test kits on Hunter’s hands and face. (R. p. 205, lines 20-15). The GSR tests tested negative as to Hunter’s face, but his hands tested positive for three particles of GSR, one particle consistent with GSR, and two particles associated with GSR. (R. p. 265, lines 21-22; R. p. 269, lines 2-8). Hunter’s hat and gloves were not tested for GSR as law enforcement found the results from his face and hands more probative than any item he may have worn. (R. p. 274, lines 12-25).

Law enforcement did not have to wait long to develop a suspect because the driver of the Chrysler 300, Autumn Gilstrap, went to the police station, gave an oral and written statement, and consented to a full search of the vehicle and within hours of the shooting. (R. p. 276, lines 2-9; R. p. 291, line 14 – p. 292, line 10). Her car contained no weapon or other evidence of the shooting other than potentially an empty cigar package located in the passenger door. (R. p. 213, line 24 – p. 214, line 8). A GSR test conducted with consent from Autumn tested positive for one particle of GSR. (R. p. 275, line 23 – p. 276, line 9). Autumn explained to law enforcement that Appellant contacted her that day and asked for a ride to Atlanta. (R. p. 293, lines 5-7). She agreed, picking up Appellant at Curtis Circle in Clemson (R. p. 292, lines 11-15). As soon as Appellant got in her car, she noticed a white Ford SUV trying to prevent them from leaving. She got around the SUV but observed that it kept following her. (R. p. 293, line 8 – p. 294, line 18). Appellant told her to keep driving as he answered a number of phone calls. (R. p. 294, line 19 – p. 295, line 6). They got to the four-way stop about five minutes later and Autumn remembered the SUV being right behind her. (R. p. 295, lines 14-25).

According to Autumn, Appellant got out of her car and walked to the SUV with his own

weapon. (R. p. 296, lines 4-23). She witnessed Appellant yelling in exchange with the people in the SUV, and eventually saw him holding the gun with the barrel pointed towards the SUV's window. (R. p. 297, lines 6-24). She noticed that Appellant's hand was inside the SUV, heard the gun go off, and watched Appellant walk back to her and get back into the Chrysler. (R. p. 298, lines 3-17). She did not see the gun when Appellant got back in her car, but she did see him with a brown satchel which he had when she picked him up. (R. p. 298, line 18 – p. 299, line 1). Nobody called 911; Appellant told her to drive off and explained to her that the gun went off and hit the top of the roof of the SUV. (R. p. 299, line 4 – p. 301, line 7). Autumn took Appellant to meet some other people at Greenville Hospital and declined to drive Appellant to Atlanta "because [she] was unsure of what really happened." (R. p. 302, lines 3-24). Autumn then drove directly to the Clemson Police Department. (R. p. 303, lines 15-19).

At trial, it was undisputed that the Explorer Hunter drove contained over 250 pills and other substances. (R. p. 64, lines 2-10; R. p. 96, lines 3-12; R. p. 363, line 25 – p. 364, line 2). Kalyn and Hunter also testified that they fabricated their initial version of events to law enforcement when they told the officers that Appellant had robbed them a few weeks prior to the shooting and owed them money. (R. p. 49, lines 1-7; R. p. 80, lines 4-10; R. p. 106, line 6 – p. 108, line 8). Hunter testified that they wanted law enforcement to "focus on finding" Appellant, so they did not initially tell the officers that they challenged the outcome of a drug deal with Appellant prior to the shooting. (R. p. 101, lines 3-21). Detective Arflin testified that neither Hunter nor Kalyn appeared under the influence during the processing of the crime scene and taking of statements. (R. p. 334, lines 8-22).

Appellant testified at trial that he asked Autumn to pick him up and take him to Atlanta so that he could spend time with a female friend who was also a dancer. (R. p. 403, line 3 – p.

404, line 8). He carried with him a brown satchel with clothes he packed for the weekend trip and a gun he had purchased for protection in the clubs where his female friend danced. (R. p. 406, lines 1-19). He purchased the gun with a box of ammo and kept both in his brown satchel. (R. p. 426, lines 20-24). Appellant testified that he owed Hunter and Robby money from a bet made during a social hangout with them a few weeks prior. (R. p. 401, lines 1-24). About the time that Autumn picked him up that day, Robby began calling him and asking him to settle up an unpaid bet. (R. p. 404, lines 12-19). Appellant testified that he explained to Robby and Hunter that he was on his way to Atlanta for the weekend and would pay him when he got back into town, but that Robby would not take no for an answer. (R. p. 408, line 2 – p. 409, line 22). He explained that Hunter and Robby were becoming upset as their phone calls went on and that they began following Appellant and Autumn “close behind” and “aggressively.” (R. p. 408, lines 17-25).

Appellant stated he got out of the car when Autumn stopped at the four-way “to try to give them” the gun “for payment.” (R. p. 410, lines 2-14). Appellant testified he believed the gun was unloaded and that they would take it and leave him alone. (R. p. 410, lines 17-22). Appellant testified that he held the gun in his left-hand, his non-dominant hand, by the grip without his finger on the trigger. (R. p. 410, line 24 – p. 411, line 25). According to Appellant, he pushed the gun inside the car in front of Hunter’s face and Hunter pushed the gun back out. This process repeated itself and, on the second push inside the car, the gun went off. (R. p. 412, lines 9-25). Appellant testified he had no idea anyone had been hit with a bullet and he returned to Autumn’s car and told her the bullet hit the roof and no one was hurt. (R. p. 413, lines 1-24). He put the gun back in the brown satchel before he got back into Autumn’s car. (R. p. 417, lines 11-16).

Authorities picked up Appellant two days later in Atlanta. He waived extradition to South

Carolina. (R. p. 414, lines 3-11). No gun was recovered in connection to the incident. (R. p. 214, lines 6-18).

ARGUMENT

- I. The trial court did not abuse its discretion in allowing Detective Arflin to provide limited testimony that he was personally familiar with revolvers and that a revolver would fire either with one trigger pull or by cocking the hammer and then pulling the trigger.**

A. Standard of Review

“The admission or exclusion of evidence is a matter within the trial court’s sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a ‘manifest abuse of discretion accompanied by probable prejudice.’” *State v. Commander*, 396 S.C. 254, 262-63, 721 S.E.2d 413, 417 (2011) (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 854, 847-48 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). “Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result.” *Id.* at 212, 631 S.E.2d at 267.

B. Admissibility of Arflin’s Limited Testimony Premised Upon Rule 701, SCRE

“Lay witnesses are permitted to offer testimony in the form of opinions or inferences if the opinions or inferences are rationally based on the witness’ perception, and will aid the jury in understanding testimony, and do not require special knowledge” skill, experience or training. *State v. Douglas*, 380 S.C. 499, 502, 671 S.E.2d 606, 608 (2009); Rule 701, SCRE. Every person is generally competent to testify as a witness so long as their testimony is supported by personal knowledge. Rules 601 and 602, SCRE. In contrast, “expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge.” *Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010); Rule 702, SCRE.

“Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” Rule 704, SCRE.

Lay testimony need not always been devoid of reference to prior skill or training in order to be admissible. A law enforcement agent is permitted to testify “about his knowledge as a law enforcement officer based on his previous observations.” *S.C. Dept. of Rev. v. Meenaxi, Inc.*, 417 S.C. 639, 658, 790 S.E.2d 792, 801 (Ct. App. 2016) (permitting agent testimony about the commonality of video gaming players discarding coupons of no value of them, but finding the agent’s specific interpretation of verbiage on a beverage license outside the bounds of permissible lay opinion testimony). A layperson can testify about his own “special knowledge and experience in the daily operation” of a technical item such as a machine absent any expert qualification. *Small v. Pioneer Machinery, Inc.*, 329 S.C. 448, 468-69, 494 S.E.2d 835, 845 (Ct. App. 1997) (finding a lay witness could offer his opinion as to what caused a machine to malfunction because his opinion was based “upon his observations and perceptions as the [daily] operator” of the machine). Our Supreme Court has also found it “unnecessary” for a forensic interviewer to be qualified as an expert witness, ruling admissible lay testimony concerning the established method utilized to build rapport with a child victim. *State v. Douglas*, 380 S.C. at 502-03, 671 S.E.2d at 608 (the interviewer “testified only as to her personal observations and experiences, and her interview with the Victim in [that] case”).

Lay witness testimony oversteps the bounds of Rule 701, SCRE, where the lay witness delves into the reason for its determination or otherwise provides a technical basis for the testimony. *State v. Kelly*, 285 S.C. 373, 374-75, 329 S.E.2d 442, 443 (1985) (a police officer may not testify, as a lay witness, as to the cause of an accident). For example, a fire chief’s lay testimony concerning the origin and intentionality of a fire has been found to impermissibly

reach beyond “his direct observations” and instead require expert qualification due to the opinion needing “‘special knowledge, skill, experience or training’ to be properly made.” *Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 409, 764 S.E.2d 249, 252 (Ct. App. 2014) (quoting Rule 701, SCRE), *reh’g dismissed* (Oct. 24, 2014); *State v. Westmoreland*, 421 S.C. 410, 420, 807 S.E.2d 701, 706-07 (Ct. App. 2017) (coroner offered improper lay opinion under Rule 701(a), SCRE, where opinion rendered “was based upon review of the perceptions of others”), *reh’g denied* (Dec. 14, 2017).

Over Appellant’s objection, Arflin testified that a single-action revolver has a hammer that must be cocked in order to pull the trigger and fire the gun. (R. p. 356, lines 5-19). He testified that a double-action revolver only requires “a long, heavy trigger pull” to fire the gun. (R. p. 356, line 20 – p. 357, line 1). The court allowed the testimony in limited fashion based upon Arflin’s testimony that he understood revolvers. (R. p. 355, line 19 – p. 356, line 11). In this case, the trial court did not abuse its discretion when it allowed this limited lay testimony because, on this record, it was unclear whether Arflin’s experience with revolvers was derived from anything other than his personal observation and experience. (R. p. 356, line 4 – p. 357, line 7). Arflin testified that he was familiar with firearms—and revolvers—both personally and professionally. (R. p. 338; lines 8-16; R. p. 355, lines 4-6). Arflin had earlier demonstrated familiarity with revolvers when he testified, without objection, that he would not expect to find shell casings when dealing with a revolver—he did not offer technical testimony as to why that was the case. (R. p. 338, lines 17-19). Arflin ultimately offered testimony that he was familiar with both single-action and double-action revolvers and that he fires weapons. (R. p. 355, lines 4-13; R. p. 357, lines 2-7).

As defense counsel pointed out in objecting to Arflin’s testimony, counsel was not aware

and Arflin did not testify that he received training on revolvers as part of his employment as a law enforcement officer. (R. p. 356, lines 2-4 (“I’m not aware of any officers that are trained on revolvers. There are semi-automatic weapons and rifles.”)). Though the State pointed out in its argument to the court that Arflin was familiar with revolvers as an officer, the State did not question Arflin in terms of training received, but rather in terms of general familiarity with that type of firearm. (R. p. 355, lines 4-22). Arflin never testified that he received any particular type of training, in firearms or otherwise, in order to be employed as a detective with the Clemson City Police Department. (R. p. 330, line 17 – p. 331, line 5). Further, Arflin’s testimony did not reach to any technical bases, explanation, or, more importantly, any inference, opinion, or even an identification of the type of gun that may have been used in the shooting in this case. Thus, Arflin’s limited testimony concerning how he fired single action and double action revolvers was permissible lay testimony relating to personal, not specialized, experience. *S.C. Dept. of Rev. v. Meenaxi, Inc., supra*; *Small v. Pioneer Machinery, Inc., supra*; *State v. Douglas, supra*.

C. Harmlessness of Detective Arflin’s Limited Testimony

Even if wrongly admitted by the trial judge, lay testimony that overreaches the boundaries of Rule 701, SCRE, constitutes harmless error if it does not extend to “the heart of the case.” *State v. Ellis*, 345 S.C. 175, 178, 547 S.E.2d 490, 491 (2001); *State v. Westmoreland*, 421 S.C. at 421-22, 807 S.E.2d at 707-08. “A harmless error analysis is contextual and specific to the circumstances of the case: . . . the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial.” *State v. Westmoreland*, 421 S.C. at 422, 807 S.E.2d at 707 (quoting *State v. Reeves*, 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (1990)). The factors to be

considered in a harmless error analysis include “the importance of the witness’ testimony in the prosecution’s case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution’s case.” *State v. Mizzell*, 349 S.C. 326, 333, 563 S.E.2d 315, 318 (2002) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 684, 106 S.Ct. 1431 (1986)). The Court should uphold a conviction if it determines, beyond a reasonable doubt, the error complained of did not contribute to the verdict obtained. *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 828 (1967).

Even if this Court were to find Arflin’s testimony required special knowledge, skill, experience or training falling outside the bounds of permissible lay testimony, Arflin offered no opinion or inference constituting reversible error. Rule 701, SCRE. At issue was the intent with which the gun fired. (R. p. 501, line 13 – p. 506, line 10 (jury instructions on murder, involuntary manslaughter, and defense of accident)). Arflin testified that there were two types of trigger pulls applicable to the discharge of a revolver. (R. p. 356, line 13 – p. 357, line 1). But in this case, Arflin’s testimony lacked any prejudicial effect because it lacked relevance to the issue before the jury’s ultimate determination. No one contested that the gun discharged. And the type of firearm was not at issue, including whether it was a double action or single action handgun. Law enforcement recovered no gun in connection to the incident. The State presented no ballistics evidence concerning the origin of the fired bullet. The general type of gun was essentially undisputed at trial: Appellant identified it merely as a “piece of junk” and other eyewitnesses identified it as a silver revolver. (R. p. 57, lines 17-25; R. p. 91, lines 21-22; R. p. 160, lines 10-12; R. p. 426, line 19). At most, Arflin offered background information relevant to the eyewitness’ identification of a revolver.

Arflin's testimony further did not address any action testified to by any witness and accordingly did not offer an inference or opinion on the events resulting in the victim's death. (R. p. 356, lines 13 – p. 357, line 1). Appellant testified that he did not have his fingers on the trigger and that the gun fired as he and the driver of the Explorer engaged in a face-level shoving match with the gun. (R. p. 411, line 16 – p. 412, line 25). The driver of the Explorer likewise testified he engaged in a reflex-driven shoving match with Appellant over the threatening presence of the gun in his face. (R. p. 91, line 5 – p. 93, line 16). Even if erroneously offered through a lay witness, Detective Arflin's testimony did not prejudice Appellant because it did not speak to the intent of the actors at the scene of the shooting and therefore could not constitute direct evidence tending to show Appellant's guilt or innocence for murder. *See State v. Westmoreland, supra* at 424, 807 S.E.2d at 708-09.

II. The trial court did not abuse its discretion when it allowed the State to argue at closing that guns do not accidentally discharge and to briefly demonstrate the types of trigger pulls Detective Arflin testified would discharge a revolver, because both arguments were supported by properly admitted evidence.

A. Standard of Review

“A trial judge is vested with broad discretion in dealing with the range of propriety of closing argument, and ordinarily his rulings on such matters will not be disturbed.” *State v. Northcutt*, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007). A prosecutor’s statement during closing argument is impermissible if determined to have “by itself so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S.Ct. 1868, 1871 (1974). “The appellant has the burden of showing that any alleged error in argument deprived him of a fair trial.” *State v. Northcutt*, *supra*. “An appellant must prove both an abuse of discretion and resulting prejudice to warrant reversal.” *State v. Navy*, 370 S.C. 398, 412, 635 S.E.2d 549, 556 (Ct. App. 2006), *aff’d in part, rev’d in part on other grounds*, 386 S.C. 294, 688 S.E.2d 838 (2010).

Moreover, any excerpt of the State’s closing exists as “one moment in an extended trial.” *Donnelly v. DeChristoforo*, 416 U.S. 637, 645, 94 S.Ct. 1868, 1872 (1974). Accordingly, a court must conduct an “examination of the entire proceedings” in context. *Id.* at 643, 94 S.Ct. at 1871; *State v. Northcutt*, *supra* (“We must review the [closing] argument in the context of the entire record.”).

B. The State Confined its Closing Argument to Evidence in the Record and Permissible Inferences Therefrom

“Solicitors are bound to rules of fairness in their closing arguments.” *State v. Northcutt*, *supra* at 222, 641 S.E.2d at 881. The closing’s “content should stay with the record and reasonable inferences to it.” *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002).

The State's closing "must not appeal to the personal biases of the jurors," nor should it "be calculated to arouse the jurors' passions or prejudices." *State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). Even if a prosecutor's closing argument appears "aggressive" on the face of the record before the appellate court, the closing should be upheld so long as its assertions lie in direct response to the defense presented at trial. *State v. Navy*, *supra* at 414, 635 S.E.2d at 557.

Over Appellant's objection, the State argued in a brief demonstration that the trigger on the gun would have had to have been pulled "for this gun to go off because guns do not accidentally go off. . . ." (R. p. 445, line 22 – p. 447, line 3). Appellant argued that the statement concerning accident was not supported by facts in evidence. (R. p. 446, lines 7-15). The trial court allowed the statement "in a limited fashion." (R. p. 446, lines 16-18). Appellant re-raised this objection in its post-trial motions, qualifying it by stating that "the demonstration in the closing argument [was not based upon] reliable facts in the evidence." (R. p. 512, lines 12-15). The trial court ruled that "the demonstration, which lasted all three, maybe, seconds, three to five seconds, did not go beyond the scope of what would just be argument by counsel." (R. p. 513, lines 2-7). The trial court also noted that it "had previously instructed the jurors that what the attorneys said was not evidence in the case." (R. p. 512, lines 22-24; *see* R. p. 17, lines 14-20).

The prosecutor's closing argument that "guns do not accidentally go off" derived directly from properly admitted evidence, as did the argument about the trigger pull. (R. p. 429, line 10 – p. 453, line 2). Appellant maintained that the gun involuntarily discharged as he offered it to the driver of the Ford Explorer as payment for a bet. (R. p. 411, line 16 – p. 412, line 25; R. p. 441, lines 14-25; R. p. 465, line 18 – p. 469, line 16). Moreover, the demonstration itself, however brief, pertained directly to the properly admitted testimony of Detective Arflin, who had earlier

testified that he was familiar with revolvers and that one of two types of trigger pulls applied to that type of gun.¹ (R. p. 356, line 13 – p. 357, line 1). To this end, the prosecution’s closing contained no improper speculation nor extrapolation from facts in evidence. *See State v. Copeland*, 321 S.C. at 325, 468 S.E.2d at 625.

Nor did the argument render the trial fundamentally unfair.² *Donnelly v. DeChristoforo*, *supra*. “A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony.” *Humphries v. State*, 351 S.C. at 373, 570 S.E.2d at 166 (2002). The evidence at trial indicated that the gun discharged during the exchanges testified to in conflicting manners by Hunter Raby and Appellant, and corroborated by eyewitnesses at the four-way stop. (R. p. 91, line 5 – p. 93, line 16; R. p. 161, lines 1-5; R. p. 178, lines 18-24; R. p. 297, line 3 – p. 298, line 13; R. p. 411, line 16 – p. 412, line 25). Given this testimony, the prosecution’s closing argument cannot be found to have prejudiced Appellant when considered “in the context of the entire record.” *State v. Northcutt*, *supra*. The State’s closing argument focused on the premise that Appellant’s exit from his vehicle and his repetitious pushing of the barrel of the gun into the driver’s side window of the Explorer, along with his actions following the discharge of the gun, indicated an intent to kill, an absence of accident, and a series of unlawful acts. (R. p. 430, line 6 – p. 433, line 19; R. p. 436, line 13 – p. 452, line 18).³ This was particularly clear from the

¹ The State had earlier argued without objection that the gun was a revolver, and that Detective testified that a revolver either had to be cocked before firing or that it had a long handle trigger. (R. p. 442, lines 18-25).

² Appellant appears to acknowledge that his prejudice argument on this issue derives from the presupposition that the trial court erroneously admitted Detective Arflin’s testimony concerning the pulling of the trigger. (Br. of App. at 18).

³ “. . . Even if you believe his story that he was trying to give him payment for a gun, you do not pay somebody with a gun by pointing it in their face. So the law of accident does not apply.” (R. p. 431, lines 17-21). “. . . Jaron Gibbs had no just cause to get out of that car and put a gun in

State's rebuttal closing. (R. p. 490, lines 11-24). It is reasonable to infer, and thus permissible to argue, that the discharge of the gun included the pulling of the trigger. *Humphries v. State, supra* (content of closing must be within record and reasonable inferences therefrom).

Furthermore, demonstrations during closing argument which are supported by the evidence at trial are not in and of themselves prejudicial during closing argument. *State v. Brisbon*, 323 S.C. 324, 332, 474 S.E.2d 433, 438 (1996) (solicitor conducted permissible demonstration with an axe during closing); *cf. State v. Northcutt, supra* at 222-23, 641 S.E.2d at 881-82 (Solicitor's demonstration with a crib held a "miscue" requiring reversal of death sentence); *contra State v. Cannon*, 229 S.C. 614, 618, 93 S.E.2d 889, 891 (1956) (prosecutor's version of the testimony argued in closing determined to be insufficiently supported by the evidence and prejudicially directed at the theory upon which the case was tried). Again, the gun indisputably discharged during the exchanges testified to in conflicting manners by Hunter Raby and Appellant at trial, making it reasonable to infer that the trigger had been pulled. (R. p. 91, line 5 – p. 93, line 16; R. p. 161, lines 1-5; R. p. 178, lines 18-24; R. p. 297, line 3 – p. 298, line 12; R. p. 411, line 16 – p. 412, line 25). The use of a revolver during the shooting was not in dispute at trial. Even though Appellant identified the gun merely as a "piece of junk," other witnesses presented unchallenged testimony the gun was a silver revolver. (R. p. 57, lines 17-25;

Hunter Raby's face. He certainly did it with the intent of inflicting injury." (R. p. 433, lines 3-6). "... The defendant didn't say I tried to put it in his hand. The defendant said I pushed it in his face. ... " (R. p. 438, lines 5-7). "... They are yelling at each other. He says he's holding it by the grip. Again, he pushed it in Hunter's face. ... twice ... That is the intent to kill. That's not an accident. That's not a misunderstanding. This is the intent to kill. The gun goes off. There's been absolutely no testimony that there was a struggle [or] that anybody else's finger was on that trigger. ... " (R. p. 441, line 14 – p. 442, line 17). "... And he drives off. And he goes to Atlanta to hang out with a stripper. Even after he received a phone call, he did not deny this, that, I think you shot someone." (R. p. 443, lines 13-16).

R. p. 91, lines 21-22; R. p. 160, lines 10-12; R. p. 426, line 19).

Particularly, “a defendant may open the door to what would be otherwise improper evidence through his own introduction of evidence or witness examination.” *State v. Culbreath*, 377 S.C. 326, 333, 659 S.E.2d 268, 272 (Ct. App. 2008). “Once the defendant opens the door, the solicitor’s invited response is appropriate so long as it does not unfairly prejudice the defendant.” *State v. Collier*, 421 S.C. 426, 436, 807 S.E.2d 206, 212 (Ct. App. 2017) (quoting *Ellenburg v. State*, 367 S.C. 66, 69, 625 S.E.2d 224, 226 (2006)); *Vaughn v. State*, 362 S.C. 163, 169-70, 607 S.E.2d 72, 75 (2004) (“Once a defendant opens the door, the relevant question in determining if a defendant’s rights were violated is whether the solicitor’s comments ‘so infected the trial with unfairness as to make the resulting conviction a denial of due process.’” (quoting *Donnelly v. DeChristoforo*, *supra*)). Thus, even if a solicitor’s closing argument is determined inappropriate, it should not be found to deny the defendant due process so long as “it was responsive to statements or arguments made by the defense.” *Tappeiner v. State*, 416 S.C. 239, 251, 785 S.E.2d 471, 477 (2016).

Here, the record reflects that Appellant opened the door to the testimony regarding how the gun was fired. Appellant’s counsel initially examined a State’s witness, the EMT, concerning his experience with firearms, inviting the response that he was recreationally trained in firearms and could shoot from both his dominant and non-dominant hand. (R. p. 169, lines 3-15; *see also* R. p. 173, lines 17-23). Appellant testified he held the gun by the grip in his non-dominant hand. (R. p. 410, line 23 – p. 411, line 25). This testimony elicited by Appellant made ripe for the State’s closing the manner in which the gun could have fired, permitting the demonstration at issue. *Vaughn v. State*, *supra* at 169, 607 S.E.2d at 75.

Not only was the demonstration an invited response to testimony put forward by

Appellant, but the State's closing argument made no appeal to any juror bias, nor did it include language which could be considered to arouse any passion or prejudice within the jury. *See State v. Copeland, supra*. The prosecution also imparted upon the jury that its argument was not evidence, and that the jury should only consider the testimony and evidence that came from the witness stand. (R. p. 437, lines 4-14). Thus, even the State qualified its argument as just that—argument—and its contents were wholly appropriate within the confines of the evidence presented and inferences allowable therefrom. The prosecutor's statement that "guns do not accidentally go off" and the following demonstration directly addressed the alternative theories presented at trial, was supported by or reasonably inferred from the evidence, and was therefore not prejudicially presented in closing argument. *Humphries v. State, supra*.

III. Cumulative Error Argument is Not Preserved and Need Not Apply

Appellant posits for the first time on appeal that the cumulative effect of the trial court's errors deprived him of a fair trial. (Br. of App. at 19-20). "The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013). Specifically, Appellant contends that Detective Arflin's testimony about the types of trigger pulls applicable to a revolver was erroneously admitted as lay testimony, and the State's reliance on that testimony during its closing argument affected the outcome of the trial by prejudicially and erroneously providing the jury with a basis upon which to reject Appellant's accident defense. (Br. of App. at 20).

As an initial consideration, Appellant did not argue for the invocation of the cumulative error doctrine at any time before the trial court. "[A]n objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge." *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001). "A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). Appellant's post-trial motions lacked the specificity required to preserve any objection regarding the cumulative error doctrine. (R. p. 511, line 21 – p. 512, line 18). The trial court addressed the errors cited by Appellant in its post-trial motion as individual bases raised in support of a motion for new trial, and did not address cumulative error. (R. pp. 512, line 19 – p. 513, line 9). Appellant did not request a finding as to any alleged accumulation of prejudice. (R. p. 513, line 10). Thus, this issue was not ruled upon by the trial court as required by our issue

preservation rules. *See State v. Beekman*, 405 S.C. at 236-37, 746 S.E.2d at 489 (citing *State v. Price*, 368 S.C. 494, 500, 629 S.E.2d 363, 366 (2006) (recognizing axiomatic rule that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review)).

Respondent further submits that Appellant has not demonstrated one or more errors to qualify this case for reversal on this ground. “An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground.” *State v. Beekman*, *supra* at 237, 746 S.E.2d at 490; *State v. Daise*, 421 S.C. 442, 466–67, 807 S.E.2d 710, 722–23 (Ct. App. 2017) (“any errors by the circuit court were not prejudicial and did not combine to affect Daise’s right to a fair trial”), *reh’g denied* (Dec. 14, 2017). When a court finds no error by counsel on any claim raised, there can be no sum of either error or prejudice upon which this Court may grant relief. *See United States v. Basham*, 561 F.3d 302, 330 (4th Cir. 2009) (“When ‘none of [the] individual rulings work[] any cognizable harm, . . . [i]t necessarily follows that the cumulative error doctrine finds no foothold.’” (quoting *United States v. Sampson*, 486 F.3d 13, 51 (1st Cir. 2007))). Respondent submits that, for the reasons discussed herein, Appellant’s convictions should not be reversed on any one issue and that the cumulative error doctrine need not apply.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should affirm the Appellant's conviction for murder and possession of a weapon during the commission of a violent crime.

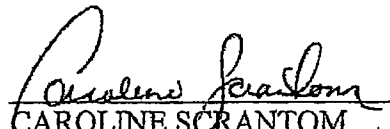
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February 4, 2019
Columbia, South Carolina

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Letitia H. Verdin, Circuit Court Judge

THE STATE,

Respondent,

v.

JARON LAMONT GIBBS,

Appellant

Appellate Case No. 2017-0002042.

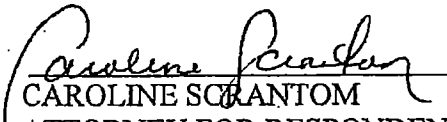
CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,

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February 4, 2019
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**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Pickens County
Letitia H. Verdin, Circuit Court Judge**

THE STATE,

Respondent,

v.

JARON LAMONT GIBBS,

Appellant

Appellate Case No. 2017-0002042.

PROOF OF SERVICE

I, Caroline Scrantom, counsel for the Respondent, certify that I have served the within Final Brief of Respondent by depositing two (2) copies of the same in the United States mail, addressed to his attorneys of record at:

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I further certify that all parties required by Rule to be served have been served this 4th day of February, 2019.


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
General Sessions Court
Letitia H. Verdin, Circuit Court Judge

Case No. 2015-GS-39-01893

Case No. 2015-GS-39-01895

Appellate Case No. 2017-002042

The State,

Respondent,

v.

Jaron Lamont Gibbs,

Appellant.

FINAL REPLY BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in allowing a witness who was not qualified as an expert to testify as to how certain firearms function?
2. Did the trial court err in allowing an improper demonstration and improper closing argument that was not based on evidence presented during the trial?
3. Was the cumulative effect of the trial court's errors, in combination, so prejudicial as to deny appellant a fair trial?

ARGUMENT IN REPLY

- I. THE TRIAL COURT ERRED IN ALLOWING A WITNESS WHO WAS NOT QUALIFIED AS AN EXPERT TO TESTIFY AS TO HOW CERTAIN FIREARMS FUNCTION.

Appellant challenges the court's admission of the testimony of the lead investigator, Michael Arflin, on the functioning and mechanics of firing of certain types of revolvers, where he was not qualified as an expert as required by Rule 702 of the South Carolina Rules of Evidence and South Carolina case law. The state responds that his testimony was not offered as expert testimony but as lay testimony under Rule 701 of the evidence rules.

Contrary to the state's contention, the testimony the state sought to elicit from Arflin was not properly within the purview of Rule 701. That rule provides:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) ***do not require special knowledge, skill, experience or training.***

See Rule 701, SCRE (emphasis added). On the other hand, Rule 702 provides that matters of scientific, technical, or other specialized knowledge that will assist the trier of fact are a proper subject of *expert* testimony, where the witness is “qualified as an expert by knowledge, skill, experience, training, or education.” See Rule 702, SCRE.

Although the state contends the testimony about the mechanics of the operation and functioning of certain types of revolvers was a proper subject of lay testimony under Rule 701, it also acknowledges that lay testimony “oversteps the bounds of Rule 701” when it becomes “technical” in nature. Clearly, a witness’s testimony about the mechanics and functionality that causes a weapon to fire crosses that line, providing information of a technical and specialized nature, outside the ordinary knowledge of jurors. Instead, because of the technical, specialized nature of such testimony, it is a proper subject of expert testimony under Rule 702. Notwithstanding its argument premised on Rule 701, the state clearly contends Arflin’s testimony was premised on his special knowledge and experience with firearms, even if that experience was personal and not the result of professional training. The state’s argument concerning his knowledge and experience undermines its assertions that his testimony was offered and admitted as lay, not expert, testimony.

The state further contends the trial court did not abuse its discretion in admitting Arflin’s testimony because, on the record created by the trial testimony, the basis or source of Arflin’s purported experience with revolvers was *unclear*. This contention tacitly admits the required foundation for Arflin’s testimony – evidence of his qualification through knowledge, skill, experience, training, or education – was not established. Contrary to the state’s contention, the absence of such evidence in the record

is the very reason the trial court abused its discretion in admitting the testimony. Because the state was the proponent of the evidence, the burden rested upon the state to establish its admissibility by laying the proper foundation as to the witness's technical and specialized knowledge of the subject matter – the mechanics of the operation and functionality of specific types of revolvers. Where the alleged basis of a witness's specialized knowledge is experience or training, the trial court is charged with the gatekeeping function of vetting that experience and training to determine the witness is sufficiently qualified to provide the jury with information about the technical functionality of the particular piece of equipment, in this case a firearm, and that the witness's testimony is reliable, both of which are foundational requirements for admission of the evidence. *See Graves v. CAS Medical Systems, Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012); *State v. Tapp*, 398 S.C. 376, 388, 728 S.E.2d 468, 474-75 (2012); *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009); *State v. Rose*, 423 S.C. 382, 392, 814 S.E.2d 529, 534 (Ct.App. 2018). Where, as here, the record is unclear and the basis for the witness's knowledge and experience is not explained in the evidence, the trial court abuses its discretion in admitting the evidence without this requisite foundation.

Even the case law on which the state relies with respect to a so-called “lay” witness's testimony about the functionality of a piece of equipment establishes that such testimony could only be admitted because of the foundation laid as to the “special knowledge and experience in the daily operation of the machine” by its operator, who testified about its malfunction and the cause of that malfunction. *See Small v. Pioneer Machinery, Inc.*, 329 S.C. 448, 468-69, 494 S.E.2d 835, 845 (Ct.App. 1997). Although

the Court in *Small* referred to the witness's testimony as "lay opinion testimony," this characterization was a misnomer, because the Court clearly set forth the limitation of Rule 701, and the cases decided under Rule 701, that lay opinion testimony is admissible *only* as to matters that do *not* require special knowledge. See *Small*, 329 S.C. at 468-69, 494 S.E.2d at 845, citing Rule 701, SCRE, and *State v. Williams*, 321 S.C. 455, 469 S.E.2d 49 (1996) (both noting requirement for admission under Rule 701 that special knowledge *not* be required). The Court's ultimate conclusion that the testimony was admissible was premised on the "special knowledge and experience" of the witness, in keeping with the requirements of Rule 702. See *Small*, 329 S.C. at 468, 494 S.E.2d at 845.

To the extent *Small* could be argued to allow testimony based on technical or specialized knowledge under Rule 701, *Small* was decided long before the seminal decisions in *White*, *Graves*, and the other precedents relied on by appellant and discussed in detail in his opening brief. For the reasons argued there, the testimony the state elicited from Arflin concerning the functioning of revolvers was within the purview of Rule 702, but the foundational requirements for admission of such testimony under that rule were not met. There was no vetting by the trial court of Arflin's qualifications, the reliability of his proposed testimony, or the testimony's ability to assist the trier of fact. The court abused its discretion by not performing its "gatekeeping role" before admitting this evidence. See *White*, 382 S.C. at 274, 676 S.E.2d at 689.

The state contends Arflin's testimony was not a technical explanation and did not lead to any inference concerning the gun that may have been involved in this shooting. It is simply disingenuous to argue that an explanation of what is necessary to fire a weapon

is not "technical" in nature. Arflin described the mechanics of cocking and pulling the trigger to fire one type of revolver and the kind of trigger action required to fire another type of revolver. Moreover, his testimony most definitely led to an inference. His assertion that pulling the trigger was necessary to discharge a revolver led to the inference that such a firearm could not fire as the result of being swatted by Raby as the gun was pushed back and forth between him and appellant, as multiple witnesses testified occurred in this case. Arflin's testimony was clearly within the purview of expert testimony under Rule 702, not lay testimony under Rule 701, and it was improperly admitted without the requisite foundation as to his technical and specialized knowledge about how such firearms operate.

The state also disingenuously argues that no prejudice could have resulted from this testimony. To the contrary, on the evidence presented by appellant and other witnesses, including those called by the state, the jury could have accepted appellant's account and found the shooting occurred either through recklessness or accident. Arflin's description of the functionality of the two types of revolvers suggested that an affirmative act of pulling the trigger was required for the weapon to fire. It clearly touched on the question of intent, which the state concedes was at issue. The testimony implied the gun could not have gone off as the result of being pushed and swatted by Raby. It likely contributed to the jury's guilty verdict on the charge of murder, rather than a guilty verdict on involuntary manslaughter or an acquittal on the basis of accident. The admission of this evidence was clearly prejudicial and requires reversal.

II. THE TRIAL COURT ERRED IN ALLOWING AN IMPROPER DEMONSTRATION AND IMPROPER CLOSING ARGUMENT THAT WAS NOT BASED ON EVIDENCE PRESENTED DURING THE TRIAL.

Appellant contends the trial court erred in allowing a demonstration by the solicitor and the accompanying argument that “guns do not accidentally go off,” in contravention of the requirement that closing argument must be confined to the evidence presented at trial and the reasonable inferences that may be drawn therefrom. See *Vasquez v. State*, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010); *Vaughn v. State*, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004); *State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997); *State v. Copeland*, 321 S.C. 318, 326, 468 S.E.2d 620, 625 (1996); *State v. Cannon*, 229 S.C. 614, 618, 93 S.E.2d 889, 891 (1956); see also *Clark v. Cantrell*, 339 S.C. 369, 384, 529 S.E.2d 528, 536 (2000). In this case, the state’s argument that guns do not accidentally go off and its related demonstration were not supported by the evidence.

The state contends the demonstration and argument pertained directly to the testimony of Arflin. The state does not address appellant’s contention that, if Arflin’s testimony was erroneously admitted, there is no evidentiary basis for either the demonstration or the argument that guns do not fire accidentally. If this Court reverses on Issue 1, above, it should also reverse on the basis of an improper demonstration and argument without any evidentiary support.

However, if the testimony of Arflin was properly admitted, that testimony does not support the inference that “guns do not accidentally go off.” There was no testimony whatsoever about the possibility of malfunction or accidental discharge, especially with an old weapon that was testified to be a “piece of junk.” In fact, Arflin’s testimony implied some other manner of discharge might occur, since his testimony about how

revolvers are fired was “kind of the rule” and therefore not an absolute with no exceptions. Completely lacking in the trial record is any testimony as to the possibility or impossibility of malfunction or an accidental discharge, and therefore the solicitor’s argument was improper.

Inexplicably, the state contends appellant opened the door to the testimony about how guns are fired and to the demonstration conducted by the solicitor. The questions and testimony on which the state relies – about a person shooting a gun with his dominant hand or non-dominant hand – had nothing to do with the mechanics of operating a revolver and what action is required to make it fire. That line of questioning could not possibly be construed to open the door to Arflin’s testimony or the solicitor’s demonstration, neither of which addressed what hand is used to shoot a firearm.

The state summarily asserts the demonstration and closing argument was “not prejudicially presented in closing argument,” without squarely addressing appellant’s prejudice argument. As set out in the opening brief, the unwarranted assertion that “guns do not accidentally go off” went to the very issue before the jury for decision – intent – and negated the theory of the case supported by the evidence presented by the defense – that the gun simply went off in the back-and-forth between appellant and Raby, either through being struck by Raby or through malfunction or accident. The solicitor’s argument that was outside the evidence was clearly prejudicial and likely affected the jury’s verdict.

III. THE CUMULATIVE EFFECT OF THE TRIAL COURT’S ERRORS WAS SO PREJUDICIAL THAT APPELLANT WAS DENIED A FAIR TRIAL.

The state contends appellant’s cumulative prejudice argument is not preserved. To the contrary, each claim of error was preserved by a contemporaneous objection, and

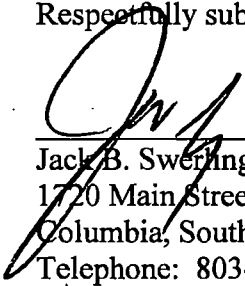
a facet of the analysis of each claim of error is whether there was resulting prejudice. If no single error resulted in sufficient prejudice to require a new trial, the appellate court may determine if multiple errors, in combination, so tainted the outcome as to undermine the appellant's right to a fair trial. See U.S. Const. amends. V, XIV; S.C. Const. art. I, § 3; *State v. Blurton*, 342 S.C. 500, 512-13, 537 S.E.2d 291, 297-98 (Ct.App. 2000) (finding cumulative effect of errors warranted reversal), *rev'd on other grounds*, 352 S.C. 203, 573 S.E.2d 802 (2002) (finding additional error requiring reversal); *State v. Freeman*, 319 S.C. 110, 123-24, 459 S.E.2d 867, 875 (Ct.App. 1995) (reversing on basis of combined effect of court's errors).

The South Carolina Supreme Court has never announced a rule requiring a defendant to raise a claim of cumulative error in the trial court in order to preserve for appeal a claim of cumulative prejudice resulting from multiple errors by the trial court. Here, because contemporaneous objections were made that properly preserved each claim of error for appellate review, the Court may review the cumulative effect of those errors and reverse on that basis.

CONCLUSION

For all the reasons set out above and the additional reasons set out in appellant's opening brief, this Court should reverse his convictions and remand for a new trial.

Respectfully submitted,



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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
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v.

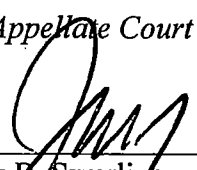
Jaron Lamont Gibbs,

Appellant.

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SC Court of Appeals

CERTIFICATE OF COUNSEL

Counsel hereby certifies that the final brief and final reply brief of appellant comply with Rule 211(b) of the South Carolina Appellate Court Rules. Counsel further certifies that the final brief and final reply brief of appellant comply with the Order of the Supreme Court of South Carolina, *Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings* (April 15, 2014).



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April 20, 2020

RECEIVED

APR 23 2020

SC Court of Appeals

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
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Columbia, South Carolina 29211

Re: State v. Jaron L. Gibbs, Appellate Case No. 2017-002042

Dear Ms. Kitchings:

The above-referenced case is before a panel of the Court of Appeals for decision. Last week, I requested that the matter be scheduled for oral argument when the Court resumes hearing arguments. The purpose of this letter is to call to the Court's attention supplemental authority that is relevant to one of the issues in this appeal, pursuant to Rule 208(b)(7) of the South Carolina Appellate Court Rules. This supplemental authority is a decision issued by the South Carolina Supreme Court subsequent to the filing of the initial briefs in this case.

Hamrick v. State, 426 S.C. 638, 828 S.E.2d 596 (2019), is cited as supplemental authority for (1) the proposition that the testimony of Officer Arflin was not lay testimony within the purview of Rule 701 of the South Carolina Rules of Evidence (argued in appellant's reply brief, pp. 1-5); (2) the lack of the necessary foundation of expert qualifications for admission of Arflin's testimony under Rule 702 of the South Carolina Rules of Evidence (argued in appellant's opening brief, pp. 10-16); and (3) the contention that the error in admitting Arflin's testimony was prejudicial and not harmless (argued in appellant's opening brief, p. 16, and reply brief, p. 5).

I respectfully request that you advise the Court of our intention to rely on this supplemental authority in this appeal.

Very truly yours,

Jack B. Swerling

cc: Melody J. Brown, Esquire
Caroline Scrantom, Esquire
Katherine Carruth Goode, Esquire

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Jaron Lamont Gibbs, Appellant.

Appellate Case No. 2017-002042

Appeal From Pickens County
Letitia H. Verdin, Circuit Court Judge

Opinion No. 5760
Submitted May 8, 2020 – Filed August 19, 2020

AFFIRMED

Katherine Carruth Goode, of Winnsboro, and Jack B.
Swerling, of Columbia, both for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody Jane Brown, and
Assistant Attorney General Caroline M. Scrantom, all of
Columbia, for Respondent.

HEWITT, J.: Jaron Lamont Gibbs appeals his convictions for murder and possessing a weapon while committing a violent crime. He claims the trial court erred in allowing a police officer to testify about single and double action revolvers when the officer was not qualified as an expert witness. Gibbs also claims the trial court erred in allowing the State to reference the officer's testimony in the State's

closing argument and if these alleged errors do not independently justify reversal, reversal is warranted by their cumulative effect.

We respectfully disagree with both arguments. First, we find no abuse of discretion in allowing the officer to testify based on his experience with revolvers. Second, the State's closing argument was permissible advocacy based on its view of the evidence.

FACTS

Events Giving Rise to Charges

The circumstances of this mid-day shooting were disputed, but multiple witnesses testified the case arose out of a drug transaction. On a Saturday in August 2017, Hunter Raby, Robby Porter, and Kalyn Meadors were going to the lake near Clemson when they contacted Gibbs—the defendant—to buy drugs. Raby drove his white Ford Explorer with Porter in the front passenger seat. Meadors rode in the rear passenger seat. They met Gibbs near Clemson.

Gibbs gave them marijuana and pills in exchange for money. After the transaction, the occupants of Raby's Explorer weighed the marijuana they purchased. Believing they had been shorted, they drove Raby's Explorer back to the purchase location to look for Gibbs and saw him in a Chrysler. They contacted Gibbs by phone and began following the Chrysler.

According to Raby, the phone calls with Gibbs became heated. Shortly thereafter, the two cars arrived and stopped at a four-way intersection. At that point, Gibbs exited the Chrysler's front passenger seat, walked behind the Chrysler, and walked up to the Explorer's driver's side window where Raby was seated. Witness accounts differ as to what happened next.

Raby said Gibbs pulled out a gun, put the gun inside the Explorer's driver's side window, and yelled that Raby had messed up and "was really close to losing [his] life over it." Raby said that the gun was a silver revolver, Gibbs held the gun in his right hand, and Gibbs held the gun along the left side of Raby's face. Raby said he used both of his hands to push the gun away as Gibbs was threatening him. At that point, Raby said the gun fired. Raby denied touching the gun's trigger.

Meadors—the Explorer's backseat passenger—could not see the gun from her seat and only realized what it was after it fired. She assumed Raby had taken the gun away from Gibbs.

Gibbs's story was significantly different. He said Raby and Porter called him and demanded he settle up for an unpaid bet made at a social event a few weeks earlier. Gibbs said he told them he was on his way to Atlanta and would pay the bet later, but he claimed Porter would not take "no" for an answer. He said Raby and Porter got increasingly upset as their phone calls went on and they began following closely behind Gibbs and driving aggressively.

Gibbs said the reason he got out of the Chrysler was to offer the gun as payment for the alleged bet. Gibbs purportedly thought the gun was unloaded. He agreed that he held the gun in his right hand but explained he was left-handed, he held the pistol by the grip, and his finger was never on the trigger. Gibbs said he pushed the gun inside the car in front of Raby's face and that Raby pushed the gun back out. Gibbs said the gun fired when this occurred a second time. Gibbs claimed he had no idea anyone had been shot after the gun fired.

Three other cars were stopped at the intersection when the shooting happened. The occupants of those cars all recalled waiting on a silver sedan—the Chrysler—to proceed through the intersection. All saw Gibbs exit the Chrysler from the passenger side, walk up to the driver's side of the Explorer, and address the driver.

Alexander Saidat, an off-duty EMT waiting at the intersection in his car with his wife and children, recalled seeing Gibbs exit the Chrysler's passenger side and walk to the back of the vehicle. Saidat said Gibbs had a gun in his right hand that looked like a silver revolver. Saidat testified Gibbs and the driver of the Explorer had an argument that lasted several seconds. He then witnessed Gibbs "thrust his right arm inside the vehicle with the gun" and heard the gunshot.

Although the remaining witnesses did not recall seeing a gun, they did recall hearing a gunshot. Saidat's wife said she witnessed yelling before she "saw the hand of the driver come out, and the gun went off." She also testified that "[w]hen the gun went off, the male who was in the Chrysler who had shot ran back to the Chrysler and they drove away." Another witness also recalled "seeing a hand go up and down."

The bullet grazed the top of Raby's head, leaving only a minor injury. However, the bullet struck Porter—the front seat passenger—in the left side of his temple, just above his ear. Porter died at the hospital the following day.

Autumn Gilstrap—the Chrysler's driver—testified Gibbs contacted her earlier that day requesting a ride to Atlanta. She noticed the Explorer trying to stop her from leaving the place where she picked up Gibbs. Gilstrap said that she drove around

the Explorer, it kept following them, and Gibbs told her to keep driving as he answered a number of phone calls. Gilstrap said the Explorer was directly behind her when they reached the intersection where the shooting occurred.

Gilstrap saw Gibbs walk from her car to the Explorer and saw that he was armed. She said that Gibbs and the people in the Explorer were yelling at each other, and she saw Gibbs point the gun towards the Explorer's window. Gilstrap heard the gun go off and watched Gibbs walk back to her car and get in. Gilstrap said she did not see the gun when Gibbs got back in the car. Gibbs told Gilstrap to drive off and explained that the gun had gone off and hit the top of the Explorer's roof. Gilstrap testified she took Gibbs to Greenville Hospital to meet some other people and declined to drive him to Atlanta "because [she] was unsure of what really happened" at the intersection. Gilstrap said she drove directly to the Clemson Police Department and gave a statement.

Authorities recovered pills and other illegal substances from the Explorer. Raby and Meadors initially told officers that Gibbs had robbed them a few weeks earlier and owed them money. Both of them said later that their initial story was not true, and that the incident in fact stemmed from the aforementioned drug transaction. Gibbs was arrested in Atlanta two days after the shooting. No gun was recovered.

Revolver Testimony

Detective Michael Arflin testified at Gibbs's trial about his investigation of the shooting. The State asked Detective Arflin during direct examination if he was familiar with single action and double action revolvers. Gibbs objected, arguing Detective Arflin had not been qualified as an expert witness. The State responded that the detective had already testified he was "familiar with revolvers through his training and experience as an officer." Gibbs argued he was not aware of any officers that had been trained on revolvers, only semi-automatic weapons and rifles. The trial court overruled the objection and noted Gibbs's standing objection on record.

The following exchange then took place:

State: Detective Arflin, how do you fire a single action gun?

Detective Arflin: The hammer has to be cocked and then you fire – you pull the trigger and it discharges.

State: Will it fire without you cocking it?

Detective Arflin: That's kind of the rule behind single action. It has to be cocked.

State: A double action?

Detective Arflin: When you pull the trigger, the hammer both cocks and discharges.

State: Does it have a light trigger pull, [or] a heavy trigger pull?

Detective Arflin: In double action, it's going to be a long, heavy trigger pull.

Closing Argument

The solicitor made the statement during closing argument that "guns do not accidentally go off." She then demonstrated the necessary steps for single and double action revolvers to fire. She argued that if the gun was a single action, "[Gibbs] would have had to have gotten out of the car, [and] cocked it before he put it to [Raby's] head. That's intent. That is a conscious effort." She then described what was necessary for a double action revolver to discharge, arguing:

Raby testified he pushe[d] the gun up like this. He would have to push the gun up like this, wrap his fingers around where the trigger [was], pull it back and pull it up at the same time if this was a double action revolver. That simply does not make sense.

Gibbs objected to the State's argument and demonstration on the basis that there was no evidence a gun could not go off accidentally, especially an old gun that could have been traded on the street. The trial court overruled the objection.

The jury convicted Gibbs of murder and of the weapons charge.

ISSUES ON APPEAL

1. Whether the trial court erred in allowing a witness who was not qualified as an expert to testify about how single and double action revolvers fire.
2. Whether the trial court erred in allowing the State to reference the contested testimony in a demonstration during closing argument.

STANDARD OF REVIEW

The standard of review is deferential. Evidentiary rulings rest in "the trial court's sound discretion" and we disturb them only "upon a showing of a 'manifest abuse of discretion accompanied by probable prejudice.'" *State v. Commander*, 396 S.C. 254, 262–63, 721 S.E.2d 413, 417 (2011) (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result." *Id.* at 212, 631 S.E.2d at 267.

THE OFFICER'S TESTIMONY

Gibbs argues Detective Arflin's testimony regarding single and double action revolvers was inadmissible. He hinges his argument on the fact that Detective Arflin was not qualified as an expert and claims the detective's testimony involved "scientific, technical, or other specialized knowledge" and was thus inadmissible from a lay witness.

The State disputes this and argues Detective Arflin offered limited testimony based on his personal experience. The State points to the detective's statement that he was personally familiar with revolvers and claims the testimony was permissible based on his first-hand knowledge, not specialized knowledge.

We agree with the State. As noted above, the State asked Detective Arflin during direct examination if he was familiar with how both single action and double action revolvers operate. The detective explained earlier in his examination that he was indeed familiar with firearms, "both personally and professionally." The State also asked him if he received "training on firearms" and whether he was "familiar with revolvers." The detective answered "yes" to both questions.

Most witnesses may not testify about things outside their first-hand knowledge. *See* Rule 602, SCORE. Experts, however, may testify about things that are outside their personal observation and experience. *See Commander*, 396 S.C. at 267, 721 S.E.2d at 420 (citing multiple authorities including Rule 703, SCORE). A common distinction between expert witnesses and lay witnesses is that most lay witnesses do not state "opinions." Even so, the evidentiary rules allow a lay witness to offer an opinion if certain criteria are met. *See* Rule 701, SCORE.

The testimony at issue here concerns the basic function of certain firearms. We recognize this subject matter may have been foreign to some members of the jury, but the detective testified he was personally familiar with single action revolvers, double action revolvers, and with the difference between them. The key feature of lay testimony is the witness's personal knowledge, not whether the subject of the testimony is beyond the jury's ordinary experience. *See* Rule 602, SCRE. The detective directly stated this testimony was based on his own knowledge.

We note Detective Arflin never offered anything resembling an opinion as to who may have pulled the revolver's trigger or what caused the revolver to fire. For that reason, this case differs from cases in which emergency responders made statements that went beyond their direct observations. *See Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 410, 764 S.E.2d 249, 252 (Ct. App. 2014); *State v. Kelly*, 285 S.C. 373, 374, 329 S.E.2d 442, 443 (1985). Here, the testimony is nothing more than the most rudimentary explanation of how someone discharges a revolver. Detective Arflin's limited testimony about single and double action revolvers was thus admissible as proper lay testimony.

CLOSING ARGUMENT

Gibbs claims there is no evidentiary support for the solicitor's statement during closing argument that guns do not "accidentally" fire. As with the trial court's ruling on Detective Arflin's testimony, we respectfully disagree with Gibbs's argument that the trial court erred in allowing the State to reference the detective's testimony in a demonstration during closing argument.

Closing arguments must not appeal to personal biases or "be calculated to arouse the jurors' passions or prejudices." *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). Arguments should instead stay within the record and reasonable inferences from the record. *Id.* Even so, a solicitor is entitled to act as an advocate and, just like the defense, make the case for how he or she believes the jury should interpret the evidence. *See id.* ("A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony.").

We find the comments here qualify as permissible advocacy based on the evidence. After the solicitor made the statement that guns do not accidentally fire, the solicitor described the steps someone would have to take for single and double action revolvers to discharge. The thrust of this argument was two-fold. First, if the revolver had been a double action, the State believed it was unlikely Raby

wrapped his finger around the trigger and applied enough force to fire the weapon when pushing the gun away from his face. Second, if the revolver was instead a single action, the only way it could have fired was if Gibbs cocked the pistol first; demonstrating malice.

The statement "guns do not accidentally go off" is certainly imprecise when viewed through the clear lens of hindsight because a firearm's trigger can obviously be depressed by accident. However, a reasonable juror would have no issue understanding the State's point.

One other thing bears mentioning. Gibbs's story was that he held the gun in his non-dominant hand, held it by the grip alone, and his finger was not on the trigger. One theory of his defense was that his finger had not depressed the trigger and that Raby had inadvertently done so.

We see nothing wrong with Gibbs making that argument. We mention it only to say that it was equally fair for the State to point out that *someone* had to pull the trigger for the gun to fire, and maybe even cock the gun first, and it was unlikely for Raby to have done either.

CONCLUSION

Based on the foregoing, the court's order is

AFFIRMED.¹

LOCKEMY, C.J., and GEATHERS, J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
General Sessions Court
Letitia H. Verdin, Circuit Court Judge

Case No. 2015-GS-39-01893
Case No. 2015-GS-39-01895

Appellate Case No. 2017-002042

RECEIVED

Sep 03 2020

SC Court of Appeals

The State,

Respondent,

v.

Jaron Lamont Gibbs,

Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Appellant, Jaron Lamont Gibbs, respectfully petitions for rehearing of his appeal, decided August 19, 2020 (Published Opinion No. 5760), and for oral argument, as previously scheduled and as requested by counsel for Appellant. In support of his petition, Appellant states as follows:

I. Affirmance of Admission of Testimony under Rule 701, SCRE.

Appellant raised a claim of error with respect to the admission of opinion testimony offered through the lead investigator, Michael Arflin, with respect to the

functioning and mechanics of firing certain types of revolvers, because Arflin was not qualified as an expert under the requirements of Rule 702 of the South Carolina Rules of Evidence and the related South Carolina case law. Prior to the issuance of the Court's decision, Appellant advised the Court of his intention to also rely on supplemental authority pursuant to Rule 208(b)(7) of the South Carolina Appellate Court Rules, citing the Supreme Court's decision in *Hamrick v. State*, 426 S.C. 638, 828 S.E.2d 596 (2019), decided subsequent to the filing of the briefs of the parties in the Court of Appeals.

The Court of Appeals held that Arflin's testimony was properly admitted as lay opinion testimony under Rule 701, SCRE, because the testimony was based on Arflin's personal knowledge. Citing Rule 602, SCRE, the Court found that the key feature of lay testimony is the witness's personal knowledge, not whether the subject of the testimony is beyond the jury's ordinary experience. This holding overlooked key language of Rule 701, which provides:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.

See Rule 701, SCRE (emphasis added). In this case, two requirements of Rule 701 are not met. As in *Hamrick*, the testimony was not rationally based on the perception of the witness, an investigator who did not arrive on the scene until some period of time after the firearm discharged and did not personally perceive the firing of the weapon. *Cf. Hamrick*, 426 S.C. at 648, 828 S.E.2d at 601. As in *Hamrick*, how a firearm functions and discharges is a matter requiring expertise. *Cf. id.* (finding accident reconstruction to be a matter requiring expertise). The testimony given by Arflin required "special

knowledge,” whether through his experience or training, and it therefore was within the ambit of Rule 702 governing expert testimony, not Rule 701 governing lay testimony.

The Court’s own opinion acknowledged that the subject of Arflin’s testimony was outside the knowledge base of ordinary jurors, specifically noting that “this subject matter may have been foreign to some members of the jury.” This acknowledgement goes to the heart of the issue. The functioning and manner of discharge of a firearm is a matter of technical or specialized knowledge, and it can be admitted, if at all, only under Rule 702, not Rule 701.

Rule 702 provides that matters of scientific, *technical*, or other *specialized knowledge* that will assist the trier of fact are proper subjects of expert testimony, where the witness is qualified as an expert by knowledge, skill, experience, training, or education. *See* Rule 702, SCRE. The Court misapprehended that first-hand or personal knowledge by a witness removes the subject matter from the purview of “specialized knowledge.” To the contrary, as Rule 702 contemplates, an appropriate source of an expert witness’s technical or specialized knowledge is *personal knowledge*, since the witness is qualified “by *knowledge*, skill, experience, training, or education.” *See* Rule 702, SCRE (emphasis added). A medical professional’s testimony about the functioning of an organ or the characteristics and progression of a disease may be based on his *personal knowledge*, but that does not mean his knowledge is not “specialized.” What controls whether the issue falls under Rule 701 or Rule 702 is not the source of the witness’s knowledge but the matter about which he is testifying – whether it is a matter involving scientific, technical, or other specialized knowledge. In this case, the functioning and mechanics of the discharge of specific firearms is a matter of technical,

specialized knowledge and properly evaluated under Rule 702, not Rule 701. The Court should grant rehearing, address the arguments and authorities contained in Appellant's Final Brief and Final Reply Brief, and find the foundation requirements of Rule 702 for admission of this witness's testimony were not met.

The source and extent of the witness's knowledge are germane in the evaluation of the foundational requirements for admission of his testimony under Rule 702. Arflin's specific testimony about familiarity with revolvers was limited to a single question and answer:

Q Are you familiar with revolvers?

A Yes, ma'am.

R. p. 338, lines 15-16. This question and answer were simply inadequate to allow the trial court, conducting its gatekeeping function, to make the necessary findings to establish the foundation required under Rule 702 for admission of Arflin's testimony about how single- and double-action revolvers operate and discharge. *See Hamrick*, 426 S.C. at 649, 828 S.E.2d at 601-02; *Graves v. CAS Medical Systems, Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012); *State v. Tapp*, 398 S.C. 376, 388, 728 S.E.2d 468, 474-75 (2012); *State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009); *State v. Rose*, 423 S.C. 382, 392, 814 S.E.2d 529, 534 (Ct.App. 2018). Without satisfying the foundational requirements, the testimony was inadmissible. It also was prejudicial, and not harmless, because it undermined the defense's theory that the gun discharged through recklessness or accident during the pushing and swatting that occurred between Appellant and Raby, in keeping with Appellant's testimony. For all the reasons set out in Appellant's briefs,

incorporated herein by reference, the admission of this testimony was prejudicial error and warrants reversal.

This Court should rehear the issue of Arflin's opinion testimony; find it pertained to a matter requiring "special knowledge, skill, experience, or training" so as to be inadmissible under Rule 701; find that the requisite foundational requirements were not met for admission under Rule 702; and find the error in its admission was not harmless.

II. Improper Closing Argument and Demonstration.

Appellant also raised a claim of error with respect to the prosecutor's demonstration and argument based on Arflin's testimony that "this is what would have had to have happened for this gun to go off because guns do not accidentally go off." R. p. 445, line 22 – p. 446, line 1. The Court of Appeals held that this argument was permissible advocacy based on the evidence. If the Court grants rehearing and finds Arflin's testimony was admitted in error, it also should find this argument was impermissible, because the only arguable evidentiary basis for this argument was Arflin's testimony. If the Court does not rehear as to Issue I, however, it nonetheless should rehear this issue.

The state's closing argument must be confined to the evidence in the record and the reasonable inferences that may be drawn from that evidence. *Vasquez v. State*, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010); *Vaughn v. State*, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004); *State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997); *State v. Copeland*, 321 S.C. 318, 326, 468 S.E.2d 620, 625 (1996); *cf. Clark v. Cantrell*, 339 S.C. 369, 384, 529 S.E.2d 528, 536 (2000) (demonstrative evidence must be "a fair and accurate representation of the evidence to which it relates"). The Court's decision

misapprehended that the prosecutor's argument was supported by the record or the reasonable inferences from the record. Although Arflin testified to the mechanics of cocking and pulling the trigger to fire different types of revolvers, he was not asked and did not express the opinion that a revolver cannot fire accidentally. He was not asked and did not testify about malfunction that could occur due to the age or condition of a revolver, such as the one Appellant had that was old and described as a "piece of junk." He did not testify that the gun could not have discharged as the result of someone's pushing or swatting it. In fact, his testimony about how a revolver fires was not absolute but was qualified as "kind of the rule," *see* R. p. 356, lines 18-19, and no testimony was elicited as to conditions that might create exceptions to that so-called rule and allow for a revolver to discharge accidentally. The record contained no evidence related to the possibility of malfunction or accidental discharge, and therefore the solicitor's argument was improper.

It was also highly prejudicial, as it directly impacted the defense's contention that the weapon simply went off in the pushing and swatting between Appellant and Raby. *See Huggins*, 325 S.C. at 107-08, 481 S.E.2d at 116-17 (reference to statement, not in evidence, that defendant had a plan and offered money to someone to kill the victim was highly prejudicial and fundamentally unfair in her trial for his murder and for conspiring to commit his murder); *State v. Cannon*, 229 S.C. 614, 617-19, 93 S.E.2d 889, 890-91 (1956) (argument that insurance existed and the defendant had murdered the deceased for the purpose of collecting \$4,000, where there was no evidence from which that conclusion could be drawn, was prejudicial because the case was tried on the theory that insurance was the motive). The Court should rehear this issue and find reversible error.

III. Cumulative Prejudice.

Appellant also made a cumulative prejudice argument, which the Court of Appeals did not address because it found no error with respect to Issue I or II. If the Court grants rehearing and finds errors, but finds them not sufficiently prejudicial standing alone to require reversal, it should hold that, in combination, the errors so prejudiced Appellant as to deny him the fairness required by due process. *See* U.S. Const. amends. V, XIV; S.C. Const. art. I, § 3; *State v. Blurton*, 342 S.C. 500, 512-13, 537 S.E.2d 291, 297-98 (Ct.App. 2000) (finding cumulative effect of improper comments in closing argument and erroneous exclusion of evidence warranted reversal), *rev'd on other grounds*, 352 S.C. 203, 573 S.E.2d 802 (2002) (finding additional error with respect to a jury charge); *State v. Freeman*, 319 S.C. 110, 123-24, 459 S.E.2d 867, 875 (Ct.App. 1995) (reversing conviction based on combined effect of court's limitation of cross-examination and court's improper comments interjected during the trial).

IV. Request for Oral Argument.

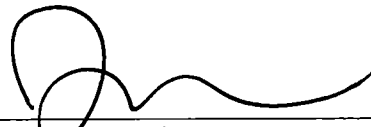
Prior to the coronavirus outbreak, the Court of Appeals had scheduled this case for oral argument to be held April 6, 2020. On March 23, 2020, counsel received email notice from the Court that argument was cancelled pursuant to the order governing operation of the appellate courts during the coronavirus emergency, issued by the Supreme Court on March 20, 2020. That notice advised that the Court would contact the parties concerning rescheduling. By letter from the clerk of the Court of Appeals dated March 31, 2020, the parties' attorneys were advised that they could request delaying a decision until after oral argument could be conducted. By letter dated April 15, 2020, counsel for Appellant requested that the Court not decide the case until argument could

be heard, even though the wait would delay a decision. Instead, the Court decided the case without argument. Appellant respectfully requests that the Court rehear its decision and grant oral argument before issuing its final determination of the issues presented in Appellant's briefs.

V. Conclusion.

For all the reasons outlined above, and based on all the authorities cited in the Final Brief and Final Reply Brief of Appellant, the Court should rehear this appeal, grant oral argument, find reversible error, and remand for a new trial.

Respectfully submitted,



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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
General Sessions Court
Letitia H. Verdin, Circuit Court Judge

Case No. 2015-GS-39-01893
Case No. 2015-GS-39-01895

Appellate Case No. 2017-002042

RECEIVED

Sep 03 2020

SC Court of Appeals

The State,

Respondent,

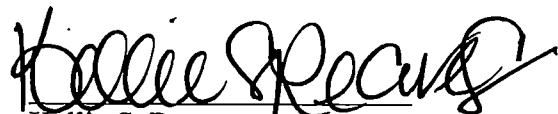
v.

Jaron Lamont Gibbs,

Appellant.

PROOF OF SERVICE

I certify that I have served the petition for rehearing, by mailing a copy, postage prepaid, to counsel for respondent, Assistant Attorney General Caroline Scrantom, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211, on September 3, 2020.



Kellie S. Reaves
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The South Carolina Court of Appeals

The State, Respondent,

v.

Jaron Lamont Gibbs, Appellant.

Appellate Case No. 2017-002042

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

James E. Lockery

J.

John D. Swerling

J.

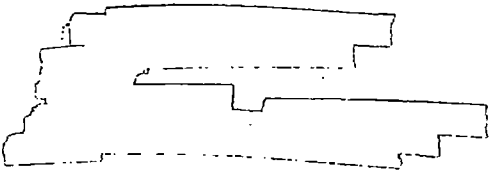
32 L. J.

J.

Columbia, South Carolina

cc:

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Melody Jane Brown, Esquire
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FILED
Sep 22 2020

Katherine Carruth Goode, Esquire
The Honorable Letitia H. Verdin