VOL. II of II

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN IRA DUNCAN III,

APPELLANT

APPELLATE CASE NO 2019-001919

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT #30 (SNAPCHAT VIDEO BY ALEX CONTELLO); STATE'S EXHIBIT# 32 (SURVEILLANCE VIDEOS ON DISK); STATE'S EXHIBIT #33 (VIDEO OF FIST FIGHT); STATE'S EXHIBIT #37 (VIDEO OF DONTARIOUS SEAY INTERVIEWS)

location. In a rural location, you can have them every 10 or 15 miles. It just really depends.

Q: And I want to make sure. So your -- your analysis from the cell towers -- well, let me back up. Did you do an analysis on John Duncan's cell phone on July the 19th, 2015?

A: Yes, sir. I conducted analysis on July 19th, 2015, from 5:00 p.m. to 12:00 a.m.

Q: And did you do that? Did you map that?

A: Yes, sir, I did.

Q: All right. Do you have that on the monitor?

A: Yes, sir.

MR. STONE: And, Your Honor, this is consistent with State's Exhibit 15, which we had already pre-marked.

THE COURT: Okay.

MR. STONE: But he's going to -- we've got it on the monitor.

All right. And I think you can keep your voice up. Just go ahead and go to that first one. You can come down off the witness stand. Make sure that everyone can hear you.

(WHEREUPON, the witness complied.)

BY MR. STONE:

Q: All right. Mr. Hightower, go to the first slide and tell me what that is, please?

A: So this depicts all of the cell phone activity utilizing the tower locations for that specific time frame that I

conducted the analysis.

Q: The first -- the first in time, what is the first in -- and I think you started somewhere around 5 o'clock that day?

A: That is correct. So from 5:06 to 5:37, there was a series of phone calls that were -- that were taken by the target number, 540-1882, that all utilized Tower 257 located at 49 Boardwalk Lane in Hardeeville.

Q: So that -- that is coming from whose cell phone?

A: 540-1882, identified to be John Duncan's phone number.

Q: Okay. And that would be the closest tower hitting off that phone during that time?

A: Yes, sir. He would be in this general location here surrounding this tower.

Q: What was the next -- the next time frame?

A: So at 1758, which is 5:58 p.m., the cell phone utilized Tower 223 located at 358 Buck Island Road. That's in Bluffton, South Carolina.

Q: And that is after the -- after the calls that were in Hardeeville?

A: That is correct.

Q: Okay. And so what is that indicating?

A: It indicates he's in movement towards the Bluffton and/or Hilton Head area.

Q: And then the third time frame?

A: So starting at 7:08 p.m., the phone number is utilizing

these three towers here located on the south end of Hilton Head, Towers 258, 278, and 237, which would be these three towers here. And that's all from the time frame of 7:08 p.m. to 8:31 p.m.

Q: And what does that indicate from the standpoint of --

A: The cell phone --

Q: -- John Duncan's cell phone?

A: The cell phone utilized by 843-540-1882 utilized these towers in this general location on the south end of Hilton Head Island.

Q: All right. Now, let me go then to the phone records, which I think we have put into evidence as -- did I give those to you or do I have those? I want to make sure I get the right exhibit number. Yes. This is State's Exhibit 36. So your second slide? That is -- is that State's Exhibit 36 that you're showing on the screen there?

A: Yes. Yes, sir, it is.

Q: All right. There was test -- there was testimony yesterday concerning telephone calls to -- or, excuse me, from John Duncan prior to the shooting. Do you have records? Does John Duncan's phone records indicate that?

A: Yes, sir.

Q: And when did those -- when did those calls come in?

A: So the first phone call we have activated is an outgoing call from 540-1882, identified to be John Duncan's number, to

843-940-0757, identified to be Cedric Knighton's number. The phone call was activated at 7:11 p.m., 1911. It lasted for a duration of 92 seconds, utilizing Tower 258, which is one of those towers located on the south end of Hilton Head.

Q: All right. And 1911, that's military time?

A: Yes, sir. It would be 7:11 p.m.

Q: Okay. After the call -- and the 1 indicates the call is going from John Duncan to Cedric Knighton?

A: That is correct. So this column D, you can see the call direction. These are all codes explaining if it's an incoming or outgoing call or if it goes to voicemail.

Q: Second -- the second call. Again, this is 7:11. So the next call comes in at what time?

A: Yes, sir. The next call series is at 7:40 p.m. There was an outgoing phone call from 843-540-1882, identified to be John Duncan, to 843-298-1189, identified to be Jeffrey Wilson. That phone call lasted for a duration of 25 seconds, utilizing Tower 278 located on the south end of Hilton Head Island.

Q: And that is military time is 7:40; is that correct?

A: That is correct.

Q: Okay. Were there other calls to Wilson during that time frame from John Duncan?

A: Yes, sir, there was.

Q: Show us those, please?

A: So the next call shown in the records is at 7:53 p.m., an outgoing phone call from 843-540-1882, identified to be John Duncan, to 843-298-1189, again identified to be Jeffrey Wilson. That phone number -- phone call lasted for a duration of 98 seconds, utilizing Tower 278, again on the south end of Hilton Head Island.

Q: Any other calls to Wilson from John Duncan during that time frame?

A: Yes, sir.

Q: What was the next one?

A: So the next one we have is at 8:02 p.m., 2002 military time, an outgoing call again from John Duncan to Jeffrey Wilson that lasted for a duration of 1,028 seconds. That's approximately 17 minutes, utilizing Tower 278, located at the south end of Hilton Head Island.

Q: At what time -- we've introduced evidence concerning the time of the shooting. What -- do we have what's on the next -- what do we have for the next slide?

A: Yes, sir. This should be locations from camera 1.

Q: Which I believe is -- and I want to make sure I -- pause that just the second, if you can. That is State's Exhibit 32, I believe; is that correct? I think that's right. It's either State's -- anyway, this is from camera 1 showing across at the time of the shooting; is that correct?

A: Yes, sir.

Q: Okay. Go ahead and play it.

(WHEREUPON, the video was played.)

BY MR. STONE:

Q: Now, what time does the timestamp up there indicate that the shooting takes place?

A: So if you notice here, this is all a running tally of the time.

MR. STEPHENS: Objection, Your Honor. Sorry. I'm not used to making an objection from over here.

Mr. Hightower hasn't been qualified for anything and I don't think there was any foundation for him as a fact witness to testify about the surveillance photo or the surveillance used in this case. He was not an investigator in this case and I don't think that -- excuse me -- a law-enforcement investigator in this case. There's nothing that I know of in the foundation for him to analyze this video, Your Honor.

MR. STONE: Your Honor, we're not asking him to analyze the video. It's already been published to the jury about four or five times. I'm asking him about the time of the shooting because that's relevant to the calls that came in afterwards, which have already been testified to that's on the phone records. That's all the court purposes.

MR. STEPHENS: And, Your Honor, the solicitor is free to argue about the timestamp on here. This is about this

witness providing some kind of authority about the timestamp on the video. He's certainly welcome to say this is what the timestamp in the video is.

MR. STONE: That's all I asked him to do, Judge, just tell us what time the shooting took place.

THE COURT: I'll tell you what. You'll rephrase the question.

MR. STONE: Sure.

BY MR. STONE:

Q: If you could, just tell us by looking at the timestamp on the video --

THE COURT: Now just hold on one second. Does that solve the objection?

MR. STEPHENS: Yes, Your Honor. It was about the shooting. Thank you.

THE COURT: All right.

BY MR. STONE:

A: At 8:20:30 is when the shooting took place.

MR. STEPHENS: Objection, Your Honor. I would ask that that be stricken. He draws a conclusion. Yes, he can say what appears to be happening on the screen, but again, he's testifying about the action that's going on.

MR. STONE: We've had four witnesses I think -- one, two, three -- three witnesses, including the defendant's friend himself, that says that's when the shooting took

place. So --

THE COURT: I'll sustain the objection and ask that -- and rule that this be stricken and the jury is not to give it any consideration.

BY MR. STONE:

Q: Go to the next video. This is the angle, I think, that's been introduced as well from the other location; is that correct?

A: Yes, sir. It's from camera 19.

Q: Okay. Go ahead and play that.

(WHEREUPON, the video was played.)

Q: What time is on the top of that?

A: 8:20:38.

Q: Okay.

(WHEREUPON, the video ended.)

Q: Mr. Hightower, there was testimony yesterday concerning phone calls made by John Duncan after 8:20. Do you have any -- do the phone records indicate those?

A: I do.

Q: And what is the next slide? Are these, again, State's Exhibit -- what's the number on it?

A: 36.

Q: 36? Indicating the phone records from John Duncan?

A: Yes, sir.

Q: And what is the -- what's the next call after 8:20?

A: So at 8:23 p.m., 2023, an outgoing phone call from 540-1882, identified to be John Duncan, to 843-298-1189 to Jeffrey Wilson. The phone call lasted for a duration of 13 seconds utilizing Tower 278 on the south end of Hilton Head Island.

Q: There's also testimony from John -- concerning John Duncan making a call, another call after that. Was there another call?

A: Yes, sir. At 8:31 p.m., an outgoing phone call from 540-1882 to 843-940-0757, identified to be Cedric Knighton's number. It lasted for a duration of 20 seconds, utilizing Tower 278 located on the south end of Hilton Head.

Q: And that was 8:31?

A: Yes, sir.

Q: Okay.

MR. STONE: We don't have any further questions of this witness at this time, Your Honor.

THE COURT: Cross-examination?

MR. STEPHENS: Thank you, Your Honor. Where's the -- I beg the Court's indulgence.

CROSS-EXAMINATION

BY MR. STEPHENS:

Q: Mr. Hightower, I'm asking you a question about State's Exhibit 36. This is the cell phone tower historical records for that number that ends in 1882; correct?

A: It's referred to as the call detail records, but yes.
Q: Did you have an opportunity in your analysis to review the other phone records provided by Verizon?
A: I did not analyze them. I only analyzed the phone number attached to 1882.
Q: Did you have -- but you did have an opportunity to review them?
A: Not necessarily.
Q: Okay.
A: I mean I had obtained the records, but I did not conduct an analysis on them.
Q: All right. Now, any use of that -- of that phone other than a use through Wi-Fi would be through the cell phone towers; correct?
A: It would be through the data, yes.
Q: All right. Is there any way to -- in your knowledge, to make a phone call using Wi-Fi that would not involve the cell phone towers?
A: iPhones, yes, you may. You can utilize the iMessage service, as well as the Wi-Fi service to make a phone call from an Apple device to an Apple device.
Q: All right. In your review of the -- not the detail record but the -- the call record for that phone number 1882, do you recall whether -- do you recall looking at the phone calls that the number 1882 received and sent on that time or

on that day? Sorry.

A: From 5:00 p.m. to 12:00 a.m. on July 19th is when I conducted my analysis. So within that time frame, yes.

Q: All right.

MR. STEPHENS: Again, begging the Court's indulgence for just one moment.

THE COURT: Certainly.

BY MR. STEPHENS:

Q: All right. Just to ask you, just so I make sure I'm clear, this number called you see on row C is the number that was called? So --

A: Not necessarily. If the phone call is routed, it would be the calling party number located in column K. So that would be the incoming phone number.

Q: Okay. So this would be the party that is calling in. Is there a way to get rid of this highlighted portion? Thank you, Mr. Hightower. Okay. So calling -- calling party K would actually show you who was calling if someone was calling in? I'm a little confused by that.

A: So when you're outside of the Verizon network, if you get an incoming phone call from another provider, say AT&T, T-Mobile, the switch doesn't -- the Verizon switch doesn't always identify the incoming call phone number on the dialed digit column. What it would show is on the calling party number in column K. It would identify that actual phone

number calling from that separate provider.

Q: So this would be the number calling in; right?

A: That's correct.

Q: All right. Now, I think -- I appreciate you clearing my confusion up. Mr. Hightower, if you could come down here for just a second, please?

(WHEREUPON, the witness complied.)

BY MR. STEPHENS:

Q: Now, you identified a call on Mr. Duncan's phone at approximately 1920, about 7:20 on a 12-hour clock --

THE BAILIFF: Excuse me, Judge. The jury has asked for that to be turned slightly. They can't see it.

MR. STEPHENS: Okay. I'll come to this side, since I know they have a problem hearing me.

BY MR. STEPHENS:

Q: Can you point out that call on here?

A: Which one are you referring to?

Q: The -- the call involving Jeffrey Wilson's phone around 1920 or 7:20 p.m.

A: The 7:20 p.m. would be here.

Q: Okay. This one? The number 18 on the -- on the end column?

A: That's correct.

Q: Okay. Now, if you track it all the way to the end, you said column K was the number that was calling in; correct?

A: Correct.
Q: So that's -- isn't this Jeffrey Wilson's number?
A: It is.
Q: So that is Jeffrey Wilson calling John Duncan; correct?
A: That is correct.
Q: Okay. So it wasn't John Duncan calling Jeffrey Wilson, it was Wilson calling Duncan?
A: Again, here at 1740, 7:53, they are all incoming calls from John Duncan to Jeffrey Wilson.
Q: Sure. But I was asking about the number at 7:20.
A: Right. 7:20 was an incoming call from Jeffrey Wilson.
Q: And how long did that call last?
A: It lasted for 132 seconds.
Q: So that's a little over two minutes?
A: Yes, sir.
Q: All right. Are there any other calls to or from Jeffrey Wilson's number before that?
A: Not from this 5:00 p.m. range.
Q: Okay. So the first call is Jeffrey Wilson calling John Duncan?
A: According to the records, yes.
Q: All right. And how long after the -- you said the previous call was Cedric -- Cedric Knighton. Was Mr. Duncan calling Cedric Knighton?
A: Yes. So that would -- that would be 7:11 -- excuse me

-- 1911 p.m., it would be 7:11. It would be this phone call here. It lasted for a duration of 92 seconds.

Q: So about a minute and a half?

A: Yes, sir.

Q: All right. So if it started at 1911 or 7:11, it's over by 1913, 7:13?

A: Yes, sir.

Q: And this call from Jeffrey Wilson is seven minutes later?

A: Yes, sir.

Q: All right. Thank you. I think that's about it about State's Exhibit 36. I -- I know it goes without saying, but I will say it anyway. You work for the Solicitor's Office; correct?

A: Yes, I do.

Q: So you work for every -- for the person prosecuting the case?

A: Yes, sir, I do.

MR. STEPHENS: Thank you, Mr. Hightower. No further questions.

REDIRECT EXAMINATION

BY MR. STONE:

Q: And I want to make sure that call that we were just talking about, that comes after the first call to Cedric Knighton; is that right?

A: That is correct.

Q: Okay.

MR. STONE: Nothing else, Your Honor.

THE COURT: Thank you. You may step down.

MR. STONE: With that, the State rests.

THE COURT: The State rests. Ladies and gentlemen, I must now ask you to step in the jury room while I discuss some matters of law with the attorneys. I hope to be back with you shortly. I remind you it's too early to begin discussing the case. Please retire to the jury room.

(WHEREUPON, the jury exited the courtroom.)

THE MALE BAILIFF: The jury is clear, Your Honor.

THE COURT: The State rests. Any motions from the defense?

MR. STEPHENS: Yes, Your Honor. First, we renew all our previous objections and motions for the record.

Also for the record, we make a motion for directed verdict based just that the -- there hasn't been direct testimony that -- that anyone saw a handgun, although Mr. Morrow definitely testified that he saw, I believe, a portion of a handgun, what he believed to be a handgun. I think there was testimony about a bullet hole, but that's -- we don't think that that's sufficient direct evidence to show the killing also by Mr. Duncan.

There has been some identification, but those -- those

witnesses, we believe, there's some matters of impeachment there.

And malice aforethought, Your Honor, I understand the inference of a handgun. We would just argue that there hasn't been sufficient evidence of a -- of a criminal intent.

THE COURT: All right.

MR. STEPHENS: That's all, Your Honor.

THE COURT: Any other motions other than that?

MR. STEPHENS: No, Your Honor. Not at this time.

THE COURT: Solicitor?

MR. STONE: Yes, sir. We've had three -- three witnesses identify the defendant as somebody who shot and killed Dominique Williams in their presence. Two witnesses actually said that after the shooting the defendant said that's what you get. In fact, one witness even said prior to the shooting he laughed before he did it. I think there's ample evidence of both an identification of a murderer, as well as malice aforethought.

THE COURT: The Court agrees with the argument of the State in this case. I find these matters are for a jury. There is ample evidence that a jury could consider the issue of murder.

Will this be an opportune time for me to discuss with your client his right to testify?

MR. STEPHENS: Yes, Your Honor. I might need some

additional time with him, but I believe we can go ahead and do that. I also -- before the defense begins our case in chief, I'll just need a few minutes to get everything in order, but you're welcome to go ahead and question the defendant at this time, Your Honor.

THE COURT: If you want me to wait, we can wait.

MR. STEPHENS: I think we're ready, Your Honor.

THE COURT: All right. Mr. John Duncan, at this time, I'm going to explain to you certain of your rights. And if any -- if you don't understand anything that I say or wish for me to give you more detail, please let me understand -- please let me know that.

We have now reached the stage in the trial where you have the right to present your defense. You have the right to claim the protections given to you by the Fifth Amendment to the Constitution of the United States of America, which states in part as follows.

No person shall be compelled in any criminal case to be a witness against himself. This means you cannot be required to testify in this case. You have the right to testify. However, no one can make you testify. This is a personal right that you have and no one can waive this right except you.

If you decide to testify, you would be subject to the same rules that govern other witnesses. You may be examined

and cross-examined on any relevant issue in the case. In addition, if you have any convictions involving dishonesty, false statement or for crimes punishable by imprisonment for more than one year and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to you, the solicitor will be able to introduce your record to attack your credibility.

If you decide to testify, this decision must be made freely and voluntarily and intelligently, with the knowledge of the protections given to you by the Fifth Amendment and the consequences of your decision to testify. If you decide not to testify, I will instruct the jurors that they cannot give that fact, the fact you didn't testify, any consideration whatsoever because there is to be absolutely no prejudice to you because you did not testify.

But it's left entirely up to you as to whether or not you wish to testify, and you may discuss this with your attorney, family, friends or others. The final decision must be left entirely up to you.

Do you understand what I have explained so far?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you have any questions?

THE DEFENDANT: No, sir.

THE COURT: Have you had an opportunity to discuss this matter with your attorney?

THE DEFENDANT: Yes, sir.
THE COURT: Have you decided what you wish to do?
THE DEFENDANT: Yes, sir.
THE COURT: And you decided?
THE DEFENDANT: To testify.
THE COURT: To testify?
THE DEFENDANT: Yes, sir.
THE COURT: All right.
MR. STEPHENS: Your Honor, I just need, like I said, a few minutes to get people in order. Ms. Duncan has requested that -- I would like to call her first just so that after she's testified, she's asked to remain in the courtroom so she can see the rest of the case, Your Honor.
THE COURT: Sure.
MR. STEPHENS: Again, I just need five or ten minutes to -- to make sure that she's ready and to speak with the defendant.
THE COURT: What's your guesstimate about the length of time your case will take to be presented?
MR. STEPHENS: Your Honor, I think that some things have gotten shorter because the State has entered some evidence that I was going to try to enter through Investigator Reynells. I -- I still intend to call him, but I think that's going to be fairly short. I believe that we'll be done, depending on the cross-examination of the defendant, in

an hour, hour and a half, something like that, Your Honor.

If that works out to be true, I would just ask that we have the lunch break to work on requests to charge so I can get those to the Court.

THE COURT: Well, let's see. I might want to just go ahead and take a short recess at the conclusion of all of the testimony.

Solicitor, what's your preference?

MR. STONE: I have no preference. Whatever you'd rather do, we'll make sure we're ready.

THE COURT: All right. Let's take a five-minute recess while you get -- get squared away.

MR. STEPHENS: Yes, Your Honor.

THE COURT: We'll just see what happens. We'll see how long it takes. All right. We'll be in recess for five minutes.

(WHEREUPON, there was a break in the proceedings, after which the proceedings resumed as follows.)

MR. STEPHENS: My co-counsel is going to get our first witness whenever the Court is ready.

THE COURT: Is the State ready for the jury?

MR. STONE: Yes, sir.

THE COURT: Is the defense ready for the jury?

MR. TRIPP: Yes, Your Honor.

THE COURT: All right. Let's bring them in.

MR. STEPHENS: Yes, Your Honor.

THE MALE BAILIFF: The jury is entering the courtroom, Your Honor.

(WHEREUPON, the jury entered the courtroom.)

THE MALE BAILIFF: The jury is seated, Your Honor.

THE COURT: Welcome back, ladies and gentlemen. If you recall, the State has rested. The defense now has the opportunity to present evidence, should the defendant decide to do so.

Mr. Stephens?

MR. STEPHENS: Thank you, Your Honor. Your Honor, the defense calls Ms. Ava Duncan.

THE CLERK: If you could place your left hand on the Bible and raise your right hand.

THE WITNESS: Uh-huh.

THE CLERK: Raise your right hand. Do you solemnly swear or affirm to truthfully answer all questions asked of you by this Court, so help you God?

THE WITNESS: Yes. Yes, ma'am.

THE CLERK: Watch your step. Adjust the microphone as you need it. Speak directly into it. If you could, please state your name for the record and spell it.

THE WITNESS: Ava Waters Duncan, A-v-a W-a-t-e-r-s D-u-n-c-a-n.

AVA DUNCAN, being first duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. STEPHENS:

Q: Ms. Duncan, good morning. I know you may be nervous. I'm just going to ask you to make sure that you -- you speak loud enough that the microphone picks it up and the court reporter can hear you and take your time to answer. Ma'am, do you know the defendant in the case, John Ira Duncan III?

A: Yes, sir. That's my son.

Q: And -- and I know I've been calling him John through the case. What do you call him, ma'am?

A: We call him Jay because my husband, his father, is John Ira Duncan, Jr. So I call him Jay.

Q: Okay. And where was Jay born at?

A: In Beaufort at Beaufort Memorial Hospital.

Q: Where did he grow up?

A: Well, probably Hardeeville and Florida.

Q: Do you know how long had he been going to school in Hilton Head prior to the incident in this case?

A: Well, he started in first grade and then we left and went to Florida and he didn't come back until, like, eighth grade.

Q: When he came back and was going to school in Hilton Head in the eighth grade, were you living in Hilton Head at that time?

A: Yes, sir.
Q: Okay. Now, where did you live on Hilton Head Island?
A: Well, when we first came back, we were staying in Muddy Creek at his grandparents' house. Then we moved eventually to Woodhaven on the south end.
Q: Ma'am, I want to show you what's been marked as Defense Exhibit Number 1. I'm just asking, ma'am, is this a fair and accurate representation in your mind of Hilton Head Island?
A: Yes, sir.
Q: And this portion down here where it says John Duncan, can you see where that arrow and that dot go?
A: Yes, sir.
Q: Is that an accurate location for where you lived?
A: Yes, sir.
Q: Okay. When you -- while you were living in Woodhaven Apartments, who lived there with you?
A: When we first moved to Woodhaven, his father was still in Florida. So it was just me and Jay. Then a couple of -- a couple of months later, his dad came.
Q: Okay. So in 2015 when the incidents in this case happened, was John's dad living with you?
A: Yes, sir.
Q: All right. And what were you doing for a living then?
A: Well, at that time, I was working at Durham School Services as a bus -- as a bus driver and dispatch and with

Yellow Cab on the weekends.

Q: And what were your work hours like, ma'am?

A: Crazy hours. On Monday through Thursday, we would start at 5 o'clock until sometimes six in the afternoon. On the weekends, I worked at Yellow Cab and that's from 6 a.m. to 6 p.m.

Q: And how much -- I'm sorry. How much time were you able to spend with John or Jay? How often did you see him, given that work schedule?

A: Early in the morning and late at night.

Q: So y'all might get some meals together or something like that?

A: Yeah. And then he got a little part-time job and then really we would, like, pass in the night.

Q: Did Jay do anything else that -- that took him out of the house?

A: Besides football and being at Dontarious' house all the time, no.

Q: So you mostly think you interacted with Jay when you were home before you passed out to sleep?

A: To be honest with you, not that much.

Q: All right. And you mentioned John or Jay played football and hanging out with Dontarious. What was -- what would he typically do after school and on the weekends?

A: Besides being out with Dontarious going to the beach and

working, that's about it. Every now and then, he would go to a movie.
Q: Was he driving?
A: I'm under oath. He had a permit. Yes, he was driving. He had no choice, but yes, he was driving a little bit, not a whole lot.
Q: Did he have his own car?
A: No. We only had one car.
Q: All right. Ma'am, I notice that Jay has glasses on here at counsel table. Do you know -- did he wear glasses at home?
A: Yes. He has to. He can't see.
Q: I'm sorry, ma'am?
A: He has to. He can't hardly see.
Q: And when did he get glasses, ma'am?
A: He was nine when they diagnosed him with glasses.
Q: Do you know what his prescription is?
A: I don't have it with me, but yeah, he has prescriptions.
Q: Now --
A: And he has contacts, but with him being incarcerated, they only allow him glasses.
Q: All right. When this happened in 2015, did he normally wear glasses or contacts?
A: Contacts.
Q: And is that what he would wear to school?

A: Yes. Contacts.

Q: When he went to the beach, do you know what he normally wore?

A: He usually don't wear his contacts because he says it irritates his eyes from getting in saltwater.

Q: Now, I know there was some discussion about marijuana in this case. Did you ever see Jay with any -- with drugs in the house or anything like that?

A: No. No, sir.

Q: So were you aware of whether -- of anything he might have been doing with the marijuana, ma'am?

A: No, sir. No.

Q: Now, the Friday on July 17th, 2015, if I can direct your attention to that weekend and that day, was there anything special going on that weekend?

A: Yes. July 13th is his dad's birthday. So yeah, he was getting prepared for his dad's birthday party at his mom's house the next -- the following day. We had people coming from out of town and everything.

Q: Where is Jay's or your husband John's mother's house at?

A: In Hardeeville.

Q: And what, if any, plans did -- did the family have? You mentioned a party, but what was -- what was planned?

A: His dad's, John's, birthday party. He was having it at his mom's house on that Saturday.

Q: The Friday before the party, do you recall what time you came home?
A: About 6:30, 7 o'clock.
Q: Do you recall --
A: Well, if I got off at 6:30, it was 6:30 or 7 o'clock.
Q: Do you recall what, if any, interactions you had with John that night?
A: Yeah. Me and his dad and him was, like, you know, together because of his dad's birthday. We didn't go anywhere because we know we was having a party that Saturday.
Q: Do you remember what time you went to sleep that night?
A: Me? Probably about around, like, nine.
Q: Do you recall when you got up the next morning?
A: Yes, sir.
Q: And about what time was that?
A: It was early. I'm an early riser. About seven, 7 o'clock in the morning.
Q: Now, did you see Jay when you got up that morning?
A: Yes, sir.
Q: And how did he appear to you?
A: He was sleeping. He got up when I told him. Well, I was going to the hairdresser to get my hair done. He was like, no, ma, I'm not going with you to no hairdresser. That's boring. So he was home. I left him.
Q: Do you recall what time you left the home to go to the

hairdresser?

A: Probably about 11.

Q: Where did you get your hair done?

A: In Savannah. I go to my sister-in-law's hair shop.

Q: Okay. When was the next time you saw Jay that day?

A: That afternoon. He came to Hardeeville to the birthday party.

Q: All right. So he -- did he go with you to the -- to the party? Did you drive him to the party?

A: I drove to the party and he caught a ride from Hilton Head to Hardeeville.

Q: Okay. Do you remember what time he got to Hardeeville for that party?

A: I can't tell you that because I was inside the house cooking and mingling with the family, but it wasn't dark or anything.

Q: When you saw Jay at the -- at his dad's birthday party that night, did you notice any kind of cuts, bruises, anything about his appearance that was out of the ordinary?

A: No, sir. He played football so if there was something, it was probably already there. There was nothing different about him.

Q: So if you had seen any kind of cuts and bruises, you thought it was football?

A: Football.

Q: How was he acting that night?

A: He was fine. He was seeing one of his cousins. His big cousin was there. They was playing -- playing videos and they had a little cousin and they went outside and played football. So he was acting normal to me.

Q: What did you -- where did the family stay Saturday night?

A: Oh, after we -- after the party was over with, I was a little bit intoxicated; so we went and stayed at the hotel, Days Inn in Hardeeville.

Q: Was John -- or Jay -- sorry. I keep doing that. Did he stay --

A: Yes, sir.

Q: -- with the family that night?

A: He stayed with us at the hotel.

Q: Would it be fair to say he wasn't at your side the whole night though of the party?

A: He was at my side, but he was either in the house or in the yard somewhere around.

Q: Does John have or Jay have other friends in Hardeeville as well?

A: Yes. We have family there, so yes.

Q: All right. The next day -- the next day, do you remember what you and the family did?

A: After we came back from the room, we came back to John's

mother's house, which is Jay's grandmother. We had breakfast and lunch and had the family to leave. So we was saying goodbye to them.

Q: All right. And, Ms. Duncan, I just ask you to speak up a little bit.

A: Okay.

Q: Or you can try to pull that microphone a little closer to you.

A: Uh-huh.

Q: So this was Sunday, July 19th?

A: Yes, sir.

Q: You said that you were hanging around with family through lunch. Where was that at?

A: At his grandmother's house in Hardeeville.

Q: What time did the family leave Hardeeville?

A: I can't tell you the exact time, but I know it was afternoon.

Q: And who went with you when you left Hardeeville?

A: Me, my husband, and my son.

Q: When you say your son --

A: Jay.

Q: Do you mean Jay?

A: Jay.

Q: Where did you go from Hardeeville?

A: Home.

Q: That's on the --
A: Woodhaven.
Q: Okay. What, if anything, did John do once you got back home?
A: He -- usually on Sundays, that's his beach day. So he told me, mom, I'm about to go to Dontarious' house. We'll probably end up going to the beach.
Q: When was the last time that you saw him that Sunday?
A: After he left to go to the beach, he came back home and that's when I saw him.
Q: You weren't with him at the beach, were you, ma'am?
A: No. No, sir.
Q: Did you witness anything that happened at the beach that day?
A: No, sir.
Q: What -- when John left -- Jay. When Jay left to go meet Dontarious, how was he acting?
A: Fine. Normal self to me.
Q: When you next saw him on Sunday, how was he acting?
A: He was kind of rushing, like talking, but he was talking to his daddy mostly, not me.
Q: Ma'am, has Jay talked to you about the charges in this case?
A: Yes, sir.
MR. STONE: Objection.

MR. STEPHENS: I withdraw the question, Your Honor.

BY MR. STEPHENS:

Q: All right. Now, ma'am, I know it's a silly question, but you love your son, don't you?

A: With all my heart.

Q: Would you lie under oath to try to protect him?

A: Lie under oath, no, but to protect him, yes, I would.

Q: Now, you are under oath today?

A: Yes, sir.

Q: Is everything that you've told me and told the Court here today the truth as you recall it from those events in July of 2015?

A: To the best of my knowledge, yes, it is the truth.

MR. STEPHENS: Thank you, ma'am.

THE WITNESS: You're welcome.

CROSS-EXAMINATION

BY MR. STONE:

Q: Ms. Duncan, just a few questions because I want to make sure I've got my days straight.

A: Okay.

Q: Friday, your son, John Duncan, was at Woodhaven Gardens on Hilton Head?

A: Woodhaven Villas.

Q: Villas. I'm sorry. Okay. All right. And then Saturday, he was also at that location; is that correct?

A: Yes, sir.
Q: And that's when you had gone earlier, I think, to get your hair done; is that right?
A: I left there and went to Savannah.
Q: Okay. All right. But he was, again, in that location?
A: Yes.
Q: And then Sunday, he was in Hardeeville up until sometime in the afternoon when then he went to the beach with Dontarious Seay?
A: Yes, sir.
Q: Okay.

MR. STONE: I don't have any further questions. Thank you, Ms. Duncan.

THE WITNESS: You're welcome.

THE COURT: Thank you, ma'am. You may step down.

MR. STEPHENS: Thank you.

THE COURT: Call your next witness.

MR. STEPHENS: The defense calls Investigator Seth Reynells.

THE CLERK: Put your left hand on the Bible and raise your right hand. Do you solemnly swear or affirm to truthfully answer all questions asked of you by this Court, so help you God?

THE WITNESS: I do.

THE CLERK: Okay.

MR. STEPHENS: I beg the Court's indulgence, Your Honor. I just have one document to mark.

SETH REYNELLS, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STEPHENS:

Q: Investigator Reynells, you are the investigator with the Beaufort County Sheriff's Office; correct?

A: Yes, sir, I am.

Q: Sorry. I'm already in cross-examination mode. How long have you worked with law enforcement?

A: I have been employed by the Beaufort County Sheriff's Office since May of 2009, so ten years.

Q: How long were you assigned as an investigator with the Sheriff's Office?

A: I have been an investigator now for about seven and a half of those nine years between drug investigations and criminal investigations.

Q: Now, as part of your initial training as a law enforcement officer, you went to the Criminal Justice -- did you go through the Criminal Justice Academy?

A: Yes, sir, in Columbia, South Carolina.

Q: And what -- what does that training entail?

A: It basically covers all manner of what's expected during the course of your routine job.

Q: Is there anything there dealing with marksmanship, marksmanship qualification, that you have to do as a law enforcement officer?
A: You do have to qualify in order to carry a pistol and it's something that we have to do annually as certified law enforcement officers. Yes, sir.
Q: What kind of -- well, what kind of weapon do you qualify with?
A: We, in our department, qualify with our duty weapon. It's what we're issued by Beaufort County. In our case, they are Glock .40 caliber pistols.
Q: And did you have any kind of instruction or prior experience with -- with pistols? Do you know how to -- how to fire them?
A: Prior to the Criminal Justice Academy, I was a hunter with long guns only. Pistols were training for the Criminal Justice Academy.
Q: What kind of training did you get in how you aim a pistol, a handgun?
A: Well, there's a lot of factors that go into that in terms of what kind of time you have to draw and aim your pistol, how far away you are from your target, and lighting conditions all factor in.
Q: In the -- with the handguns you've handled in your experience with law enforcement, do they have some kind of

sights or aiming?

A: Yeah. Typically, most -- most manufacturers put a rear sight and a front post sight on their firearms and, depending on the manufacturer, it varies in terms of how they're set up, but there's -- that's a standard. Generally, a standard manufacturer's.

Q: When you took -- when you take an aimed shot with a -- with a pistol, how do you -- how do you do it?

A: Again, aimed might be necessary if I'm shooting at a moving target or I'm at a great distance or there's some other kind of visual reason that I need to focus in, but if I was going to do that, I would try to line up the front sight with the rear sights.

Q: All right.

MR. STEPHENS: Your Honor, at this point, I would like to use the demonstrative evidence that we discussed the other day, and I would be happy to explain to the jury or have the Court explain to the jury what this is.

MR. STONE: I don't have any objection, Your Honor. However, I'm not real clear on where we're going, but that's -- I have no objection to that.

THE COURT: All right.

MR. STEPHENS: All right.

BY MR. STEPHENS:

Q: Investigator, I -- I'm going to hand you a piece of

demonstrative evidence. This is not a real handgun. Obviously, this is a toy, but I'd like you to take a look at it for a second and hold onto the -- this bag I'm also handing you. I'm handing that demonstrative evidence. If you pull that -- that -- that plastic toy pistol out, could you take a look at the -- at the top of the -- of the weapon?
A: It's got -- it looks like a plastic replica gun. It's got some type of sighting on it. Yes, sir.
Q: All right. So I think you testified that when you take an aimed shot, you would -- you would look through the sights from the -- through the rear gap in sights to the front sight tip or post of the handgun?
A: Yes.
Q: All right. Now, if I could see that for a second? Do you want to hand me the -- the bag?
(WHEREUPON, the witness complied.)
Q: Investigator, if you would hold it like that, if you'd take a look at it?
A: Uh-huh.
Q: Are you able to see any kind of sights with that?
A: No. I mean depending on how the bag is, you might see a little bit of the rear sights, but you're not going to see the front sights probably.
Q: All right. So if you personally were to fire a weapon like this, you wouldn't be able to take -- make an aimed shot

with -- without being able to see the sights?

A: Yes. But it's dependent upon distance. When we qualify with our firearms, you are -- when you're within seven yards, we just work on what is typically called point-and-shoot where we don't take the time to line them up because the distance is such that you don't need precision.

Q: How much training did you have for that kind of handgun?

A: If I gave you a number, it would be wrong in terms of bullets fired every year, but it's all of my department training, as well as recreational shooting when I have the time and the money.

Q: All right. Well, thank you. I believe that's all the questions about that. You said you do qualifications at the Criminal Justice Academy and you requal annually with your organization?

A: That's correct.

Q: All right. And for the last ten years?

A: Yes. Every year since I was hired.

Q: All right. Now, with this case, you were -- were you the duty investigator when -- when you were assigned?

A: Honestly, I couldn't tell you if I was the duty investigator, but I was the one that ended up generally gathering all of the information and conducting most of the interviews and ended up the investigator on the case.

Q: As a part of -- of your investigation, did you acquire

any cellular phone records or data from cellular phones?

A: Yes, I did.

Q: And do you remember whose phones you gathered data about?

A: I gathered data on phone records for devices that we did not have in custody because otherwise we would have no opportunity to review them, and I got the phone records for a number of Verizon phones, to include the 540-1882 assigned or associated with Mr. Duncan, as well as AT&T records to include some of our other witnesses.

Q: Of the -- the witnesses in the cases -- in the case, do you recall whose cell phone records and data you were able to get?

A: Yes. I was able to get the records for Cedric Knighton, Jeffrey Wilson, Mr. Duncan, some other Verizon phones associated with the account that that phone was on, which belonged to Ava Duncan at the time, and I believe I had one phone belonging to Mr. Seay, which we obtained on consent and then we got records on the second one.

Q: What about Jestin Morrow's phone?

A: We did not need to obtain his records. We physically had his phone in custody with a consent form to search.

Q: Once you got his phone, what did you do with it?

A: It was turned into evidence and then --

Q: Do you know what happened to it after that?

A: It sits in evidence. A digital forensic request is completed for the phone and our personnel that conduct digital forensic requests obtained the contents of the phone.

Q: Were you able to obtain the -- the phone of the victim, Mr. Williams?

A: We were, yes. I was not on scene. I was dispatched to the office where I conducted interviews, but the crime scene unit did obtain the victim's phone. Unfortunately, in the days following -- it was an iPhone. It was passcode locked. Family and friends were unable to get us a viable password for that device.

Q: All right. So you weren't able to pull -- to extract any of the data from Mr. Williams' phone; correct?

A: That is correct.

Q: All right. Were you able to obtain -- well, first, did you try to obtain any of his records from social media or from his phone provider?

A: Mr. Williams?

Q: Yes.

A: No, sir.

Q: There was some discussion in the case about snaps and Snapchat.

A: Uh-huh.

Q: What did you come to understand about Snapchat?

A: After all these years, I would say my expertise is

extremely limited on Snapchat, other than they are essentially set to self-destruct, whether it's a photograph or a little series of messages or a video. So once it is viewed by the receiving party, unless they take a -- like, a screenshot of it or they've got something else set up to record that, it is gone within a very short amount of time after it's viewed.

Q: All right. When you -- when you were doing this investigation, when did you become aware that there was some prior robbery and fight involved in this case?

A: Almost -- excuse me. Almost immediately. When I interviewed Mr. Morrow on January 19th at just after 9 p.m., he discussed there being some type of -- rip is the colloquial term that he used, but some type of robbery and a fight on Saturday. And then as I continued to interview additional witnesses, that was all corroborated and it was told to me by numerous people.

Q: When did you find out the person involved in the rip or robbery?

A: I found that out on -- well, essentially, immediately I knew that Dominique was involved and then within a day or two I was brought up to speed or learned of the other individuals that were present during that initial event on Friday the 17th.

Q: So you didn't find that out from Mr. Morrow when he was

first interviewed?

A: Correct.

Q: All right. When -- when you found out about this fight that happened on Saturday, do you recall what individuals you interviewed to discuss the fight with?

A: Yes. I spoke with Jestin Morrow about the fight. Devon Williams spoke about the fight. Joseph Dajon Robinson spoke about the fight. Dontarious Seay as well.

Q: Do you remember if -- if you asked Jeff Wilson -- Jeffrey Wilson any questions about the fight?

A: I didn't because Jeffrey Wilson was interviewed by another investigator, both Jeffrey and Cedric Knighton.

Q: Okay. So you weren't the investigator who interviewed Cedric Knighton either?

A: Correct. Unfortunately, we had both interview rooms filled at that time and we were trying to get to as many people as possible and there just wasn't enough for me to sit and interview everybody in the room.

Q: But after -- when that other interviewer would be done, would you get a summary or anything like that?

A: Correct.

Q: When you first found out about the -- about the fight, who did you think was -- might be present when the fight occurred?

A: Well, when I -- I assumed, based on what I was hearing,

that all of the witnesses that had been identified by our first responders, to include the defendant and the victim in this case, the gentlemen that we had already identified were telling us, yeah, there was a fight and I was there and they were kind of including each other.
Q: Did you have any reason to believe that Cedric Knighton was also present initially?
A: I did not, no.
Q: Do you know if he had indicated in his first interview that he was present at the fight or in his interview that he was present at the fight?
A: I wouldn't, but I could refer to the case file.
Q: Well, if you weren't the person who interviewed him, I think that's -- we probably would need to talk to the other investigator, but thank you, Investigator Reynells. When you found out about the marijuana that had been stolen on -- on the Friday, what did your investigation reveal about what happened to that marijuana?
A: Once it was clear that there had been a robbery on Friday, those that were present were not able to tell me what happened to the marijuana. I mean I was -- I was talking to them 20 -- you know, 20 -- 48 -- 60 hours later and they weren't aware of what had happened to it.
Q: Was there any indication in the investigation that some of the marijuana had been sold or smoked or anything like

that?

A: Not that I'm aware of, no.

Q: All right. Investigator, I'm handing you what's been marked as Defendant's Exhibit 3. If you could, take a look at it and tell me if you recognize both the first and second page of the document?

A: Yes. This is what would essentially be a portion of a printout from the forensic examination of the phone belonging to Jestin Morrow.

Q: All right. And those -- those pages, they are from the text messages on the phone or some other part of the phone?

A: It looks like it's a combination. There are some iMessages in here, which had to go back and forth between Apple devices only, and then there's some SMS messages, which are just standard text messages.

Q: All right.

MR. STEPHENS: Your Honor, at this time --

Q: Oh, first, let me ask you. You said that that phone was provided to you by Mr. Morrow?

A: Yes. That was given to us by Mr. Morrow, who completed a consent to search form.

Q: And -- and you had that analyzed through the Beaufort County Sheriff's Office?

A: That is correct.

Q: All right.

A: With our digital forensic analysis.

MR. STEPHENS: Your Honor, at this point, at this time, the defense moves to admit Defense Exhibit 3 into evidence.

MR. STONE: No objection.

THE COURT: The motion is granted. It's admitted.

(WHEREUPON, Defendant's Exhibit Number 3, forensic exam report from the telephone of Jestin Morrow, was admitted into evidence.)

MR. STEPHENS: Thank you.

BY MR. STEPHENS:

Q: Investigator, if I can see that for one second? If you take a look at the -- at the text series starting about the middle of the page, the -- is it your understanding that the to and from is based on whatever identifications that the owner might have put into the phone?

A: Yes. It reads off contact information or, if it's not saved in contacts, whatever the phone number associated with the actual communication was.

Q: The text that I indicated, who does it appear to be from and to?

A: Well, the contact name is Pugglet, P-u-g-g-l-e-t, but the phone number associated with it is 843-338-6609, which is the number that we had for Dajon Robinson.

Q: All right. And what does that text say or series of texts?

A: There's one outgoing from Mr. Morrow's phone on Saturday the 18th at approximately 11:54 a.m. saying, yo. There's one -- there's a second one five or six seconds later also saying, yo. There is an incoming message from 843-338-6609, which was assigned to Dajon Robinson at the time, at 1:30 p.m. saying, yo. And then following that at 1:31, so about 40 seconds later, a second incoming message from -- or excuse me -- an outgoing -- let me correct that. Outgoing from Mr. Morrow's phone to Dajon Robinson saying come to Chaplin with the shit.

Q: Okay. And that's from whose phone to who?

A: That's from Mr. Morrow's phone to Mr. Robinson's phone, outgoing.

Q: All right. Do you know what the -- what that was in reference to?

A: No, sir. I have no idea what that would be in reference to.

Q: Okay. Was that on the -- on the 18th, the day of the fight, the day after the robbery?

A: Yes, sir. That was three or so hours before the fight roughly, three and a half maybe.

Q: All right. Thank you.

THE COURT: Let me interrupt you just one moment. We again have an emergency. We need to take a brief recess.

So, ladies and gentlemen, I ask you to take a recess to

the jury room and I'll remind you it's too early to begin discussing the case.

(WHEREUPON, the jury exited the courtroom.)

THE MALE BAILIFF: The jury is clear, Your Honor.

THE COURT: We'll be in recess for five minutes.

MR. STEPHENS: Thank you, Your Honor.

MR. STONE: Thank you, Your Honor.

(WHEREUPON, there was a break in the proceedings, after which the proceedings resumed as follows.)

THE COURT: Mr. Stephens, how much longer do you guess you're going to be with this witness?

MR. STEPHENS: I only have, like, two questions more, Your Honor. I just want him to identify the second page. The jury is now wondering what that is. And then I'm done. Well, he is going to -- I'm going to ask him to be the last witness to authenticate my map so I can move it into evidence, but that's it.

THE COURT: And then after that witness is finished, what's next?

MR. STEPHENS: Just the defendant, Your Honor. We're not -- since I've authenticated the map through him, we'll have -- I won't need to call my foundation witness for that. And the -- I'm not calling the defendant's grandmother, who was one of my other witnesses on the -- on the list, based on her age and health and stuff, Your Honor. So it's just going

to be the defendant.

THE COURT: What do y'all think? Lunch before the defendant testifies or --

MR. STEPHENS: It's up to however the solicitor wants to do it. I just want to make sure I have a break before -- before I get into closing, Your Honor.

MR. STONE: So this -- so Investigator Reynells and then the defendant or have you got somebody else?

MR. STEPHENS: That's it.

MR. STONE: That's it?

MR. STEPHENS: That's it.

MR. STONE: The only thing I'm going to go into with Investigator Reynells are the statements by the witnesses, which he's crossed -- which he's examined him on as far as being inconsistent.

Yesterday, I -- Dontarious Seay testified and he testified to some of the -- remembering some of the statements, some of which he did not remember. All of those were given to Seth Reynells and I think we've discussed this with the defense that we have Seth -- excuse me -- Dontarious Seay's interview that we plan on playing.

The only difference is we have a transcription. What I've done in the past on that is the evidence itself is the disk without the transcription, but the transcription -- excuse me -- is our demonstrative part of that. There may be

an objection as to the transcript of that and if you'd like to address that now, but that's -- that's fine.

MR. STEPHENS: Your Honor, when we get there, I've got two objections. The first is going to be that it's outside the scope of the direct. I didn't ask anything about Dontarious or anything that he said.

The second is going to be an objection. Depending on what's in the video, that it either may be extrinsic evidence of a prior inconsistent statement that may go beyond questions that Dontarious was asked, but I can look back at my notes, Your Honor, and compare it.

And the last would be about the transcript to argue that it is -- one, for it to be part of an exhibit they're offering, I think they'd have to authenticate that transcript through the transcriptionist, but also that it's derivative evidence and not the direct -- direct evidence.

MR. STONE: Let me go backwards, if I could, on that.

On that, what we would do is we've shown it to the investigator and asked if that's a fair -- if that's accurate as to what it says, and that would be the transcription itself, but again, that's the same as a demonstrative map or something else that we create.

If you go back to -- and I don't plan on going into everything Dontarious Seay said. When I specifically asked him, I asked him about four different points yesterday and,

as I think you probably recall, Your Honor, many, many times they were qualified. It was, I don't remember, maybe I said that, maybe I didn't. Two of the statements in particular he said he didn't remember and never did admit to doing it.

Then on cross-examination, the defense brought in the fact that he was somehow under pressure when he said it, again a qualification of the statement. And the law in South Carolina -- and I have case law on this that basically says that in order for the state -- the statement -- the witness has to take the statement and unqualifiedly admit to it.

If they do not unqualifiedly admit to it, if there's any hesitation on that, if they don't remember, if they say, well, but I was under pressure, any of that, then that allows the State to go in with extrinsic evidence using that statement. Again, it'll be limited. I'm not planning on doing the whole thing, just those four points that I hit yesterday.

MR. STEPHENS: Your Honor --

MR. STONE: And I think that I have case law on that that I had probably ready to go yesterday, but --

MR. STEPHENS: If I might be heard on that portion of the solicitor's argument?

One, Your Honor, I don't recall -- and I might have to just ask to hear the playback of the recording, the witness being asked a question about the statement he made with the

time and the place to say this question by the investigator on this date, did you say it?

I remember him being asked if something happened and him saying I don't remember, but that's not about a prior inconsistent statement. I believe Rule 613 requires --

THE COURT REPORTER: I'm sorry. What rule?

MR. STEPHENS: Rule 613. Him being asked a question with the -- with the substantive statement, the time and place it was allegedly made, the person to whom it was made for it to be a qualifying statement for prior inconsistent statement being offered by extrinsic evidence.

I could be wrong. My notes aren't always the best, but I would ask that we at least review what questions, unless the Court has it in the notes. I don't recall questions about did this happen, I don't remember.

MR. STONE: If I may, Your Honor, my notes are very good because I specifically asked this because I knew, in fact, he wouldn't answer the question. I asked did this take place at the Beaufort County Sheriff's Office, the Hilton Head substation, and then I rephrased that to say the Hilton Head station. Did it occur on July the 20th and July the 22nd, the first one at 7:21 a.m. and the second time or sometime around there and the second one at 2:21 p.m. I then asked were you talking to Investigator Reynells and Investigator Levant, and then I specifically asked do you remember him saying -- you

telling the officer that Duncan's -- you heard Duncan say something after the shot, Duncan shot Dom, had the gun in a purple bag, wasn't going to be robbed, he had been robbed before, but he wasn't going to be robbed again and he was going to take matters into his own hands.

And then the last statement was that Dom -- that you told the investigator Dom [sic] did what he said he was going to do. Number one, he could not remember the first one or the last one. He -- in fact, the next to the last one where he wasn't robbed again, he said I don't remember telling him that, but I remember talking to Dom somewhat about that. So he was kind of vague with that. And then on cross-examination is when the defense crossed him on the fact that -- oh, but I was under -- I was under duress. He was -- he was scaring me and all that too.

So I think it is proper. The two cases are *Blalock* and *Moses*. *Blalock* is from the South Carolina Court of Appeals. In fact, they both are, but they are discussing specifically Rule 613, Subsection B. It is correct. I handed that to the defense.

Have you got a copy? I'll hand that to you as well, Judge.

It is true that I had to ask the time, the place, the specifics, which is -- which is what I did on direct and I think that his -- any answer -- by *Blalock* in particular I

think has a good analysis and I'll hand those two up.

MR. STEPHENS: The solicitor is an officer of the Court. I have to take him at his word just because I don't remember it. I trust that that's, in fact, the questions he asked.

Your Honor, regardless of the ruling on that, we still have a huge problem with the playing of any video with a transcript attached. Calling it demonstrative evidence is not a good workaround when you're showing them what's supposed to be an exhibit in evidence that you changed, the risk that the Court is going to interpret it as evidence. Why else would --

THE COURT: Mr. Stephens --

MR. STEPHENS: -- you play it except you want them to believe this is -- these are the words being said?

THE COURT: He's not changing it, is he?

MR. STEPHENS: He's adding words. He's adding a transcript --

MR. STONE: No, sir. I'm not changing it.

MR. STEPHENS: -- with a caption that goes with the video, Your Honor.

THE COURT: Say that again. He's what?

MR. STEPHENS: There's a caption with the video they sent of -- as the video plays, there are transcribed words added to it. That's an addition to -- to an exhibit. When the jury sees that, they will -- they are meant to take that

as these are the words being spoken. That's not demonstrative, Your Honor. That's evidence.

MR. STONE: And again, the investigator would say I was there, I watched the video, in fact, and this is exactly what he says in the transcription. I have not added any new words. I haven't inferred anything and, again, the piece of evidence itself will not have the transcription, but the transcription would play for the jury so they can read it.

And primarily, Judge, it's because it's very difficult to hear everything that's said the first time it runs through and I think that instead of playing it over and over again to make sure everybody hears it, that's why I wanted to make sure the investigator took a look at it beforehand and said it's accurate and he -- I will just proffer for you that that's exactly what he would say, that he has reviewed it and that's exactly what he said.

MR. STEPHENS: Your Honor, I can't add more without being able to examine the transcriptionist who did the transcript as to the accuracy, but I might have more after I have an opportunity to do that.

THE COURT: You might have more?

MR. STEPHENS: Depending on the transcriptionist, what they told me, I might have more to add on the objection, Your Honor, but I can't even speak to it any further without being able to -- to question the person who supposedly did the

transcript. I think it's highly, highly prejudicial, Your Honor, for the jury to get evidence that's being written down by a person I don't even know who that is.

MR. STONE: And I'd just tell you, Your Honor, we did it in house. If there is -- and I wanted to make sure that the defense saw it. Specifically, if there's something that he thinks is wrong or that we put in there that's not what was said, I'll be glad to take it out.

But I don't believe that's the case. I think looking at it with the transcript and listening to it, I don't think there's any word in there that would not be accurate. If it's not accurate, I'll be glad to take it out, but we did that in house.

MR. STEPHENS: Your Honor --

MR. STONE: Who transcribed it I don't think is relevant.

MR. STEPHENS: I think they could bring in the transcriptionist as a -- as a rebuttal witness, but if they want to get that in so badly, they can try to put it in piecemeal by having the transcriptionist testify. And then I'd still have an objection, but at least there would be something the appellate courts can review.

THE COURT: Well, let me ask you this. Have you seen this one that has been created, as you say?

MR. STEPHENS: I have seen what it looks like. I

haven't had -- based on my own scheduling, I haven't had a chance to sit down and read it. It was sent to our office Friday afternoon. I -- I sent back a response email that said I won't be able -- because they are sent by a system that requires us to download and then unzip a file, I sent an email that said we won't have a chance to do this before Monday.

I'd asked for a copy by disk. I think we do actually have a copy downloaded now, but -- but I haven't had a chance to review it.

MR. STONE: If I -- I'm sorry to interrupt, Your Honor, but I do have a suggestion. It's three minutes long. I can just play it now if you'd like, if that would help.

MR. STEPHENS: I've got no objection to it, Your Honor, but it's not going to -- it wouldn't change my objection to the exhibit.

THE COURT: I understand. I understand. The solicitor is trying to put you in this box though and say it is, in fact, correct. If you don't -- if you don't agree that it's correct, tell me what you disagree with. I understand you disagree with the procedure, but the solicitor is now trying to say tell me what's wrong.

MR. STEPHENS: It remains the testimony of someone who's not in this courtroom, Your Honor. Whoever transcribes it hears words and they write what they think that person said,

even though -- even if it seems silly, Your Honor, because the officer could clearly say this is what I believe he said, but then the jury would know that's the opinion of this person who heard it. The person who said it could say if that's what I said and that would be the best evidence, Your Honor.

But -- but again, a transcript is a third-party who is not here interpreting what they hear. It could be their opinion on a pronunciation. I might hear a word that I think is pronounced differently, but it's a -- and as my wise co-counsel pointed out, this is a confrontation clause issue. Even if I disagreed with something in the transcript, I'm not a witness in the case.

Your Honor, I think this type of evidence is unduly prejudicial unless you take steps to identify who did this. Your Honor, we can't just offer transcripts in court without having an affidavit from the transcriptionist that this is true and accurate. This shouldn't be treated any differently.

Incidentally, I have such a transcript from the Family Court hearing that I wouldn't be offering or think about offering if I didn't have that attesting affidavit.

THE COURT: Well, is it a confrontation issue if we're doing this in camera to give you an opportunity to see if you disagree with --

MR. STEPHENS: Okay. I believe it is, Your Honor.

THE COURT: -- what this witness says he heard on the tape?

MR. STEPHENS: I understand what I believe is the State's argument that this is not actual evidence but demonstrative evidence, but I believe that's intellectually dishonest. No offense, but the terminology, because the jury will take this as the words of the defendant -- or excuse me, the words of that witness. If they don't, there wouldn't be any point in playing it.

So I think the jury has to decide what they hear and if they're hard of hearing or if the recording is not good enough, I think that's just the risk you take with any evidence, Your Honor. That we don't go through and transcribe to put our opinions on every piece of purported evidence.

Again, the defense maintains -- and I apologize if I'm a little overly emotional about this issue, but this is -- I believe it's highly prejudicial, whether or not it's been done in other cases. We would just maintain our objection to it here.

THE COURT: All right. Solicitor?

MR. STONE: Yes, sir. It's entirely different from a Family Court transcript. There's no video of a Family Court transcript with everyone talking about what's being said on

it. This is the same as -- and I think we've done it in 9-1-1 calls just as an aid to the jury. In fact, I think with a clear separation.

In fact, Judge, I think it was Judge Cooper in one of the cases we tried a few years ago. I actually had a jury charge in which he instructed the jury that the -- that the video itself was the evidence and other than that it was the writing was an exhibit in the same fashion that State's Exhibit 15, 14, and these are. These are the same demonstrative evidence, just to aid the jury.

And so that's -- that's the purpose of offering it. Again -- and I was incorrect. It is a total of what I understand is 3 minutes and 40 seconds. I will tell you exactly who transcribed it. It was Derek Nelson in our office inside my office.

I don't think who transcribed it is relevant. I think it would be different if we were talking about a court proceeding with a court reporter in which there is no accompanying video and all of that. I understand the use of depositions. I've done that in civil law as well.

But again, those are out-of-the-court presence. Those are -- those are official transcripts coming in for something that took place without video and all this.

This is nothing more than a demonstrative aid to assist the jury in seeing what is being heard. And again, if the

investigator says it's incorrect or for that matter if the defense attorney says it's incorrect, we'll take it out or we'll change it or whatever we need to do.

MR. STEPHENS: Your Honor, I just -- I know I had said what was the best evidence. I just wanted to cite from Rule 1002 for the Rules of Evidence, but I don't have anything further to put on the motion or the objection. I'd be happy to -- to watch the video in its entirety, but again, the defense objects.

THE COURT: All right. I've used transcripts in trial where transcripts of a recording were used, were admitted, and I'm looking to see if I can find my notes on the charge.

I'm going to admit it. I'll be glad to give you -- give you a limiting instruction, if you wish for me to, to tell the jury about it. I will be glad to consider giving you a jury charge on it also, if you wish for me to do so.

Now, having said all of that, I'm really trying to plan for lunch and plan for when the defendant should testify. What's your best guesstimate on presentation of the defendant's testimony by the defense?

MR. STEPHENS: Pardon? I'm sorry, Your Honor. Could you repeat the question?

THE COURT: How long would you guess your presentation of the defendant's testimony would be?

MR. STEPHENS: Fairly short, Your Honor. No longer than

15 or 20 minutes of questioning.

THE COURT: Cross-examination?

MR. STONE: Yes, sir. I would expect cross-examination to probably not mirror that. It would be a little bit shorter than that.

THE COURT: All right. Let me see where we are. I don't want to push the jury too late. Let's see how long this takes and we may take a lunch break, during which time we would also discuss proposed jury charges.

All right. Let's bring the jury back in.

And, Mr. Stephens, do you want any kind of limiting instruction here to the jury if it gets to the moment or not?

MR. STEPHENS: I am -- I'm going to try to -- I'm going to try to write one out right now, Your Honor.

THE COURT: Okay. All right.

MR. STEPHENS: I just want to note that we're not waiving our objection to it, but we would ask for --

THE COURT: All right.

MR. STEPHENS: -- an instruction just to mitigate any damages.

THE COURT: Right.

MR. STEPHENS: Thank you. And I'll work that out while they are doing their cross. I'm trying to take a moment to show them that.

THE MALE BAILIFF: The jury is entering the courtroom,

Your Honor.

(WHEREUPON, the jury entered the courtroom.)

THE MALE BAILIFF: The jury is seated, Your Honor.

THE COURT: Welcome back, ladies and gentlemen. I believe we are ready to resume with examination of the witness.

Mr. Stephens?

MR. STEPHENS: Thank you.

RESUMED CROSS-EXAMINATION

BY MR. STEPHENS:

Q: Investigator, I had asked you some questions about the text messages from Jestin Morrow's phone that was in Defendant's Exhibit 3. Very briefly, if you want to -- if you would take a look at the text messages sent on the following page, does that appear to be some kind of a file that was sent to a number of addressees?

A: Just so we're clear, we're talking about this?

Q: Yes.

A: This group right here in the middle of the page?

Q: Yes.

A: Yes, sir. That -- that was outgoing. Date and timestamp is Saturday the 18th, 2015, approximately 5:19 p.m. It was an SMS message and it says three participants, meaning he sent it to two other people.

Q: And who are the -- who are the persons that that file

was sent to?

A: One of the contacts is indicated as Jeff with a phone number of 843-298-1189, which is the phone number that we had associated with Jeffrey Wilson at the time.

Q: All right. And --

A: The other is Trey F., 843-290-0705, and the third would be 368-0388.

Q: All right. Thank you.

THE COURT REPORTER: I'm sorry. What was the last one?

THE WITNESS: 0388. Sorry about that.

MR. STEPHENS: I'm just retrieving Defendant's Exhibit 3.

BY MR. STEPHENS:

Q: In your review of those records, were you able to open up what the -- what those -- or what that file was?

A: Unfortunately, no, because what you have is a printout of the digital information I had access to. There was no multimedia anything I had access to.

Q: In your investigation when you found out information about the -- the fight that occurred between Dominique Williams and the defendant, did -- we saw various videos of the fight that were taken?

A: Yes, sir.

Q: Are you aware of whether those went to any other persons who were interviewed in the case?

A: If you'll just bear with me for a second, I'm going to review my notes. I know that a video both --

Q: I'll withdraw the question. Let me ask you this in maybe an easier way. Are you aware of whether that video was sent out through social media to other individuals?

A: I heard during the course of the investigation that it may have. I didn't hear anybody say I sent it. I heard a number of witnesses say I heard so-and-so did it or I heard this or, you know, John Duncan asked me for a video of the fight, but I didn't hear anybody specifically say I sent that video to so-and-so.

Q: Now, you had a chance to review the text messages that were sent and received from Mr. Morrow's phone around the same time frame as that; correct?

A: Uh-huh.

Q: Is that yes, sir?

A: I'm sorry. Yes, sir.

Q: Thank you. All right. And is it fair to say that the topic of conversation at that time was all about the fight between the defendant and Dominique Williams?

A: It would be fair to say that the topic of conversation on everybody's platforms at that time was the fight.

Q: All right. And you said you didn't interview Jeffrey Wilson; right?

A: No, sir, I did not.

Q: So you're not aware of whether he was asked questions of his knowledge of the fight?
A: I would have to -- I would be reading someone else's supplemental report. So I don't have that knowledge, no.
Q: Thank you. I don't have -- just a couple of questions for you, Investigator. I'm showing you what's been marked as Defendant's Exhibit 1, acting as my own easel here. Can you see the -- the exhibit?
A: Yeah. That's Hilton Head Island.
Q: So would you agree this is a fair and accurate representation of Hilton Head Island?
A: Yes, absolutely.
Q: Now, the addresses on here, I think there's already been testimony about them, but to the best of your knowledge, is it fair to say there's no, like, erroneous address with someone's name on here?
A: There doesn't appear to be. No, sir.
Q: All right. And --
MR. STEPHENS: And, Your Honor, at this point, the defense moves to admit Defendant's Exhibit 1 into evidence.
MR. STONE: No objection.
THE COURT: Motion is granted and it's admitted.
(WHEREUPON, Defendant's Exhibit Number 1, map of Hilton Head Island, was admitted into evidence.)
MR. STEPHENS: No further questions at this time for

Investigator Reynells.

THE COURT: Cross-examination.

MR. STONE: Do you still have the Crown Royal bag and the gun?

THE WITNESS: No. He's got that back on his table.

MR. STONE: I just want to make sure. Do you have the gun still? I just want to make sure.

CROSS-EXAMINATION

BY MR. STONE:

Q: And I recognize this is a toy gun, but I understand that when a gun like this is in a Crown Royal bag, you can't see the -- you can't see the sights, I guess; is that correct?

A: Probably not, no.

Q: It doesn't interfere with the ability for the gun to go off, does it?

A: No, sir.

Q: You can still shoot the gun and it will discharge a bullet, regardless of whether you can see the sights or not; correct?

A: Correct.

Q: Okay. You interviewed -- and I think the defense asked you these questions as well. You interviewed three people. You interviewed a number of people, but you interviewed Devon Williams, Jestin Morrow, and Dontarious Seay; is that correct?

A: That is correct.

Q: And you did those interviews down at the Hilton Head substation of the police department?

A: Yes, sir. 70 Shelter Cove Lane.

Q: During those interviews -- and I know the defense asked you some questions concerning whether or not every time you interviewed them they talked about the drug deal that happened on Friday or the fight that happened on Saturday. Let me ask you specifically though about Sunday and about the shooting. When you interviewed Devon Williams, he told you that he knew John Duncan; correct?

A: That is correct.

Q: He told you that he knew Dominique Williams as well; right?

A: Yes, sir.

Q: At any point in time -- he also told you that he was there during the shooting; is that correct?

A: He said he was standing to the -- to the right of the victim when he got shot.

Q: At any time, whether you talked to him then or any other time, did he ever back off on that? Did he ever say anything different than that?

A: No, sir, he did not.

Q: He also told you that he watched John Duncan walk up and shoot Dominique Williams, did he not?

A: He did.
Q: Did he ever back up on that? Did he ever, say, give you a second version of that?
A: No, sir.
Q: He also told you that, in fact, when John Duncan shot him, he shot him through a Crown Royal bag; is that correct? That he had the gun in a Crown Royal bag?
A: He did.
Q: Did he ever change that story?
A: No, he did not.
Q: And then I also think he told you, did he not, that as John Duncan was walking up to him he said did you think I was playing or some words to that effect; is that correct?
A: That's correct, sir.
Q: Did he ever change that?
A: No, he did not.
Q: When you interviewed Jestin Morrow -- again, I think Jestin Morrow is the one the defense cross-examined on whether or not he admitted to knowing anything about the drug deal or actually being there when -- when the drugs were stolen?
A: Yes, sir.
Q: But let's talk about Sunday, the shooting. When you interviewed Jestin Morrow, he told you he knew John Duncan?
A: Yes, he did.

Q: He knew Dominique Williams as well?

A: His best friend.

Q: Did he ever back off on those statements?

A: No, sir.

MR. STEPHENS: The defense just objects that this is outside of the scope of the direct, Your Honor.

THE COURT: I'm sorry?

MR. STEPHENS: The defense objects. It's outside the scope of the direct examination, Your Honor.

MR. STONE: The scope of cross-examination under Rule 611(b), Your Honor.

THE COURT: Overruled.

BY MR. STONE:

Q: Going back to my original question, he told you that he knew John Duncan?

A: Yes, he did.

Q: And I'm talking about Jestin Morrow now, the second one, not Devon.

A: Right. Jestin.

Q: He knew Dominique Williams? Did he ever change his story on that?

A: He did not.

Q: He told you that he was also standing there during the shooting; is that correct?

A: He was standing to the left of Dominique.

Q: Okay. And so he is to the left. Did he also tell you that Dominique is in the center and then Williams is on the right?

A: Yes, sir. Devon was on the right.

Q: Did that ever change?

A: No, sir.

Q: He told you that John Duncan walked up and shot Dominique Williams; is that correct?

A: Correct.

Q: Did he ever change that story?

A: He did not.

Q: He told you that he shot him through a Crown Royal -- purple Crown Royal bag; is that correct?

A: That is correct.

Q: And did that ever change?

A: No, sir, it did not.

Q: And he also told you that as John Duncan was walking up he said something to the effect of you think I was playing?

A: Correct.

Q: All right. Now, you also interviewed Dontarious Seay, did you not?

A: I did.

Q: Now, Dontarious Seay, from what I understand, you interviewed him twice; is that correct?

A: Yes, sir.

Q: Now, Dontarious Seay is John Duncan's friend?

A: Correct.

Q: In fact, I think there was actual testimony that he's sort of aligned with John Duncan and not so much everybody else; is that right?

A: More or less, yes.

Q: When you interviewed even Dontarious Seay on those two occasions, in both of those occasions did he also not say that he knew both John Duncan and -- and Dominique?

A: Yeah. He said he knew both.

Q: And he also told you, even as John Duncan's friend, that he was with John Duncan during the shooting?

A: He did.

Q: And then in both of those cases he told you that John Duncan shot Dominique Williams?

A: He did.

Q: And, in fact, he even talked about the Crown Royal bag; is that correct?

A: That is correct.

Q: Now, there were some things that he said he didn't remember, I think, when he testified. This was -- this testimony was on video, was it not?

A: Yes, sir, it was.

Q: I say testimony, but I'm talking about specifically when you were interviewing him down at the Sheriff's Office?

A: When we interview people, we activate an audio and video recording.

Q: Okay. And I have a -- what I have listed as State's Exhibit 37, which is a video of portions of that interview. Have you reviewed that?

A: I have.

Q: There is actually a transcript on that, which are writings that obviously did not come with the -- with the video that my office put on that. Have you reviewed that?

A: I have.

Q: Is that accurate as to what -- what the words are spoken and said during this interview?

A: Yes, it is.

Q: Okay.

MR. STONE: Your Honor, at this time, we move to enter State's Exhibit 37 and to play that and publish that for the jury.

MR. STEPHENS: Your Honor, the defense renews our objection we made outside the jury's presence. We also -- for the Court's indulgence, I would be able to offer up --

THE COURT: Would y'all like to have a quick sidebar on that, Mr. Stone?

MR. STONE: Yes, sir.

MR. STEPHENS: Yes, sir.

(WHEREUPON, a bench conference was held in the presence

of the jury but out of the hearing of the jury off the record, after which the proceedings resumed as follows.)

MR. STONE: No objection, Your Honor.

THE COURT: As indicated in the pretrial -- in the last ruling of the Court, the Court admits this exhibit.

(WHEREUPON, State's Exhibit Number 37, video statement, was admitted into evidence.)

MR. STONE: I'm sorry.

THE COURT: Which is what?

MR. STONE: It is State's Exhibit 37.

THE COURT: 37. Let me -- as I understand it, ladies and gentlemen, I haven't actually seen this, but I've been told that this -- it is an identical -- a copy of a prior exhibit, but this exhibit has words across.

You tell me, Solicitor.

MR. STONE: This is -- this is a video of the segments of those interviews that I specifically asked the investigator about, which the -- which Mr. Seay said he did not recall or he qualified in some way. And then the transcript at the bottom is something my office provided as an assistance. It is not a part of the evidence, but it will obviously play to the jury.

THE COURT: And, ladies and gentlemen, I do tell you that you are not to consider this transcript that accompanies the Exhibit Number 37 for any purpose other than to assist

you in understanding the words spoken in this Exhibit Number 37. This transcript is not in evidence.

And if any juror believes the words spoken in this State's Exhibit Number 37 are not the same as the words in the transcript, then you are to trust your own hearing, even if it's different than these words.

MR. STONE: Thank you, Your Honor.

THE COURT: Having said all that, go ahead.

MR. STONE: Thank you, Your Honor.

Before you play that --

BY MR. STONE:

Q: Investigator, you can see this screen?

A: I can.

Q: All right. And who are the two people that you see there?

A: This is the second interview that was conducted on July 22nd with Dontarious. That is Investigator Levant sitting on the close side of the table --

Q: Okay.

A: -- wearing the blue shirt. That is Dontarious Seay in the white shirt, and I'm going to be kind of on and off camera in the lower left-hand corner in another seat.

Q: Okay.

MR. STONE: Go ahead and play this.

(WHEREUPON, the video was played.)

MR. STONE: I can't hear it. I'm sorry. Start it over. It's not playing right.

(WHEREUPON, the video was played and then stopped at the end. Not transcribed herein.)

BY MR. STONE:

Q: And then that last video, I know y'all had switched seats. That was -- that was you?

A: That was the -- that was the initial interview conducted early morning hours of 7/20/2015.

Q: All right.

MR. STONE: No further questions, Your Honor. Thank you.

THE COURT: Any redirect of the witness?

MR. STEPHENS: Just a few questions.

REDIRECT EXAMINATION

BY MR. STEPHENS:

Q: Investigator, you just watched those two clips from two separate interviews?

A: Yes, sir.

Q: And that first clip -- excuse me. Let me start out of order from what we saw, but chronologically in order. When Dontarious Seay was wearing that blue jumpsuit, was that the first interview?

A: Correct. The dark blue jumpsuit was July 20th, 2015.

Q: And do you recall what time he was picked up and brought

to the Hilton Head substation to be interviewed?

A: I don't. But I know that that interview was conducted shortly after 7 a.m., I believe, on the 20th.

Q: Is it possible he was picked up as early as three in the morning?

A: I doubt -- well, he wasn't picked up. Like, he was brought to the office by his mother, who we contacted and spoke to and she said she would bring him up to talk to us.

Q: Do you know if law enforcement officers went to the home to speak?

A: They may have gone looking for him. I was un -- I was in interviews at that time; so I don't know.

Q: At that time when he was interviewed the first time, Mr. Seay, was he considered a possible suspect in the case?

A: No. He was considered a witness.

Q: He was not considered a suspect?

A: Correct.

Q: Do you know -- do you know if there was any paperwork through the Sheriff's Office that identified him as a -- as a possible suspect?

A: No.

Q: Do you recall the interview that you conducted that first time --

A: I do.

Q: -- pretty much? Do you recall if either you or the

other investigator mentioned that Mr. Seay could be charged as an accessory in the case?

A: I do.

Q: And that was while he was being interviewed there?

A: Yeah. That was in the longer version of that -- of that interview where he was in the blue jumpsuit. Yes, sir.

Q: The second interview, did Mr. Seay say anything to you or the other investigator about being confronted at the Boys and Girls Club as part of this?

A: He did.

Q: By -- by what individuals?

A: Well, he -- he was not actually confronted. I believe he was inside the Boys and Girls Club and two of the other witnesses arrived and before they could make contact with him, there was, like, a security lockdown of the facility.

Q: And was he in any kind of agitated state based on -- based on this attempted confrontation?

A: I would say that would be difficult to tell because I wouldn't be able to tell you what his normal state is.

Q: All right.

MR. STEPHENS: I don't have any further questions for you. Thank you, Investigator.

MR. STONE: Nothing else, thank you.

THE COURT: Thank you. You may step down.

Ladies and gentlemen, we'll go to lunch until a

quarter until two, an hour and 15 minutes using that clock. I remind you don't let anybody talk to you about the case. You don't talk to anybody about the case. See you back at 15 minutes until two.

(WHEREUPON, the jury exited the courtroom.)

THE MALE BAILIFF: The jury is clear, Your Honor.

THE COURT: I know we don't know about what all the evidence is going to be that's going to be presented in this case, but let's preliminarily talk about some of the jury charges. The defense has been indicating they have some special charges they wanted.

MR. STEPHENS: I don't know about special, Your Honor. I think they're not going to be tailored, but I do expect there's going to be something special about it. I can tell the Court what we intend to ask for.

THE COURT: Sure.

MR. STEPHENS: It would be a -- clearly, some of these won't necessarily be relevant until Mr. -- until Mr. Duncan testifies.

THE COURT: Right.

MR. STEPHENS: But we -- we did ask for instruction on intent. Self-defense. We're going to ask for a charge on the lesser offense of voluntary manslaughter. Prior inconsistent statements, Your Honor. I think credibility of witnesses.

I've got to double check my notes and see if there's anything else, but I don't think there's anything other than the first few that might be objectionable to the -- the State.

THE COURT: All right. I guess we'll have to wait and see.

MR. THORNTON: Yes, sir. I mean, Judge, obviously, it's going to depend on -- on what the -- on what all the rest of the testimony is before I could even give the Court a good answer on the objections to those.

I also think -- and I've seen Your Honor's standard charge a number of times and am fine with it. I do think, just thinking about these as Mr. Stephens was talking, expert witnesses. I think there were expert witnesses in the case that we would obviously need to include that one.

And -- but your standard charge I think will do it, Judge, but, you know, unfortunately, I'm not really in a position to argue on the -- the self-defense and the voluntary, certainly, until -- you know, frankly, even the intent until we've, you know, seen what else may come out.

But I will be prepared to charge as soon as the evidence is closed. I mean -- I'm sorry. Be prepared to argue as soon as the evidence is closed, Your Honor.

THE COURT: Let me ask you this as a preliminary inquiry. I believe at a sidebar y'all earlier indicated that

you thought the defendant's testimony and cross-examination might be 50 minutes or an hour total or something like that. It's too early to know whether the State might try to put up any rebuttal or reply.

MR. STONE: It is. I'd like to tell you the answer to that, but I don't know.

THE COURT: Okay.

MR. STONE: I don't know that I could. I'd be guessing.

THE COURT: Okay. Well, what's your -- what's your guesstimate at this time as to how much time you need for closing?

MR. STONE: My closings are relatively short, and I understand and maybe we need to clear this, but I understand with the *State v. Beatty* and then sort of a reliance back on the legislature for changing the process, I want to make sure I'm clear about that and we'll make sure that's out there because, quite frankly, I'm still confused.

I think the way it stands as of now my responsibility just to ensure that there are no issues is that I open in full, the defense then -- then closes in full, and then I rebut anything that the defense says. I think that's the procedure, but I need to make sure of that before we -- before we go forward.

MR. STEPHENS: Your Honor, that's my understanding. However, I don't know --

THE COURT: It's my understanding.

MR. STEPHENS: -- if all of that is followed.

THE COURT: It's my understanding also.

MR. STEPHENS: And I mean, clearly, the procedure is the procedure, Your Honor. That's something we happen to think.

MR. STONE: So in --

THE COURT: Yes, sir.

MR. STONE: In my estimation then to answer your question, I would expect my closing in full to be no more than 30 minutes and probably shorter than that. And I will tell you that if we can have just a little bit of time between when they -- when he finishes so that I can organize it, it gets briefer as I can organize.

MR. STEPHENS: Your Honor, you've already seen that I'm slow and I pause a lot.

THE COURT: Who said -- who said you were slow?

MR. STEPHENS: It's been said, Your Honor. I'm married to a fast-talking --

THE COURT: Co-counsel?

MR. STEPHENS: -- Yankee and she -- but I don't think I've ever really gone over 30 or 45 minutes at the latest. If we are arguing and charging today, I will try to be briefer to give the jury as long to deliberate as possible. Depending on what happens with the testimony, of course, the defense preference is always to argue and charge in the

morning so that the jury can deliberate without any obstacles, but clearly that's just a preference of counsel.

THE COURT: We'll see where it goes, but my inclination would be to let the jury get it this afternoon.

MR. STEPHENS: Yes, Your Honor.

MR. STONE: Whatever you like, Your Honor.

THE COURT: All right. Let's take a lunch break and see where we go.

MR. STEPHENS: Maybe it won't matter. Your Honor, my co-counsel just brought something to my attention and I think, as an officer of the Court, I need to bring it to the Court's attention.

It's just about a juror matter. I think there appears to be one juror who -- on the end of the second row, I think, who appears to have been nodding off some. I haven't observed it. My co-counsel has. So we'd just ask that if we could just be cognizant of that.

THE COURT: Yeah.

MR. STEPHENS: At some point, if he appears to still be nodding off, we'll just --

THE COURT: Help us watch for it, if you see it.

MR. STEPHENS: We may move to have him struck.

THE COURT: Flag it.

MR. TRIPP: I've noticed it during multiple witnesses yesterday and took notes on it and it appears that it's

happened again today. So if everybody just wants to keep an eye on that and it's something that we want to address, everybody will maybe have also --

THE COURT: David indicates he'll help also.

MR. STEPHENS: We may just -- again, if we see it continuing, the defense may move to strike. I'm just not prepared to do it right now because I haven't really observed it.

THE COURT: All right. We'll be in recess.

MR. STONE: Thank you, Your Honor.

(WHEREUPON, there was a break in the proceedings, after which the proceedings resumed as follows.)

THE COURT: Anything we need to do before the jury comes in? I'm not sure if they're all here yet, but --

MR. STONE: Not from the State, Your Honor.

MR. STEPHENS: Your Honor, I'm always hesitant to say no and forget something, but not that I know of, Your Honor.

THE COURT: Help me out, counsel. I want to be on top of this now.

(WHEREUPON, there was a pause in the proceedings, after which the proceedings resumed as follows.)

THE COURT: Is the State ready for the jury?

MR. STONE: Yes, sir.

THE COURT: Is the defense ready for the jury?

MR. STEPHENS: Just one moment, Your Honor. I've got to

get my co-counsel.

The defense is ready, Your Honor. Thank you.

THE COURT: Let's bring the jury.

THE FEMALE BAILIFF: The jury is entering the courtroom, Your Honor.

(WHEREUPON, the jury entered the courtroom.)

THE FEMALE BAILIFF: The jury is seated, Your Honor.

THE COURT: Welcome back, ladies and gentlemen. I believe we are ready to resume with the presentation of evidence by the defense.

MR. STEPHENS: Thank you, Your Honor. The defense calls the defendant, John Ira Duncan III.

THE FEMALE BAILIFF: Come right this way to be sworn in.

THE CLERK: If you'd place your left hand on the Bible and raise your right hand. Do you solemnly swear or affirm to truthfully answer all questions asked of you by this Court, so help you God?

THE DEFENDANT: I do.

THE FEMALE BAILIFF: Watch your step. You can adjust the microphone. Talk directly into it. Do you need a cup of water?

THE DEFENDANT: No.

THE FEMALE BAILIFF: Okay.

THE CLERK: Please state your name and spell it for the record.

THE DEFENDANT: John Duncan, J-o-h-n D-u-n-c-a-n.

JOHN IRA DUNCAN III, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STEPHENS:

Q: John, I -- I know you also go by Jay, but I've called you John; so I am going to keep calling you John. All right?

A: Yes, sir.

Q: John, you're the defendant in this case; correct?

A: Yes, sir.

Q: All right. I'm just going to need you to speak up as much as you can. Where are you from originally?

A: I was born in Beaufort Memorial Hospital, but I was back and forth from Hardeeville to Florida most of my life.

Q: When did you last move back into South Carolina?

A: Back in, like, fifth grade.

Q: And do you remember when you moved to Hilton Head?

A: Like, in the middle of eighth grade.

Q: Where did you go to school once you came back to Hilton Head?

A: Hilton Head Middle School.

Q: And after Hilton Head Middle, where did you go?

A: Hilton Head High.

Q: For -- for two years?

A: Yes, sir.

Q: And what was left of eighth grade?

A: Yes, sir.

Q: Okay. So when you moved back to Hilton Head, where were you and your family living?

A: On Muddy Creek in Spanish Wells.

Q: And anywhere after that?

A: Then we moved to Woodhaven.

Q: All right. And who lived with you at home in Woodhaven?

A: My mom and my dad.

Q: All right. When you were going to school at Hilton Head High, did you have any kind of activities you did after school?

A: I played sports.

Q: What sports did you play?

A: I played football and I ran track.

Q: What did you -- what, if anything, did you do on the weekends?

A: Chilled with my friends. Had fun with my friends most of the time.

Q: Can you recall what friends typically you would hang out with on the weekends on your free time?

A: Most of the time, Dontarious Seay.

Q: And that was the same Dontarious who testified earlier in the case?

A: Yes, sir.

Q: How close was your home to where Dontarious lived?

A: Like, next-door neighbors basically.

Q: When you would hang out with Dontarious on weekends, what sorts of things would y'all do?

A: Go to the beach, look and talk to girls, laugh around, play basketball, things like that.

Q: Now, when this incident happened, you were 15?

A: Yes, sir.

Q: So talking -- looking and talking to girls took a lot of your time?

A: Yes, sir.

Q: Okay. When -- when you were playing football at Hilton Head High, were the -- the other witnesses in this case also on the football team?

A: Yes, sir.

Q: Now, what -- were they in the same year in school as you or were they ahead or behind you?

A: Dajon and Dontarious was in the same grade as me. Everyone else was older. Oh, Cedric. I lied. Cedric was in my grade too.

Q: Okay. Other than playing football with these guys, did you socialize at all with them?

A: Sometimes at parties.

Q: Did you have a car of your own?

A: No, sir.

Q: So did you have the opportunity to leave the south side of Hilton Head that often?

A: Not as often.

Q: Okay. When -- when you were going to school in Hilton Head, did you go to school with Dominique Williams or did he go somewhere else?

A: At the end of my eighth grade and ninth grade, he was in school with us, but tenth grade he was not there.

Q: Did you get along with him?

A: Yes.

Q: Was there any, you know, particular grudge or anything that you had with Dominique when y'all went to school together?

A: No, sir.

Q: Now, what happened after you went to school together? Did he move or you move or what?

A: He moved.

Q: Do you know where he moved to?

A: No, sir.

Q: Did you ever see him around Hilton Head after he had moved?

A: Once at a parade.

Q: Did you have his contact information?

A: No, sir.

Q: Do you know if he had your contact information?

A: No, sir.

Q: All right. At the time this incident happened, just directing your attention to July 17th, the beginning of this weekend in 2015, it was July. Were you in school at the time?

A: No, sir. Summer vacation.

Q: What, if anything, did you have going on at that time? What were your activities?

A: I had football practice, like, two days in the mornings, in the morning time.

Q: And on that Friday, do you recall if you had any kind of football practice?

A: Yes, sir.

Q: There was information earlier in the case about you having marijuana in your possession sometime later on Friday. How did you come to have some amount of marijuana that day?

A: After practice, I went to Jestin's house. While I was at Jestin Morrow's house, a friend texted me and asked me and Jestin do we know how -- could we get him weed for his birthday party. I asked Jestin do he know who to get weed from because most of the time when I get weed, I get it from Jestin. So that's how I came along getting the weed from Jestin.

Q: So where did -- so from that conversation, where did you end up getting the marijuana from? Do you recall?

A: Not really.
Q: All right. So do you remember how much marijuana you got to help this other person out or how much marijuana you got that day?
A: Like, 14 grams.
Q: And do you remember when you got the marijuana that day?
A: It was, like one or two o'clock.
Q: What happened for the rest of the day?
A: I was chilling with Jestin at first, but then Jestin said he had to leave to go talk to a college thing on the phone or something with his mom. So then after that, I went to Cedric Knighton's house and chilled with him.
Q: Do you remember what time you left Cedric's house?
A: No, sir.
Q: After you left Cedric's, do you remember where you went?
A: I went to go pick up my dad.
Q: Where was he coming from?
A: My dad was in Muddy Creek.
Q: All right. So you went to go get your dad. What kind of car did you take?
A: I had my mom's car.
Q: So do you remember what time that was?
A: Probably, like, later in the afternoon, probably, like, five, six.
Q: All right. After you picked up your dad, what happened?

A: Then I went back to Woodhaven, back home.
Q: After you got home, did you have any communications with anyone about the marijuana that you had picked up?
A: No, sir.
Q: Did anyone ever get any or all the marijuana from you?
A: Could you repeat that question, sir?
Q: I'm sorry. The question was after you went back home, did you -- at some point later on the 17th, did you have any communications, any contact with someone about getting the marijuana?
A: Yes, sir.
Q: First, let me ask you what happened with this friend who wanted you to get the marijuana for their party?
A: Well, when I texted him back that I got the marijuana, when I went there, he said he didn't need it because they wasn't going to be able to throw the party. So I was stuck with the marijuana.
Q: All right. So you had this bag of marijuana. What, if any, communications, people getting in touch with you, happened later about the marijuana?
A: Later on that night, Dominique texted me on Snapchat. He said that he had wanted to buy some weed, but it was odd to me because we don't really be around each other a lot. So -- but me being desperate to get this weed off of me, I didn't want it to be around, I told him he could come buy

some.

Q: All right. That's just this amount, you know, this marijuana you didn't want to have it on you at your house or anything; is that right?

A: Yes, sir.

Q: Okay. So Dominique texted you. Now, I'm not asking what you might have suspected, but do you know where he found out that you had marijuana?

A: Maybe Jestin.

Q: Again, I'm just going to ask --

A: Yeah. I don't know.

Q: John, just testify to what you know. If you don't know, just --

A: I don't know, sir.

Q: All right. So after you got this Snapchat message or some communication from Dom, what happened?

A: Well, they came to my neighborhood. Him, Trey Days, and Jestin Morrow came to my neighborhood. Trey was driving at first.

Q: Whose car were they in?

A: Trey Days.

Q: And you said Trey was driving his car when they first got there?

A: Yes, sir.

Q: Then what happened?

A: I went to the passenger side to ask Dom how much weed he needed. He told me the amount and I went back to go get a scale for him so he can do it himself, like scale how much you need. When I came back, Dominique was in the driver's seat. So I was going back to the passenger door, but Trey Days was right there and he was, like, no, on the other side. Dom is on the other side.

So I was going on the other side of the car to do the exchange, to let Dom get the weed. He was driving. He tried to -- he drove off. So the first thing I did was push back and I guess, like, he took the weed with it and rode. At first, I was mad. I ran after the car, but I gave up because I'm not faster than the car.

Q: So after this car with those three young men in it drove away, you said you chased after them?

A: Yes, sir.

Q: Did you try to get in touch with anyone who was in the car about what happened?

A: I Snapchatted Jestin.

Q: And do you remember what you -- what you said?

A: I asked Jestin how he led his homeboy rob me.

Q: Do you remember saying anything about shooting anyone?

A: No, sir.

Q: After this happened, did you -- did you tell anybody about the -- about being robbed?

A: I called Dontarious.

Q: Do you remember what you told him?

A: I told him that I just got robbed and that I'll tell him tomorrow when I come to his house because I was very --

THE COURT REPORTER: I'm sorry. You have to speak up.

THE DEFENDANT: Oh.

BY MR. STEPHENS:

A: I told Dontarious Seay that I got robbed and I'll tell him more details tomorrow when I come to his house because I was sick and I wanted to go to sleep.

Q: All right. Now, there was a statement that you may have seen earlier that Dontarious had made about you being robbed before. To the best of your knowledge, were you robbed before?

A: No, sir.

Q: Do you know what Dontarious might've been talking about?

A: I have no idea, sir.

Q: Okay. So this robbery happened. You -- you called Dontarious and told him about it. Then you -- what did you do next?

A: After the robbery, I went back in the house and went back to sleep.

Q: Were you mad at the time?

A: At first, yes, sir. But there's nothing I could do about it.

Q: Did you take any other actions that night to -- did you go and try to do anything about it?
A: No, sir.
Q: Okay. So what happened? Did anything else happen that night that you remember?
A: No, sir.
Q: Do you remember what you did the next day?
A: Yes, sir. My mom woke me up and told me that she was going to her hairdresser, her hairdresser's appointment. So she asked me do I want to ride with her to Savannah. I told her no because I don't want to be at the hairdresser all day with females. That is not a thing I would enjoy doing, sir. So I told her I'd just stay home. Then after that, I was going to -- like, later on in the day, I was going to go chill with Dontarious.
Q: All right. Do you remember did you, in fact, go over to Dontarious' at some point later?
A: Yes, sir.
Q: Do you remember when that was?
A: No, sir.
Q: When you went to Dontarious' apartment, what did you guys do?
A: We sat in the living room and played the PlayStation. We just talked.
Q: All right. Did anybody else you know come over?

A: Yes, sir.

Q: All right. Who was that?

A: The first two was Dajon and Drew.

Q: And how did you know them?

A: Because I went to school with them.

Q: Were they -- I know you -- were they both on the football team with you as well?

A: Yes, sir.

Q: All right. Now, when they came over to Dontarious' apartment, did they tell you anything about why they were there?

A: I know why they was there.

Q: Why did you think that they came over there?

A: Because before I went to Dontarious' house, like, Jestin was on the phone telling me that he suggest that me and Dom just fight. So just let it go. I won't be mad. I told him. Then he say he would come pick me up so we can fight at Chaplin. I told him I don't want to fight. I just left it alone. I'm leaving it alone. So when Drew and Pugg came, basically they was looking for me to fight Dom.

Q: Did you believe that they were coming to pick you up to take you to Chaplin or just to find you?

A: I guess pick me up and take me to Chaplin, but when they came, I told them the same answer. I'm not leaving or whatever.

Q: So after you talked to Pugg and Drew, what, if anything, happened next?

A: They called Jestin and then Jestin arrived with him, Drew, Dom, and Devon.

Q: After they got there, did they come up to the apartment or did you meet them outside or what?

A: They came up halfway. Like, we was halfway out. We was already on the, like, porch.

Q: What happened after that?

A: We went downstairs and we fought.

Q: Do you remember if you had any conversations with -- with Jestin about the fight beforehand or was that just kind of -- what -- what were you thinking when they came over there about the fight?

A: I guess, like, they wanted me to fight so bad. So it was, like, me -- I'm at Dontarious' house. It's no way to avoid the situation. So I don't want to -- I don't want them to be fighting at my friend's house because it's not my house, it's not my property. So I just voluntarily fought Dom.

Q: When you went outside to -- to have a -- to fight with him, was that the same fight that we saw on the video earlier?

A: Yes, sir.

Q: When it was over, did -- who did you think had won the

fight?

A: Me really because they -- at the end of the fight in the video and, regardless, they pulled me off of Dom.

Q: After that fight, were you angry at -- at Dom about the fight?

A: No, sir.

Q: At that point after the fight was over, were you angry about Dominique still about the whole situation?

A: I was mad that he had robbed me.

Q: Did you feel -- I mean at the end of the fight, did you do anything to try to reinitiate and go back and fight him again?

A: No, sir.

Q: What happened after that fight was over?

A: I went back up to Dontarious' house, basically, what I was doing before they came, but they followed us upstairs.

Q: Do you remember if you or Dontarious invited them up?

A: Neither -- neither me or Dontarious invited them upstairs.

Q: So they came upstairs and then what happened?

A: Then Dom was talking about -- he was still bragging about him taking my weed. He pulled it out. Yeah, I robbed you. Yeah, I'll do it again. But I wasn't paying no attention to it. I was just staying to myself.

Q: Why were you -- why were you paying no attention to it

or not, in your mind, engaging? Why was that?
A: Because if I argue back with you, that's basically starting a confrontation again to fight you. I don't want to fight you again in my friend's house because I don't want to have no problems with my friend's house. I'm a guest. It's not my property. It's not my house. So I'm not going to. I'm going to act with manners when I'm in my friend's house.
Q: Okay. When -- when Dominique and -- and the rest of those guys left, do you remember about what time that was?
A: In the afternoon.
Q: When they left, were you -- when they left, did you have any plan to try to hunt down Dominique and hurt him?
A: No, sir.
Q: You said that you were still angry about the robbery and the situation. What did you think you were going to do about it?
A: I just wanted my money or my weed back. I wasn't going to do nothing. I was going to confront Jestin because that's the only person I know who to get in contact with. I don't get -- I don't have contact with Dom.
Q: So who did you blame for the whole situation?
A: Jestin.
Q: Do you remember if -- other than your conversation with Cedric, do you remember if you told anyone else about the marijuana that night?

A: That's the only two that knew I had weed.
Q: So again, you just testified that you blamed Jestin for that whole situation?
A: Yes, sir.
Q: And not Dominique?
A: Yes, sir.
Q: All right. Now, do you remember while you were in the apartment with -- with those guys after the fight, do you remember if you made any kind of threats at that time to -- to hurt Dominique?
A: No, sir.
Q: Do you remember if Dominique made any threats to hurt you?
A: No, sir.
Q: There are some folks who testified that they thought the beef was squashed with this fight. Was there a beef between you and --
A: No, sir.
Q: -- Dominique at that point?
A: It was never a beef. He robbed me. I just wanted my money or my weed back. They -- they wanted me to fight him. I never wanted to fight. That's why I left my house, stopped answering calls, and went to my friend's house to enjoy my day.
Q: All right. What did you do after they left? What did

you do for the rest of the day?

A: I stayed with Dontarious for a little while and then I left to go to Hardeeville.

Q: All right. How did you get to Hardeeville?

A: A friend took me there, I believe.

Q: So you got to Hardeeville and where did you -- where did you go?

A: My grandma's house.

Q: All right. Where was this party for your dad going to be at?

A: At my grandma's house.

Q: And do you recall when you got there?

A: No, sir.

Q: Do you remember who all was there?

A: A lot of my family.

Q: In numbers, is it more than 20 people?

A: I couldn't tell, sir.

Q: All right. Is it fair to say a lot of people?

A: Yes, sir.

Q: Were they mostly old? Young? Mixed?

A: Mixed.

Q: Did you stay at the party all night?

A: Most of the night.

Q: Did you also have friends in Hardeeville?

A: Yes, sir.

Q: Did you -- was it kind of -- well, I don't want to put words in your -- in your mouth. So you were at the party for your dad's birthday. Do you remember how late your -- your family was there that night?

A: Pretty late, but, like, at a certain time, like, everybody was going either, like, about to, like, wrap up the party or start leaving and go to their place to stay, where they were going to sleep at for the night.

Q: All right. You -- your mom testified that y'all stayed at the Days Inn that night. Do you remember where you stayed?

A: Yes, sir.

Q: Where was that?

A: At the Days Inn.

Q: So what happened the next day?

A: I went back to my grandma's house.

Q: All right. And do you know how long you were there?

A: Not really, sir.

Q: All right. So you don't recall what time y'all left?

A: No, sir.

Q: How did you get back to Hilton Head Island?

A: With my mom and my dad.

Q: All right. When you got -- when you got back to Hilton Head, what did you do?

A: I went to -- I texted Dontarious and told him I would

come over to his house so we could go to the beach because I was with my family all day. I was really getting bored of being with my family. So I wanted to be with my friends.

Q: All right. Now, I know you had glasses at counsel table. Your mom testified about glasses. Were you wearing glasses when you went to the beach with Dontarious?

A: No, sir.

Q: Were you wearing contacts?

A: I wear contacts, but I wasn't wearing contacts when I went to the beach.

Q: Can you see without your glasses or your contacts?

A: Barely. I can see, but I couldn't see, like, farsighted. I can't really see a lot of things. I squinch a lot.

Q: Okay. Now, when you went to the beach with Dontarious, there's been testimony about a gun, a gun that was seen in a -- some kind of purple bag. Did you have a gun?

A: Yes, sir.

Q: Do you remember where you got that got the gun?

A: No, sir.

Q: This was -- do you remember when you got the gun?

A: Not approximately the right time. No, sir.

Q: All right. And again, in the videos where Dontarious has been identified and various witnesses said that that was you, was that you in the videos?

A: Yes, sir.

Q: So you went with Dontarious to the beach. Were you looking for anyone when you went there?

A: No, sir.

Q: Do you remember why you had a gun with you?

A: For safety reasons. Like, I just got robbed. I didn't want to get robbed again.

Q: There was testimony from Cedric Knighton and Jeffrey Wilson about phone calls that you had and discussions about where Dominique was. Let me ask you do you recall having a conversation with Cedric Knighton? I think you call him CJ?

A: Yeah. Yes, sir.

Q: Did you have any conversation with Cedric Knighton that evening?

A: Yes, sir.

Q: And do you remember what you discussed?

A: I called CJ when I got back to the island and asked him do he want to chill, and he told me about how he saw on Snapchat of how Dom and Jestin was at the beach the other night, I guess Saturday night when I was at the party, looking for me. And I was just telling him, like, man, I ain't too much worried about the situation. Like, I might chill when Dontarious. We're about to go look for girls to talk to at the beach. That was the end of that conversation.

Q: Do you remember anything else that you might have said

to him?
A: No, sir.
Q: Do you recall saying anything about you wanting to confront or shoot Dominique?
A: No, sir.
Q: Do you remember where you were when you got that -- when you called Cedric?
A: I was on the way going to Dontarious' house, maybe at Dontarious' house.
Q: All right. After you had this conversation with -- with CJ or Cedric, did you talk to anybody else about Dominique?
A: Yeah. Jeffrey called me.
Q: Do you know why Jeffrey called you?
A: I don't know exactly the reason why he called me because I wasn't looking for him or trying to talk to him, but he called me telling me, like, the same thing basically what CJ was saying, how they was -- like, Jestin and Dom was at a party the night before, Saturday, looking to confront me about things and I was, like, telling him, like, man, I just got back to the island from a party, basically telling him the situation, I was gone the whole weekend.
Q: Did you have any, like, factual knowledge that Cedric had talked to Jeffrey about you and Dom before Jeffrey called you?
A: Facts, I can't say as to fact, but you want my opinion?

Q: Well, that's my next question is did you think they had talked?

A: Yes, sir.

Q: So you had a call from Jeffrey Wilson?

A: Yes, sir.

Q: And did you see the State's exhibit with your phone records?

A: No, sir.

Q: Do you remember about what time that call was?

A: Not exactly, sir.

Q: Do you remember if you talked to -- I think you said he also talked to you about the -- some party the other night at the Tiki Hut?

A: Yes, sir.

Q: And was there any discussion about anything else, any discussion about you and Dom?

A: That was it.

Q: Do you recall if either -- if you asked either one of them where Dom was?

A: No, sir.

Q: Do you remember if either one of them told you where they thought Dom was?

A: One of them told me they think Dom might be going to the beach, but there's multiple beaches on the beach on Hilton Head. So I didn't take it seriously, like, where he was at.

Q: Did you have any reason to believe that Dominique might be coming down to -- other than what you just heard about him going to the beach, did you have any other reason to think that Dominique might be coming down to Coligny Beach?
A: No, sir.
Q: When you went down to the beach with Dontarious, what beach did you go to?
A: Coligny.
Q: How close is that to where the two of you live?
A: Walking range. Not that far.
Q: All right. John, let me just show you Defense Exhibit 1, and I'll try to stay out of your way. Can you indicate kind of the path you would take to go from your neighborhood where Dontarious lived to get down to Coligny Beach?
A: Let's see. We would take -- it's a road should be like right here.
Q: That's kind of -- so is it, like, a back street or something or back road?
A: It's a road by how you get to, like -- I don't know how to say it. Like, they've got a stoplight wherever you stop. It's a stoplight right here that you can go down that road to get to -- either you can turn either to, like, a church. You can get to Woodhaven from that road or you can go down some more and get to Cordillo Apartments.
Q: All right. Do you know -- do you recall about how long

it takes for you to walk down to Coligny Beach?

A: Maybe five to seven minutes.

Q: All right. When you got to the beach, what do you remember doing?

A: Just walking around, like I said, looking for girls with Dontarious, goofing around with Dontarious.

Q: Do you remember where all you went when y'all went down to the beach?

A: We walked basically the whole beach.

Q: All right. At some point, did you -- did you come into contact with Dominique and the other people?

A: Yes, sir.

Q: Do you remember how that happened?

A: I remember at first me and Dontarious were walking. Like, we kept hearing noises, like somebody yelling, like, towards us. So I asked -- like I said, I didn't have my contacts or my glasses. So I'm basically squinching over to the side where they're yelling from. I asked Dontarious, like, maybe is that Jestin. I thought that was, like, somebody that look like Jestin. He was, like, he don't think so. So we just kept walking.

Q: Okay. So you heard -- I'm sorry. You heard something?

A: Yes, sir.

Q: And do you -- do you know what it -- what that noise was that you heard the first time?

A: It was too far away. I don't know. Like, either somebody was yelling or talking in loud voices.
Q: All right. So after you heard this noise, what did you -- what did you do?
A: Me and Dontarious just kept walking because, like I said, we didn't identify nobody that we knew. So they probably wasn't talking to us. So we just kept moving.
Q: What happened next?
A: Then we heard the noise again. This time, I got a better view at the person. Then I asked Dontarious was that Jestin again. He didn't know, but I walked that way to see if that was Jestin, to get closer to see if my eyes was telling me the truth.
Q: Okay. So you walked towards the group that was -- that you heard the noise coming from?
A: Yes, sir.
Q: And do you know if they were yelling anything in particular or just making noise or what?
A: I don't want to lie. I don't know exactly what they were saying.
Q: Okay. So when you walked towards them, what happened?
A: The first thing I did, I confronted Jestin. I asked Jestin how he was supposed to be my homeboy, but he's hanging with the person that just robbed me.
Q: When you were walking towards them, could you see who

was there?

A: Yes, sir. After I got closer.

Q: So you could see Jestin, Dominique, and Devon?

A: Yes, sir.

Q: Did you recognize who they were?

A: Yes, sir.

Q: And you went to stand in front of Jestin?

A: Yes, sir.

Q: So after you asked him that, what happened?

A: After I asked Jestin how he supposed to be my homeboy, he was telling me, like, yeah, he ain't had nothing to do with it. As I was talking to Jestin, Dom was, like, what's that supposed to mean? You already know what's up. I was --

THE COURT REPORTER: I'm sorry. You have to just slow down.

BY MR. STEPHENS:

A: As I was talking to Jestin about how he was supposed to be my homeboy but he was hanging with somebody that just robbed me, Dom said what that supposed to mean, like, you already know what's up. As I looked, I seen him coming towards me and reaching for something.

Q: So what, if anything, did you do?

A: The first -- my first reaction, I was afraid for my life. So the gun I had on me, I shot once in the direction and ran away.

Q: Did you see what happened after you shot?

A: No, sir. I didn't stand there long enough to see what happened.

Q: Did you aim to shoot and -- and hurt Dominique?

A: No, sir. I just shot in his direction.

Q: Have you ever -- has anybody ever showed you how to shoot a handgun?

A: No, sir.

Q: And there's testimony that it was still inside the purple bag?

A: Yes, sir.

Q: Did you do anything with it to try to pull it out of that bag or did you just do as they -- as they said in the prior testimony and shoot through the bag?

A: Shoot through the bag.

Q: What did you think would happen?

A: I never knew because I didn't shoot through -- I had never shot a gun before. So I never shot to know what was supposed to happen.

Q: Do you know what kind of gun it was?

A: No, sir.

Q: After you shot and you ran away, did you go back?

A: No, sir.

Q: Did you know at that point whether Jestin or Devon had any guns?

A: No, sir.
Q: Did you believe whether they did or they might?
A: They be around guns. Yes, sir.
Q: What did -- where did you go after you left?
A: I went back home.
Q: Do you remember what happened with the gun?
A: No, sir.
Q: Do you remember clearly everything that happened after the shooting?
A: Not as much. Not really.
Q: How did you feel after you shot and ran away?
A: I really didn't feel nothing because I didn't know if I actually hit something. I don't know. I just felt glad that I got away from the situation.
Q: There's been testimony that -- that you may have yelled something like that's what you get or that's what you're going to get. We heard both in this -- in this trial. Do you recall if you yelled out anything?
A: I didn't say nothing, sir.
Q: Did you hear if anyone else yelled anything?
A: I can't say for another person. Maybe. Dontarious was with me. Maybe Jestin or Devon said something, but I know I didn't say nothing.
Q: Then you didn't -- you didn't hear anyone else say?
A: No, sir.

Q: All right. I'm going to show you Defendant's Exhibit 2.

MR. STEPHENS: I beg the Court's indulgence just for a moment, Your Honor.

THE COURT: All right.

(WHEREUPON, the video was played.)

BY MR. STEPHENS:

Q: All right. John, could you see the -- the image in that -- in this -- in this video? It's a -- it's a little bit blurry at times. There were two -- there were two people kind of that they move across from left to right on the -- on the video. Did you see that?

A: Yes, sir.

Q: Do you recognize those two people?

A: At the top is when it was me and Dontarious.

Q: So that was you and Dontarious. They appear to stop in the video. Did you -- did you actually -- to the best of your recollection, did you stop while you were walking --

A: I was --

Q: -- there with Dontarious?

A: Yes, sir.

Q: Do you remember why you stopped?

A: Like I told you, the first -- like I told you, we heard something and we looked back and I asked him was that Jestin, but we didn't know. So we kept walking.

Q: So you believe that's the first time you heard that

noise?

A: Yes, sir.

Q: All right. And was that you and Dontarious crossing the screen again towards the end of the video?

A: Yes, sir.

Q: And do you remember what was happening then?

A: Because we heard the noise again. Like I told you, I couldn't see from the range I was at. So I walked closer to see if that was the same person that I suspected the first time.

Q: All right. I'm going to show you another video on here.

(WHEREUPON, a video was played.)

Q: All right. John, was that the shooting?

A: Yes, sir.

Q: And when you walked up, was that you standing in front of Jestin?

A: Yes, sir.

Q: How far away do you think Dominique and Devon were from you?

A: I don't know exactly. I'm not sure.

Q: What were you facing towards?

A: I was facing towards Jestin when I first walked up.

Q: And could you see Dominique while you were facing towards Jestin?

A: Not as much. A little bit through my peripheral, but

not as much.

Q: All right. Are you left or right-handed?

A: Right-handed.

Q: So when you were facing towards Jestin, again, what do you remember seeing from Dominique?

A: Dominique was, as I said, like, walking towards me reaching for something.

Q: All right. To shoot him, did you have to turn your body or did you just turn your arm?

A: Like, basically halfway. Not all the way.

Q: How do you feel about having shot Dom?

A: I feel bad because someone died and there's nothing I could do about it.

Q: At the time, what did -- at the time this all happened in just a few seconds, how did you feel?

A: At first, I didn't feel no type of way because I didn't know the situation. I didn't know nobody got hit or anything. I was just afraid. So --

Q: Before you shot though, what were -- what were you feeling?

A: I was mad at Jestin.

Q: And when you saw Dom and you -- and you fired, again, what were you -- what were you thinking at that moment?

A: Afraid that he might try to do something to me, attack me, shoot me, whatever he was reaching for to try to harm me.

Q: At that time, in your mind did you feel like you had any kind of choice?

A: No, sir.

MR. STEPHENS: Thanks. Thank you, John. The solicitor -- I believe the solicitor may have questions for you.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. STONE:

Q: I want to make sure I understand what you're telling us, Mr. Duncan. First of all, you admit to leaving Hardeeville with a gun, a .40 caliber gun, driving to Hilton Head --

MR. STEPHENS: Your Honor, objection. Your Honor, that is not in evidence. He didn't testify to the caliber of weapon.

MR. STONE: I was going to ask him a question, Judge. It's cross-examination.

THE COURT: You can ask him a question.

BY MR. STONE:

Q: You admit to leaving Hardeeville with a gun; is that correct?

A: Yes, sir.

Q: And you went from Hardeeville through Bluffton to go catch up with Dontarious Seay; correct?

A: Yes, sir.

Q: You already had the gun before you got to Dontarious

Seay; correct?

A: Yes, sir.

Q: Or was Dontarious Seay with you when you got the gun?

A: I got it before I got to Dontarious.

Q: I'm sorry. What?

A: I got it before I got to Dontarious.

Q: Okay. You got it that same day?

A: Yes, sir.

Q: Okay. So you get the gun Sunday, you drive from Hardeeville down to Hilton Head, you pick up Dontarious Seay going to the beach. The gun you had was a .40 caliber?

A: I don't know, sir.

Q: You don't know what kind of gun it was?

A: No, sir.

Q: Okay. But you had a gun with you at some point?

A: Yes, sir.

Q: All right. And you were in here earlier when the testimony was that it was a .40 caliber; right?

A: Yes, sir.

Q: Now, you admit to talking to -- going down to the beach. You admit to talking to Cedric Knighton, but you didn't ask him where Dom was; is that right?

A: Yes, sir.

Q: And you talked to Cedric Knighton, but you didn't tell him you had that thing for him?

A: No, sir.
Q: But, in fact, you did have that thing for him?
A: I did not, sir.
Q: All right. You didn't have a gun with you at the time?
A: Yes, I had a gun, but it wasn't for Dom.
Q: Okay. I'm sorry. I thought you got the gun because you have been robbed before --
A: Yeah. I did.
Q: -- and you were worried for your safety?
A: That wasn't for Dom though. That was because I had got robbed.
Q: Did Dom rob you or did somebody else rob you?
A: Dom robbed me, but that's not saying that I got a gun to retaliate. I got a gun for protection so I won't get robbed again.
Q: I understand. When Dom robbed you, he didn't have a gun?
A: I don't know.
Q: Okay. He didn't point a gun at you when he robbed you, did he?
A: He didn't get a chance to.
Q: Gotcha. So you get the gun, you drive down to Hilton Head, you talk to Cedric Knighton, but you didn't say I'm looking for Dom. You then talked to Jeffrey Wilson; is that right?

A: Yes, sir.

Q: But you didn't ask Jeffrey Wilson about where Dom was?

A: No, sir.

Q: According to you; is that right?

A: Yes, sir.

Q: You did not say to Jeffrey Wilson I got a .40 for him?

A: No, sir.

Q: Despite the fact that you did?

A: I didn't know --

MR. STEPHENS: Objection, Your Honor.

A: -- what kind of gun it was.

MR. STEPHENS: He's already said he didn't --

Q: You didn't know what kind of gun it was?

MR. STEPHENS: -- know what caliber weapon.

THE COURT: He's already -- all right. I'll sustain the objection.

BY MR. STONE:

Q: I'm just kind of curious how Jeffrey Wilson knew you had a .40 caliber gun if you didn't tell him.

MR. STEPHENS: Objection, Your Honor. He never said it was a .40 caliber.

THE COURT: I sustain the objection.

MR. STONE: Okay.

BY MR. STONE:

Q: So you go down. You talk to these two people, and then

you, at some point, happen to run into Dontarious? I mean -- excuse me, not Dontarious, but Dominique; is that right?

A: Yes, sir.

Q: You admit to walking up to Dominique and you admit to shooting him?

A: Yes, sir.

Q: Okay. When you first walked up, according to your testimony just now, the first thing you did was confront Jestin; right?

A: Yes, sir.

Q: When did you first see Jestin, by the way? Because I know your vision wasn't very good. So how close did you get to Jestin when you --

A: Maybe like this range right there.

Q: Like right here? And the first thing you did was you confronted him and you confronted him basically by saying why did you let your homeboy rob me; right?

A: Yes, sir.

Q: This is two days after the robbery, is it not?

A: Yes, sir.

Q: So you had already seen Jestin the day before; correct?

A: Yes, sir.

Q: And you got robbed on Friday; right?

A: Yes, sir.

Q: So despite the fact that two days had passed, you're

still mad about the robbery?
A: I'm not mad.
Q: You're not mad, but the very first thing you say to Jestin when you walk up to him is why you let your homeboy rob me?
A: Yes.
Q: Okay. And you're having that conversation and then I understand you see Dominique; is that right?
A: Yes, sir.
Q: And at that point, Dominique says something back to you; right?
A: Yes, sir.
Q: And what does he say to you?
A: He said what that -- what does that supposed to mean, you already know so, and walked toward me reaching for something.
Q: And he reached for something?
A: Yes, sir.
Q: Okay. Did you see a gun?
A: I don't know what it was.
Q: You didn't see a gun on him, did you?
A: I don't -- my vision is not that good. So I cannot tell you what I exactly saw.
Q: Is that how he looked after you shot him?
A: I don't know.

Q: You didn't look at him after you shot him?

A: No, sir.

Q: Is that how he looked after you shot him?

A: I don't know.

Q: Do you see a gun in any of these pictures?

A: I don't know.

Q: Did you ever see a gun?

A: I told you I do not know. I keep telling you the same thing. I did not --

Q: You said you didn't know if he had a gun or not?

A: Yes, sir.

Q: Did you see a gun?

MR. STEPHENS: Your Honor, objection.

A: I just told you, sir.

MR. STEPHENS: Asked and answered. And I also think --

MR. STONE: No, you didn't answer the question.

THE COURT: Overruled. Go ahead.

MR. STONE: Thank you, Your Honor.

BY MR. STONE:

A: I just told you that I didn't know what I seen. I know he was reaching for something. My vision is not excellent or 20/20 I could tell you exactly what I seen.

Q: Okay. All right. Did you see Jestin with a gun?

A: No, sir.

Q: Did you see -- Devon Williams was out there too; right?

A: Yes, sir.
Q: And did you see him with a gun?
A: I wasn't looking in his direction.
Q: So despite you not seeing anybody with a gun, you pulled out your gun and shot it at Dominique's head; is that right?
A: I don't know exactly --
MR. STEPHENS: Objection. He testified he didn't see where -- he didn't aim, he just shot.
Q: Despite not seeing a gun --
THE COURT: Overruled. Go ahead.
BY MR. STONE:
Q: -- you pulled out your gun and shot it; is that correct?
A: I thought I seen him reaching for something. I shot.
Q: Okay.
MR. STONE: If you will, play -- play angle camera 1.
(WHEREUPON, the video was played.)
BY MR. STONE:
Q: Can you see the screen?
A: Yes, sir.
Q: This is the angle that your lawyer just showed you; is that correct?
A: Yes, sir.
Q: And this is you first walking across? You're in the hat with the dark jacket; correct?
A: Yes, sir.

Q: And you're ahead of Dontarious Seay; is that right?

A: Yes, sir.

Q: By a good four or five feet; correct?

A: Yes, sir.

MR. STONE: Okay. Pause it.

BY MR. STONE:

Q: Have you started the conversation yet with Jestin at this point?

A: No, sir.

Q: What?

A: No, sir. I can't --

Q: No, because you can't see him yet; right? Okay. How about let him roll this and you tell me when you start that conversation?

(WHEREUPON, the video was played.)

A: Started the conversation.

MR. STONE: Stop it.

BY MR. STONE:

Q: Is that right?

A: I barely can see.

Q: Well, come on down. I want you to be able to see it. I don't want you -- I don't want there to be any confusion about this, Mr. Duncan.

(WHEREUPON, the witness complied.)

BY MR. STONE:

Q: You were standing here. You were right at these bushes right here. Is that when you're starting the conversation with Jeffrey [sic] about that?

A: No, sir.

MR. STONE: Come back? Play it.

A: We are having the conversation now.

THE COURT REPORTER: I can't hear him. I can't hear him.

A: We are having the conversation now.

Q: Right there? Okay. At 8:20:28.

MR. STONE: Play it.

Stop it.

BY MR. STONE:

Q: So in two seconds, you had the conversation? Because that's where he just dropped; right?

A: Yes, sir.

Q: So you shot him at 20:30, but according to you, you had this conversation with Jestin how about why did you want to do that with me and why did you let my homeboy rob me and then you took a look at -- at Dominique and Dominique reached for something and came at you and had another conversation? They did all of that in two seconds?

A: No, sir.

Q: Have a seat.

(WHEREUPON, the defendant complied.)

BY MR. STONE:

Q: Let me go back and first start with you at the robbery because I want to make sure that I'm clear about that. By the way, Dominique was your age, was he not?

A: No, sir.

Q: He wasn't? He was older too?

A: Yes.

Q: By how much?

A: I don't know, sir.

Q: Okay. You were almost 16; correct?

A: I was 15.

Q: I understand you were 15. You were about a month away from 16?

A: Yes, sir.

Q: Okay. He was about four or five months into 16? He was 16 at the time?

A: No. No, sir.

Q: Was he in your class?

A: Yes, sir.

Q: Okay. All right. You're at your house and Dominique, along with Jestin and -- and who was the other one?

A: Trey Days.

Q: Trey Days. They come to your house. You had already talked to Dominique and agreed to sell him some drugs or some marijuana; right?

A: Yes, sir.

Q: When he gets there, you ask him how much does he want; right?

A: Yes, sir.

Q: You didn't just give him the bag that you happened to have with you. You asked him specifically how much do you want; right?

A: Yes, sir.

Q: And I think you testified you then went inside to scale it; is that right?

A: To go get the scale.

Q: To go get a scale?

A: Yes, sir.

Q: I'm sorry. So that you could weigh it?

A: Yes, sir.

Q: And in order to weigh it on the scales, in order to make sure you're giving him the right amount?

A: Yes, sir.

Q: Okay. Then you give it to him and he drives off. Now, you admit that you chased him, you admit that it made you mad, and you admit to using a Snapchat, but according to you, you said homeboy robbed me, not -- but I got a bullet, I got a bullet for him?

A: Yes, sir.

Q: Is that right?

A: Yes, sir.

Q: So you didn't say that?

A: I didn't say I had a bullet for him.

Q: Okay. The next day, you went to Dontarious' house, you went downstairs and fought Dominique. We saw that on the video. And you thought you won?

A: Yes, sir.

Q: Nobody else thought you won?

A: I don't know what everybody else thinks, sir.

MR. STEPHENS: Objection, Your Honor. I don't think that was the testimony of the people in this case.

THE COURT: Overruled. Go ahead.

BY MR. STONE:

Q: And you were mad still because he robbed you?

A: I was not mad. I just wanted my weed or my money back.

Q: What's that?

A: I wasn't mad. I just wanted my money or my weed back.

Q: Right. You want your money or your weed back; right?

A: Yes, sir.

Q: So when you didn't get your money or your weed back, did you not say you don't give me my money or my weed back, I'm going to shoot you?

A: I never said that.

Q: You never said that?

A: No, sir.

Q: Okay. So you didn't say, regardless of this fight, I want my money or my weed back or I'm going to shoot him? You didn't say that?

A: I never said nothing about shooting.

Q: Okay. So you didn't say that to Jestin?

A: I never said nothing about shooting.

Q: You didn't tell Pugg Robinson I'm going to go get a strap?

A: No, sir.

Q: You do understand what a strap is; right?

A: Yes, sir.

Q: Okay. You use Facebook, don't you?

A: Sometimes.

Q: Yeah. I'm going to show you what's been marked as State's Exhibit 38. That is your profile picture on Facebook, is it not?

A: Yes, sir.

Q: Yes, it is? Is that right?

A: Yes, sir.

Q: Okay. And it's under the name of John Duncan; correct?

A: Yes, sir.

Q: That's you?

A: Yes, sir.

Q: Okay. Who is -- who is K Glizz Primus?

A: One of my homeboys.

Q: Pardon me?

A: One of my friends.

Q: One of your friends? Is Jaquez Gadsden one of your friends too?

A: Yes, sir.

Q: On that Saturday at 5:21:06, did you send a Facebook message to K Glizz Primus that said, yo, let me hold that 40 just for a day so I can catch a body?

A: I don't remember.

Q: Let me --

MR. STEPHENS: Your Honor --

Q: Let me show you this. It's printed off on your Facebook right here. Do you recognize that?

THE COURT: Hold on just one minute. Is there an objection?

MR. STEPHENS: Your Honor, I believe that's an incomplete sentence and I would ask the solicitor to read it in full, the full statement there.

MR. STONE: Certainly.

BY MR. STONE:

Q: You tell me what does that say?

A: Yo, let me hold that 40 just a day so I can catch a body on my grandma.

THE COURT REPORTER: A body on what?

A: On my grandma.

Q: Do you remember sending that?
A: No, sir.
Q: That would have been right after the fight, would it not? The fight ended somewhere around 4:30, something like that in the afternoon?
A: I don't know the exact time, sir.
Q: Okay. At 5:30, so basically nine minutes later, do you remember sending a text to Jaquez Gadsden that says, bro, it don't matter. When I pull up in the Ville, give me -- let me hold a strap so -- so do something and I will give you the 8 for the low. Do you remember that?
A: No, sir.
Q: Take a look at that right there. Do you remember that?
A: No, sir.
Q: You don't?
A: No.
Q: On 5:40, now four minutes later, again a message to Jaquez Gadson. Can't someone tried to -- can't. Someone tried to jugg me and he gonna get when I see him. Do you recall sending that message?
A: No, sir.
Q: Okay. Let me just make sure I'm clear about something. A strap is a gun; correct?
A: It can be used -- I don't know. Everybody have a different termination --

Q: Well, that's your --

A: -- than I do.

Q: -- Facebook? I didn't say it, you did.

A: Like I just told you, I don't remember saying that.

Q: You just don't remember saying it, but you know what a strap is; right?

A: I don't remember saying that at all. A strap could be anything, sir.

Q: And when you're asking to let me hold a 40 just for a day, would that be a .40 caliber?

A: I don't know because I don't remember sending that out.

Q: Did you get the gun from Mr. Primus?

A: No, sir.

MR. STEPHENS: Objection, Your Honor.

Q: But then again, these are --

MR. STEPHENS: Asked and answered. He already said he didn't remember.

THE COURT: I'm sorry?

MR. STEPHENS: I'm sorry, Your Honor. He already answered. I said objection, the witness already answered. He didn't remember where he got the gun from. That was asked and answered.

THE COURT: Overruled. Go ahead.

BY MR. STONE:

Q: And that was that Saturday afternoon after the fight; is

that correct?

A: That's what the text says. I told you --

Q: You didn't send --

A: I don't know, sir.

Q: I'm assuming you didn't send Facebook chat --

THE COURT REPORTER: I'm sorry. One person at a time.

BY MR. STONE:

Q: You didn't send Facebook chat during the fight, did you?

A: No, sir. I don't remember sending those Facebook text messages. So no.

Q: You got the gun on Sunday, you went down to the beach, you met up first with Dontarious Seay, and you walked; correct? You went with Dontarious Seay. You walked down to the beach; right?

A: Yes, sir.

Q: If you walked, it would have taken you five to seven minutes?

A: Yes, sir.

Q: As I think you testified earlier?

A: Yes, sir.

Q: But you didn't walk straight to the beach, did you?

A: I did walk straight to the beach.

Q: Did you?

A: Yes.

Q: So this photograph of you crossing in front of the

Frosty Frog with Dontarious?

A: That's on our way walking to the beach.

Q: Oh, it is? Oh, I'm sorry. Okay. I'll show you what's been marked as State's Exhibit 14. I am assuming you meet up somewhere with him somewhere up here near Woodhaven; is that right?

A: Yes, sir.

Q: And you're walking to the beach; correct?

A: Yes, sir.

Q: The beach is down here; right?

A: Yes, sir.

Q: When you get in Coligny Circle, that walks straight out to the beach, does it not?

A: Yes, sir.

Q: This is Pope Avenue that goes straight down; correct?

A: Yes, sir.

Q: The Frosty Frog is over here, isn't it?

A: Yes, sir.

Q: So you went down, walked over here, then went down and then went back over here to the circle; correct?

A: That's the same thing as going to the beach, sir.

Q: Gotcha. And, in fact, when you got down to the circle, you didn't just go straight to the circle, you kept going back and forth over the circle, didn't you?

A: I don't remember, sir. I just know I was walking

towards the beach.

Q: But you weren't looking for -- for Dominique, were you?

A: No, sir.

MR. STONE: Excuse me just a moment, Your Honor.

THE COURT: Certainly.

BY MR. STONE:

Q: And finally, I just want to make sure. You don't remember where you got the gun and you don't remember what happened to it afterwards; is that right?

A: Yes, sir.

Q: And you don't remember calling Cedric Knighton afterwards?

A: No, sir.

Q: Do you recall calling Wilson -- Jestin Wilson afterwards?

A: No, sir.

Q: Do you recall calling Jeffrey Wilson afterwards?

A: No, sir.

Q: So you didn't call him and say he's dead?

A: No, sir.

MR. STONE: Nothing further, Your Honor.

THE COURT: Redirect, Mr. Stephens?

MR. STEPHENS: Yes.

REDIRECT EXAMINATION

BY MR. STEPHENS:

Q: First, I've just got to ask a question about your Facebook page. Let me ask you in July of 2015, did you get a tattoo?

A: Yes, sir.

Q: What was the tattoo?

A: Of my great-grandma.

Q: Of what?

A: Of my great-grandmother.

Q: Do you recall sending a text to KP that says that the text you wanted on July 8th, 2015, was my grandma's name and clouds on it?

A: Yes, sir.

Q: All right. Do you remember a text back --

MR. STEPHENS: I beg the Court's indulgence.

BY MR. STEPHENS:

Q: Do you remember how much that -- the guy who did the tattoo was going to charge you?

A: No, sir.

MR. STEPHENS: Again, I beg the Court's indulgence for just a moment. I apologize for the delay, Your Honor. I'm trying to search. If the solicitor wants to let me use his copy of the Facebook post?

MR. STONE: Sure.

MR. STEPHENS: The entire Facebook, Solicitor? Do you have it?

MS. BUTNER: Yes, sir.

MR. STEPHENS: Thank you.

MR. STONE: There you go.

MR. STEPHENS: Okay.

BY MR. STEPHENS:

Q: So around the 8th, do you recall sending a text -- a Facebook post to KP wanting to get a tattoo of your grandma?

A: Yes, sir.

Q: Do you remember a tattoo -- a text back from KP also on the 8th of July, a week earlier, that said the tattoo guy wanted he said 40?

A: No, sir. Yes, sir.

Q: And that was $40?

A: Yes, sir.

Q: You said you don't remember the -- sending a reply back about letting me hold the 40 just for a day and give grandma my body?

A: Yes, sir.

Q: The body of my grandma. I'm sorry.

Q: I don't remember, sir.

Q: So you don't know if that could be a reference to the $40 that you were going to pay to get a tattoo of your grandma?

A: It could be, sir, but I don't remember sending the text.

Q: All right. Now, when you sent the message, if you type

it out but don't press send, what's the first -- you've used Facebook before. What's the first thing that pops up when you reopen that messenger?

A: It would be the same thing that you had typed right before.

Q: And if you don't delete it, what happens if you try to send a new message?

A: If you press send, then the things that you had texted right there would send.

THE COURT REPORTER: I'm sorry. What?

BY MR. STEPHENS:

A: If you don't, like -- say, you type something up, but you don't send it and you leave it, like you go off Facebook or anything and you come back, that would be the first thing still sitting there in that, like, inbox the person.

Q: Okay. Did you get $40 and get a tattoo?

A: Yes, sir.

Q: So you got the $40 and got your grandma's name on your body on your arm?

A: Yes, sir.

Q: Thank you. When you sent those other texts or Facebook messages, clearly those are not about your grandma. You said you don't remember sending any texts about -- about a strap or anything like that?

A: No, sir.

Q: But at some point, someone did give you a gun; right?
A: Yes, sir.
Q: And you already said, I believe, that you didn't want to get robbed again?
A: Yes, sir.
Q: Do you recall if you ever told anyone that you were going to defend yourself if you got robbed again?
A: I told them I wasn't going to get robbed.
Q: And you don't recall sending the message; so I'm not going to ask you what your intent was there.
MR. STEPHENS: Can I get -- am I still connected there?
UNKNOWN FEMALE: Uh-huh.
MR. STEPHENS: Give me one second, please.
(WHEREUPON, a video was played.)
BY MR. STEPHENS:
Q: All right. This was the -- again, this is Defendant's Exhibit 2. I believe this is right after the shooting.
MR. STEPHENS: I apologize, Your Honor. I'm going to use the clip that we've got.
(WHEREUPON, a video was played.)
BY MR. STEPHENS:
Q: All right. The solicitor asked you a few minutes ago, John --
MR. STEPHENS: You can turn that off now.
Q: -- if -- if you knew if Jestin had a gun and you said

you didn't know; right?

A: Yes, sir.

Q: Well, let me ask you a different question. You just saw that video; correct?

A: Yes, sir.

Q: You had already run off?

A: Yes, sir.

Q: So do you know what Jestin was doing when he walked off screen to the right?

A: No, sir.

Q: Do you know what Jestin was doing when he walked off screen to the left for four or five seconds?

A: No, sir.

Q: Is it fair to say you -- did you see Jestin with a gun when this encounter happened at the beach?

A: No, sir.

Q: And -- but you don't know what happened after you left; is that fair to say?

A: Yes, sir.

Q: All right. Now, the solicitor asked you a question about the Frosty Frog. It's been years since I've been on Hilton Head because I despise going south of Broad. I don't hope I don't offend anyone from saying it, but I went a couple weeks ago so -- so I could see the scene. Next to the Frosty Frog, there -- is there any other path that takes you

to the beach?

A: Yes, sir.

Q: It's just not the one at the Coligny fountain; correct?

A: Yes, sir.

Q: Do you remember if you took that path or were going to take that path?

A: I don't remember exactly. I know when I said I went from Dontarious' house that I was going to the beach that we would be looking for girls and that we was going to, like, go to the beach. So we maybe walked to Frosty Frog.

Q: All right.

MR. STEPHENS: I beg the Court's indulgence for just a moment.

THE COURT: All right, sir.

MR. STEPHENS: Your Honor, may we approach real quick?

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury off the record, after which the proceedings resumed as follows.)

BY MR. STEPHENS:

Q: John, a minute ago the solicitor played you the video that includes the shooting and asked you questions about when you started having this conversation with Jestin; correct?

A: Yes, sir.

Q: All right. Did you see if that video had any audio with it?

A: I don't know, sir.

Q: Could you tell from looking at the video whether anyone was talking?

A: You can see that when I walked up that me and Jestin were facing each other.

Q: Before that, could you see if anyone was talking?

A: Maybe so. I don't know remember.

Q: No. Could you see from the video --

A: Could you see from the video if we were talking?

Q: -- if any mouths were moving?

A: Maybe.

Q: Could you tell?

A: Maybe I was talking. You really can't -- I couldn't see.

Q: Okay.

A: Because I see the back of me.

Q: Now, this happened in July of 2015; correct?

A: Yes, sir.

Q: Do you remember the first time you saw the surveillance footage of this?

A: No, sir.

Q: But did you see it the next day?

A: What next day?

Q: Did you see the surveillance footage the day after the shooting?

A: No, sir.
Q: Did you see it the week after the shooting?
A: No, sir.
Q: Did you see it the month after the shooting?
A: No, sir.
Q: Do you recall if you saw this surveillance footage a year after the shooting?
A: I don't remember, sir.
Q: If you don't remember, you don't remember.
A: I don't.
Q: And this was almost five years ago?
A: Yes, sir.
Q: So is there anything about that encounter that stood out to your mind that this is where we started talking, how you were standing, anything else that triggers in your mind that this is where we must've started talking?
A: We probably started talking when I stopped and I was looking at Jestin. Maybe we was talking on the way walking towards everybody. I pointed at the exact time we were looking at each other and talking.
Q: Do you remember -- do you remember clearly at this point almost five years later?
A: No, sir.
Q: Are you sure about the words that were used?
A: Yes, sir.

Q: John, I'd like to show you some photos. And I know I promised I wouldn't do this, but if you can come down for a second, I want you to take a look.

(WHEREUPON, the defendant complied.)

BY MR. STEPHENS:

Q: This is demonstrative evidence, but do you know what these appear to be?

A: The shooting.

Q: When you say the shooting -- can you step back for a second? When you say the shooting, do you mean the recording of the shooting or --

A: Yes, sir.

Q: Okay. All right. Now, if you look at this first picture, is this a fair representation of when you knew you were standing in front of Jestin?

A: Yes, sir.

Q: Having a conversation? You have to speak up because I've got you away from the microphone.

A: Oh. Yes, sir.

Q: Okay. Now, do you know about where Dominique was standing?

A: To the left over there.

Q: Again, sorry, John. You've got to speak up.

A: Oh. To the left over by the trees.

Q: So there is some person right there next to the tree?

A: Yes, sir.
Q: Do you know who that is?
A: I think that's Dominique. I'm not sure.
Q: Okay. Now, if you look at the second picture -- and again, these are time stamped. What does that say?
A: 8:20:27.
Q: All right. Is that a little bit clearer who that -- what that is next to the tree?
A: Yes, sir.
Q: The third picture, is it better, worse or about as clear?
A: Better.
Q: Can you see all that person's body?
A: Yes, sir.
Q: Is it -- is it pretty -- is it adjacent to the tree or away from the tree?
A: Like, adjacent to the tree.
Q: So it's kind of like it's still at the tree?
A: Yes, sir.
Q: 8:20:28. Is it -- does it look about the same or -- or it's changed? That person?
A: It looks like it's coming forward.
THE COURT REPORTER: It looks like it's coming forward?
THE DEFENDANT: Yes.
BY MR. STEPHENS:

Q: This is also 8:20:28. Does that look a little blocked by Dontarious there, I believe?
A: Yeah. But you can tell somebody is in front of the tree.
Q: All right. Now, we are at 8:20:29. Do you see that person?
A: Yes, sir.
Q: Are they blocked at all by that tree?
A: No, sir.
Q: Do you recall about what was going on a couple of seconds before the shooting?
A: That's when I was turning and looking towards Dom.
Q: Do you know what Dominique -- what Dominique was doing?
A: I told you. Reaching for something.
Q: So there was some movement?
A: Yes, sir.
Q: And at 10:29, do you know what was happening there?
A: Probably the shot.
Q: So from 10:28 in about half a second in these photos, are you sure that that's Dom?
A: Yes, sir.
Q: Going from adjacent and a little blocked by the tree to moving towards you?
A: Yes, sir.
Q: Do you remember what you did?

A: When?

Q: When you saw movement?

A: I told you. I turned his way and shot a shot.

MR. STEPHENS: Thank you, John. You can have a seat again.

(WHEREUPON, the defendant complied.)

BY MR. STEPHENS:

Q: And I know I already asked this, but I want to ask this again. Up to the point or even at the point that you were stepping to getting in front of Jestin, did you intend to shoot at Dominique Williams?

A: No, sir.

MR. STEPHENS: Thank you, John. No further questions.

THE COURT: Recross?

RECROSS-EXAMINATION

BY MR. STONE:

Q: When Dom ran off with your marijuana, he didn't point a gun at you, did he?

A: I told you he didn't get a chance to.

Q: What's that?

A: He didn't get a chance to. He drove off.

Q: He drove off?

A: Yes, sir.

Q: But the answer of the question is, no, he didn't point a gun at you, did he?

A: I just told you he didn't get a chance to.

Q: The fight that y'all had Saturday, he didn't point a gun at you, did he?

A: No, sir.

Q: And prior to that, had he ever pointed a gun at you?

A: No, sir.

Q: The Facebook post that says -- that you sent to K Glizz, let me hold that 40 just for a day, you are saying refers to a tattoo that you were going to purchase concerning your grandmother?

A: I told you --

MR. STEPHENS: Objection.

A: -- that I don't remember sending that text.

Q: Okay. Well, I --

A: I already told you that.

Q: Okay. Well, on direct questions from the defense attorney, he was asking about some kind of tattoo and you had apparently sent a Facebook post --

A: I don't remember.

Q: -- about that. Do you remember that?

A: Days before.

Q: Days before? Like, ten days before, in fact. Do you recall doing that post?

A: Yes, sir.

Q: So it's not a question of whether or not these are

accurate Facebook posts. It's just you don't remember sending them; right?

A: Yes, sir.

Q: Okay. Is a jugg a robbery or stealing? If somebody said -- if you, for instance, said somebody tried to jugg me, is that tried to steal something from me or rob me?

A: Jugg can have different meanings.

Q: Okay. What meaning does it have?

A: Jugg mean you could try to either stab someone. Jugg mean you try to take something and run off with it.

Q: Okay.

A: Jugg can mean anything to a different person.

Q: So jugg could mean somebody took something from me and tried to run off with it?

A: Yes, sir.

Q: All right. So on your Facebook post, do you recall when you said tried to jugg me and he gonna get it when I see him? Did that have anything to do with your grandmother?

A: I don't remember sending that.

Q: You don't remember sending that?

A: No.

Q: How about when you wrote let me hold a strap? Do you remember that?

MR. STEPHENS: Objection, Your Honor. This is asked and answered.

A: I don't remember sending them.

MR. STEPHENS: The witness already said he didn't remember sending them and I also --

THE COURT: I'll sustain your objection.

BY MR. STONE:

Q: Just to be sure though, you don't have any question these are your Facebook posts? You just don't remember sending them; is that correct?

A: I told you.

MR. STONE: Your Honor, we'd move State's Exhibit 38 into evidence, which are the Facebook.

MR. STEPHENS: Your Honor, may I?

Your Honor, I object. If they want to put in the -- the messages that the defendant had denied as extrinsic evidence, I think they'd need to do a redacted version of this. And there are the responses from another person that is not the defendant are going to be hearsay as well, Your Honor.

THE COURT: I'm not sure I'm following everything that the solicitor is putting in.

MR. STONE: I'm not sure I understand your objection, but we'll be glad to redact everything except the things that I asked him about specifically.

MR. STEPHENS: Then I think that I would not have an objection to that. I think that would qualify as extrinsic evidence under the rule.

MR. STONE: Thank you. And I will do that before I use it. Thank you, Your Honor. I've already marked it, but I'll ask her to take this away to do that.

THE COURT: All right. The motion to admit is granted under the circumstances agreed upon.

(WHEREUPON, State's Exhibit Number 38, redacted version of Facebook posts, was admitted into evidence.)

MR. STONE: Thank you.

THE COURT: Anything else of the witness?

MR. STONE: Nothing from the State, Your Honor.

MR. STEPHENS: Your Honor, I do have -- if the Court allows it, I have one brief redirect question.

REDIRECT EXAMINATION

BY MR. STEPHENS:

Q: John, there was a question earlier about whether you had confronted Jestin about the robbery prior to this Sunday. When you saw Jestin on Saturday, how many -- who was with him in total?

A: Dom and Devon and Drew. So three people plus him. So altogether, it was four people at that time.

Q: Did you see Pugg or Dajon Robinson?

Q: But he didn't -- he didn't drive with them, but they was there.

Q: When you saw -- when you saw Jestin on Saturday, where was it? Where were you at?

A: Dontarious' house.

Q: And you had already -- I think you already testified you did not want to fight at Dontarious' house?

A: Yes, sir.

Q: Was there anyone there who came to Dontarious' house who wasn't on the football team with Jestin?

A: Yes, sir.

Q: Who was that?

A: Actually, no, because Drew was on there. I was about to say Drew, but Drew was on the football team.

Q: Other than Dominique, who have moved away; right?

A: Yeah.

Q: All right.

MR. STEPHENS: No further questions. Thank you, Your Honor.

MR. STONE: No, sir.

THE COURT: Thank you. You may step down.

You may call your next witness.

MR. STEPHENS: I beg the Court's indulgence for just a moment.

Your Honor, at this point, the defense rests.

THE COURT: The defense rests?

MR. STEPHENS: Yes, Your Honor.

THE COURT: Anything from the State in reply?

MR. STONE: No, sir.

THE COURT: Ladies and gentlemen, I need to talk to the attorneys for a few moments outside of your presence. So I will ask you to please retire to the jury room and remind you it's too early to begin discussing the case.

THE FEMALE BAILIFF: Please leave your notebooks, for those who are taking notes.

(WHEREUPON, the jury exited the courtroom.)

THE MALE BAILIFF: The jury is clear, Your Honor.

THE COURT: I think I'm about to eat my words. I don't see -- I don't see us giving the case to the jury at 5 o'clock.

MR. STONE: Whatever you'd like, Your Honor. I'll do it either way.

MR. STEPHENS: Your Honor --

MR. STONE: It is kind of late though.

MR. STEPHENS: I can say the defense preference was to argue and charge in the morning. My wife would have -- would like me to have it done so I don't stress her out, but we'd prefer to do it in the morning, if we can, Your Honor.

THE COURT: Yeah. I think so.

MR. STONE: My wife doesn't care, Judge. I'll do it any way you want me to do it.

THE COURT: All right. I'm going to -- I'm going to let the jury go until 9:30 in the morning, but before we start doing any other business, I want us to talk about jury

charges.

MR. STEPHENS: Yes, sir.

THE COURT: So that in the morning we'll be able to go. Let's bring the jury back in whenever they're ready.

THE FEMALE BAILIFF: The jury is entering the courtroom, Your Honor.

(WHEREUPON, the jury entered the courtroom.)

THE FEMALE BAILIFF: The jury is seated, Your Honor.

THE COURT: Welcome back, ladies and gentlemen. I apologize for making you step out of the courtroom and then to come right back in and then having to tell you that we are going to resume the conclusion of this matter in the morning.

Our choices were to go ahead, but that means you would not begin deliberating until 5 o'clock or after 5 o'clock. And since you haven't been discussing the case, you couldn't possibly know how long it's going to take for twelve of you to reach a verdict in this case.

So, ladies and gentlemen, tomorrow morning at 9:30. I remind you, you can't let anybody talk to you about the case, you can't talk to anybody about the case, and you can't read, listen or otherwise receive any information about this case.

Tomorrow morning. See you in the morning, ladies and gentlemen.

(WHEREUPON, the jury exited the courtroom.)

THE MALE BAILIFF: The jury is clear, Your Honor.

THE COURT: Does anybody need a break before we start talking about this stuff or are y'all good?

MR. STEPHENS: Whatever the Court wants.

MR. THORNTON: Yes, sir. Maybe ten minutes, Judge.

THE COURT: Seven.

MR. STEPHENS: Yes, sir. Five.

THE COURT: Seven minutes.

MR. THORNTON: Yes, sir. At the Court's pleasure, Your Honor.

THE COURT: All right. We'll be in recess for a few minutes.

(WHEREUPON, there was a break in the proceedings, after which the proceedings resumed as follows.)

MR. THORNTON: The State is ready, Your Honor.

MR. TRIPP: The defense is ready.

THE COURT: It might be helpful if I just run down a list of things. I have standard charges that may be acceptable to both sides.

A general statement about the indictment not being evidence and presumption of innocence. I normally give two charges on reasonable doubt. One is a hesitate to act and then the other is the longer version of the same thing. Along with the duties of the judge, duties of the jury.

Question. Does anybody -- anybody think a circumstantial evidence charge is appropriate?

MR. THORNTON: Your Honor, obviously, we'll do whatever the Court wants. You know, I'm trying to in my head think about is there anything circumstantial. I mean we had telephone calls, obviously, that we think that back up what the witnesses said about phone calls that they got from Mr. Duncan. I don't know that that really rises to the level of what we would normally have as circumstantial, and that's the only thing I could come up with, but we'll go with whatever the Court thinks on that one.

MR. STEPHENS: Your Honor, we're not -- I don't think the defense would be requesting it. I obviously don't think -- I know this is a feeble answer, but I don't think we have an objection to it if the Court decides that it's appropriate.

THE COURT: Let me think about if it's needed.

MR. STEPHENS: Your Honor, what the Court --

THE COURT: Sometimes when you charge so much stuff, sometimes I think the jury gets numb.

MR. STEPHENS: I agree.

MR. STONE: Yes, sir. I mean if we don't have any evidence of it, I certainly don't want to charge it because they get lost after a while.

MR. STEPHENS: And, Your Honor, but for the -- the eyewitness testimony on the stand, before they testified I would say there might be circumstantial evidence about the

gun being fired because it was from a bag, but I think their testimony established direct evidence of witnessing it being fired. So I don't think -- I don't know that it's necessary.

THE COURT: All right. I've got a charge on credibility of witnesses, expert witnesses, prior inconsistent statement of witnesses. I might say something in there about notetaking. Though there wasn't much of it, was there?

Then murder. Let me -- I really want to ask a question of both sides about this. Does *State v. Belcher* take out the inferred malice done with a deadly weapon?

MR. STEPHENS: Your Honor, I think the defense would like some kind of time to review the case, unless Mr. Tripp is ready to address it. I'd have to -- I'd have to research it.

MR. TRIPP: As far as I recall, *Belcher* did say that it was a comment on the facts to say that possession or use of a deadly weapon --

THE COURT: I think it comes out.

MR. THORNTON: Judge, my understanding of it is that originally it was -- it was if there's any evidence. In other words, if you did -- especially if you did voluntary manslaughter, which I know we'll get to in a minute, it's not appropriate. I don't think -- I think it's probably safest just to leave it out based on some of the language in some of the cases after *Belcher*. I think it's safe to leave that

out. I don't think there should be an inference for that.

THE COURT: All right.

MR. THORNTON: At least not charged.

MR. STEPHENS: Your Honor, also erring on the side of caution, it's having an appellate issue we don't necessarily need on that issue. I'm good with leaving it out.

THE COURT: Okay.

MR. STEPHENS: At least on this.

THE COURT: Now, let me ask you this. In lieu of that section dealing with inferred malice, we still have malice. *Gibson v. State* I think says that the following might be appropriate, and y'all tell me.

The law says that if one intentionally kills another with a deadly weapon, the implication of malice -- the implication of malice may arise. If facts are proven beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, the inference would simply be an evidentiary factor to be taken into consideration by you, the jury, along with other evidence. You may give it the way you determine it should receive.

Y'all tell me.

MR. TRIPP: Your Honor, I believe that seems to be the same as what was ruled out in *Belcher*, which is to say that if these certain facts happened, then you may infer malice. It seems to be saying the same thing.

THE COURT: Well, this --

MR. TRIPP: Instead of saying use of a gun and saying it's by intentionally --

MR. THORNTON: I think they are distinguishable because of the talk about the intentional nature of the killing, and I think *Gibson* actually distinguishes itself. My recollection is *Gibson* is after *Belcher*.

THE COURT: Yeah. It is.

MR. THORNTON: And distinguishes itself from it and I believe that *Gibson* is still good law. So we -- the State has no problem with putting that language in there.

THE COURT: We all think that *Gibson* -- I don't have the cite, but it's *Gibson v. State*, May the 11th, 2016, a South Carolina case. That's -- that's all I have on it, but look at that and see. We'll talk about it in the morning. We'll see if the State's recollection is the same as mine.

Which may bring us to the voluntary manslaughter issue. I am guessing the State is going to object. Go ahead.

MR. THORNTON: You would guess correctly, Your Honor.

THE COURT: All right.

MR. THORNTON: Do you want me to go ahead and argue now, Judge?

THE COURT: I think so.

MR. THORNTON: All right.

MR. TRIPP: Your Honor, we're a proponent of the -- of

the charge.

THE COURT: Do you want to go first?

MR. TRIPP: I would assume the burden would be on us.

THE COURT: All right.

MR. TRIPP: First, let me say that I've provided Your Honor with a copy of the law and cases supporting. The outline has been marked as a Court exhibit under Court's Exhibit 11 or maybe Court's Exhibit 12 for voluntary manslaughter. I also provided a copy of that to the Solicitor's Office.

Let me start off by saying first and foremost that, as I put on the back at the bottom, to warrant the Court in eliminating the offense of voluntary manslaughter, it should very -- it should very clearly appear that there's no evidence whatsoever tending to reduce the crime from murder to manslaughter.

The elements of voluntary manslaughter are laid out there. I'm going to skip to number two, the killing is in the sudden heat of passion. The thrust of the first excerpt there is that it occurs from an uncontrollable impulse.

In this case, evidence that this was impulsive and not something planned out consists in a lot, including the following. In Mr. Duncan's testimony, he said he was over the situation. The fight was not his doing. He had no plans to look for the victim at the beach. He was mad at Jestin,

not mad at the victim. He had a gun for safety reasons. He had just been robbed. He heard through Jeffrey and Cedric that the victim was looking for him. Again, he said he was not looking for the victim.

The State's witnesses agreed that everybody thought the fight had resolved the dispute over the drugs. John talked smack, but nobody thought that he was -- he appeared serious about the things that he had said. John's mother testified that it was normal for him on Sunday to go to the beach. Sunday and Saturday, he had a normal attitude. His self-testimony consisted of no evidence showing that defendant was looking for the victim or that he was informed by anyone where the victim would be. He had just gotten back from out of town at the time.

Dontarious Seay testified also that Mr. Duncan wasn't looking for the victim when this actually happened. Dontarious Seay twice told police and in his testimony that Jestin called twice to them. Mr. Duncan testified that he saw Jestin and that was backed up by Dontarious and that he didn't know Dominique was involved in this until he got very close.

Dontarious testified that -- that there were words exchanged between the two and then he saw the gun raised. Again, the defendant said the same thing. He said he couldn't see Dominique until he got close and that he

confronted Jestin, not Dominique.

Now, I guess it's natural to think that the impulse with voluntary manslaughter is anger, but case law says that's not -- that's not restrictive. Fear can be a basis for voluntary manslaughter.

So Mr. Duncan testified that when he approached Jestin, Dominique came and stepped towards him. That was consistent with what Mr. Stephens pointed out through the still shots. That he moved from the tree towards Dominique and -- I'm sorry -- towards Mr. Duncan and Mr. Duncan said that -- that Dominique said something to him along the lines of you knew how this was, this is how it's going to be or you knew how this was going to be.

And Mr. Duncan testified that flat out in that moment he testified that he believed Dominique reached for -- reached for a weapon. That he believed he had no choice but to fire at that point.

So that's all the evidence of this being out of impulse and not planned. Under II there, we have case law that specifically says if testimony tends to show that the decedent and defendant were in a heated argument and that the decedent was about to initiate a physical encounter when the shooting occurred, the same situation that we have here.

Court's indulgence for a second, Your Honor.

Under Subsection 3, again I've said that fear can

constitute grounds for this impulsivity of the cause of the shooting, you know, the fear in this case, the evidence of the fear that he felt when this confrontation occurred suddenly. You have evidence that Dominique and Jestin were older kids. These were high school kids and that they were older.

These were kids. You know, if you take one view of the evidence, they manipulated and patronized and bullied Mr. Duncan, stole property that didn't belong to him, that didn't belong to them, didn't belong to John, and invited him -- or set up a fight the next day supposedly to resolve this situation. I'm not sure how -- how a fight where you don't give the person the property back is a resolution, but then they invited themselves up to Dontarious' house. But nobody invited them and then hung out at his house and brandished the weed in front of John and ridiculed him about it.

John testified that these folks were known to be involved with guns. They set up this fight as a sort of phony resolution when knowing that they had still wronged him and had no intent to make this right and they showed no remorse or fear or concern about this situation.

And then, you know, if somebody is willing to go that far and then I come across them, that person is going to scare the hell out of me. So this evidence that John was scared, that John was fearful when this happened, and that

what he did was a result of an immediate and sudden and spontaneous reaction impulse based on fear.

Consistent with that, the shooting was hasty and spontaneous. There was a bag on the gun. The bag wasn't taken off the gun. He didn't even use -- he couldn't have used the sights to aim the gun. That distance was ten yards, which as Officer Reynells testified, that's a distance where accuracy is an issue. You can't -- at seven yards, you can pull up and make a quick shot and maybe hit body mass. At ten yards, you've got to aim a gun. There's no evidence that he had training or knew what he was doing. He testified that this was the first time he's ever used a gun.

So this is somebody who doesn't know what they're doing, pulls out a gun, and fires without even looking at the sights. This is not a premeditated or planned out situation.

And then also, it's the middle of -- it's daylight in the middle of Coligny Circle, hundreds of people around, a public area. Again, all evidence that this was a hasty and spontaneous -- the result of a hasty and spontaneous action and not something that was planned or premeditated.

The video, again, bears that out showing that, as Mr. Stephens went through, Dominique moved towards -- moved away from the tree towards John right before he shot -- right before the shot.

Over on the back of the outline under Subsection B, in

State v. Gardner, the Court -- the Supreme Court says if there's evidence that there's some overt threatening act or physical encounter, that's sufficient for a voluntary manslaughter charge.

Between -- between the video and Mr. Stephens' breakdown of it and John's testimony that he couldn't see this guy, he approached, and then recognized who it was, Dominique stepped towards him and called him out. Through his history with this guy, the things he's done without fear, without reservation, in that moment that's evidence sufficient to say that Mr. Duncan operated and shot the gun out of an uncontrollable impulse based on fear of this -- of this -- of this victim.

THE COURT: Go ahead.

MR. THORNTON: Thank you, Your Honor.

Your Honor, I believe you've already been handed up *State v. Pittman*, and just a quick comment on some of the cases that's handed up by -- by the defense in this case --

THE COURT REPORTER: *State v. Pittman*?

MR. THORNTON: -- where they talk about fear, Your Honor. That they had *State v. Wiggins* cited under B on their outline they handed up.

Testimony that the victim threatened him and fired at him. Well, we didn't have that in this case.

Testimony which if believed tends to show that the

decedent in *Lowry*, from the *Lowry case*, *State v. Lowry*, 434 S.E.2d 272 under their II here. Testimony which if believed tends to show they were in a heated argument. Well, we don't have that here.

The problem that they have in this case, Judge, is that he didn't want -- unless the Court remembers differently, saying that he was in fear to the extent -- because fear isn't enough, Judge, and I am well aware that you already know that based on *State v. Oates*, Your Honor, which I'm sure you are familiar with. The *State v. Oates* case, Judge, is 421 S.C. 1. I'll hand that up to the Court now.

And there was an intensive discussion during the trial of the *Oates* case and they went through a good bit of it in the Court of Appeals, and my recollection on this is cert has been denied by the Supreme Court at this point, but fear can constitute the basis for voluntary manslaughter. Yet a presence of fear does not end the inquiry, is what they are quoting. That this Court is actually quoting *Starnes*, I believe, *State v. Starnes*, which is 388 S.C. 590.

And what it in essence says, Your Honor -- I'll hand *Starnes* up as well. What it basically says is that, yes, you know, fear could constitute an uncontrollable impulse to do violence, but you don't stop at the fear. Well, the first problem I have is I don't once think that their client testified that he was in any fear. What he said was that

Dominique stepped towards him and he thought he was reaching for something; so he shot him. There's no uncontrollable impulse at that point to do violence.

What the *Oates* Court says, Your Honor -- and again, I know you're aware of it, as you tried it -- is that there has to be something. Even if there is fear, there's got to be something more than fear. And one of the things you look for is what were the actions of the defendant. Well, in this case, he had to draw and then he fired, and they can call it ten yards if they want to, but it's on video and there's no way that's 30 feet.

The problem is, you know, well, he didn't have time to aim and he didn't look at his shots. Well, clearly, he didn't need to because he shot the person he was shooting at by his own testimony. Oh, I shot in his direction. Well, it was a helluva shot, Judge, because he shot him right in the face. He shot one time and then he left the area.

You know, *Oates*, one of the things they talked about, the reason that they-- that they allowed voluntary, that it was proper for you to charge voluntary in that case is that he fired six shots. There was -- there was differing testimony on whether there was an argument or not.

Nobody in this case testified that there was an argument, much less a heated argument. If you believe the State's witnesses, the State's witnesses say he was looking

for Dominique, he said he was looking for Dominique, he told multiple people I got a .40 for him, I got a strap for him, I got a bullet for him, and then he walked up, pulled his gun, and shot him once in the face and then left.

His testimony is I wasn't mad at Dominique, I wasn't upset with Dominique. Dominique to my knowledge wasn't upset with me. I was talking with Jestin, and then he said you know what's up and went to reach for something; so I shot him. And I know Mr. Stephens really wanted him to say how scared and upset he was, but he didn't. What he said was, well, I feel bad, but I couldn't really do anything about it.

And the last question he asked him was did you feel like -- and I think Mr. Tripp brought this up. Did you feel like you had any choice? No.

Well, see, that's the problem, Judge, because it was a choice. It wasn't an uncontrollable impulse to do violence. He made a choice. He made a choice to kill Dominique. He fired one shot. He fired it right into his face, and he left. Not one bit of testimony came from him about being in fear, having an uncontrollable impulse, didn't know what to do, was terrified. None of that.

So the State's contention is there isn't even fear. However, even assuming that the Court finds fear, that doesn't end the inquiry, which is what *Pittman* -- excuse me -- what *Oates* and *Starnes* says. You have to look at what his

actions are, and his actions are he pulls his gun, fires a shot, kills the person who he says is coming towards him, and then he leaves.

So, Your Honor, the State doesn't believe there is any evidence in the record to support voluntary manslaughter. Either he walked down there looking for Dominique after telling everybody he was going to kill him and killed him or he walked up and somebody he thought was going to draw on him and he killed him in self-defense. I absolutely think they get self-defense, but it's one or the other. It's not a -- voluntary manslaughter doesn't come in because I don't believe there's any testimony or anything that would justify an uncontrollable impulse to do violence based on fear.

That would be the State's position, Your Honor.

MR. STEPHENS: You know what, I'm going to let Mr. Tripp respond, if the Court allows. I just wanted to make one request of the Court, which is -- as I was asking the questions, Your Honor, I have both in my notes and my observation that he said it twice that he was in fear for his life. If the Court does not have a note of that, Your Honor, I would only ask that before you rule that we actually listen to the recording because I was paying very close attention myself. And that's all I have.

THE COURT: My recollection is he did in response to one of your questions at any rate say that he was in fear of his

life.

MR. STEPHENS: Yes, Your Honor. And Mr. Tripp is going to respond.

THE COURT: Thank you.

MR. TRIPP: Thank you, Your Honor.

I got ten yards from Mr. Morrow, who said that he thought the distance was ten yards. Mr. Morrow plays football for Marshall University; so I find him credible as to what ten yards -- knowing what ten yards is.

As Mr. Stephens said, Mr. Duncan testified that he was in fear for his life. He had no other choice. If somebody is pulling a gun, I don't know what person isn't afraid. You know, certainly, firing one shot and turning on a dime and hauling butt out of there is pretty consistent with fear in my experience.

And that, you know, a heated argument -- a heated argument is equivalent to looking at all the circumstances of the relationship between Mr. Duncan and the victim and Mr. Duncan's belief that the victim was pulling a gun and stepped to him and called him out at the same time.

Again, if you look at -- if you look at those couple of seconds as to what happened between them based on Mr. Duncan's testimony in a vacuum, you know, that's one thing. If you look at it based on all the surrounding circumstances, which, under *State v. Norris*, the jury is entitled to do,

it's a -- it's a different situation. It's evidence of voluntary manslaughter. It's evidence of an act out of impulse based on fear.

THE COURT: Go back to the second argument prong of the argument made by the State in that the fact that the defendant said in response to one of his attorney's questions that he was afraid, is that sufficient? You're saying that's sufficient in and of itself to give you --

MR. TRIPP: Fear is a basis for voluntary manslaughter. So, you know, you've got -- you've got three elements: an unlawful killing in the sudden heat of passion upon sufficient legal provocation. So this sudden heat of passion can be based on fear. It doesn't have to just be anger, Judge. That's *Wiggins*, 330 S.C. 538. That's also *State v. Davis*, cited down there under III, 50 S.C. 405. If the impulse is based on fear, that's sufficient for a voluntary manslaughter.

THE COURT: Going back to the *Oates* case, the Court does say that the mere fact that a person is afraid is not sufficient in and of itself. Go ahead and follow me down through, and I know that he's getting ready to tell me the same thing, but --

MR. TRIPP: Right. But --

THE COURT: But following it on through, they say that the fear must manifest itself in an uncontrollable impulse.

MR. TRIPP: Right. So this shooting. I mean the uncontrollable impulse would be the pulling out a gun and firing haphazardly and spontaneously and then running off.

So I mean that's all consistent with -- with something taking place in a matter of milliseconds. And he said he was afraid. He had no choice. He pulled out the gun. There's still a bag on it. He didn't line up the sights. He just fired the gun once and then turned and sprinted.

THE COURT: All right. Let me hear about that.

MR. THORNTON: Judge, I would just have a couple of brief things.

Number one, under that theory then, you would have voluntary manslaughter charged in every case where there is also self-defense because what he said is, well, you know -- and I would point out to the Court that his personal opinion on whether he would be afraid is not relevant, but what he says is, well, anytime somebody was to pull a gun on me, I would be afraid and then if I immediately draw and fire, then every case then there's no reason for the law. There's no reason for the *Oates* case, which goes through eight pages, as Your Honor knows, of explanation on the fact that just because you have fear, that that is not enough.

And as you know in the *Oates* case, there was evidence that the -- that the victim in the case had brandished his gun first. Now, in *Oates* they did allow involuntary

manslaughter, but they focused on the defendant's actions. They focused on he fired six times. They focused on his -- his testimony, which talked about I was in conservation mode. I didn't -- you know, I just -- I was just reacting. I wasn't doing anything.

Whereas, in this case, he didn't say anything other than, well, I didn't have any other choice. I think that was the quote that Mr. Tripp used.

And I appreciate the case they have, the *Davis* case, which is 1897, and *Gilliam*, which is '88, and Lowry, which is '93, but -- but, you know, the *Oates* case that talks about *Starnes* and the others is obviously a much newer case and it gives a much more nuanced approach, which is, yes, fear can be that, but that's not where you stop. You've got to have this uncontrollable impulse to do violence and it's got to be manifested in the actions and/or the testimony of the person involved.

The problem they have is, Judge, under their theory, you'd have to charge it in every case. Anytime somebody draws a gun and you draw a gun and shoot them first, then that's automatically voluntary manslaughter. Then there's no reason to have this very expansive definition talking about fear, what constitutes it. It can't just be fear. It has to be deliberate or uncontrollable impulse to do violence and not deliberative action.

MR. TRIPP: Your Honor, on the back at the very bottom, it includes self-defense is a lesser included offense of voluntary manslaughter. It should be submitted to the jury if supported by the evidence. The rationale of the rule is the jury may fail to find all the elements of self-defense, but could find sufficient legal provocation and heat of passion to conclude the defendant was guilty of voluntary manslaughter.

You know, there -- and so I mean it's just two different -- two different theories or findings that a jury could make. And as long as there's evidence to support either one, obviously, you charge what the evidence could support.

So again, the impulsivity as shown by -- this is -- this is seconds or milliseconds between when he realized -- when John realizes who he's dealing with and what's coming at him and puts it together with everything that's happened with this guy the past couple days and makes a haphazard but spontaneous action in pulling the gun and shooting and sprinting away.

MR. STEPHENS: Your Honor, if we may have a moment? Your Honor, would the Court be opposed to me adding to Mr. Tripp's argument? If so, I'll shut up, but I was only going to add one point, which was, Your Honor, I believe these aren't mutually antagonistic, self-defense and -- and voluntary manslaughter.

Self-defense can exist where voluntary manslaughter wouldn't if it's a cold, reflective self-defense and a person doesn't -- they don't necessarily have to say they were afraid for their life and they wouldn't necessarily have to say they thought they had no other choice. They'd be entitled to self-defense under certain factors.

Voluntary manslaughter is you can't do anything else, which is what he said. It also has to be driven by fear, which is what he said, Your Honor.

So in certain cases, such as this one, they both exist. In other cases where a person has the ability to reflect and still exercises self-defense, they have that defense, but they would not have voluntary manslaughter. That is not what we have in Mr. Duncan's testimony.

That's all I have, Your Honor. Thank you.

THE COURT: Give me an example of when you would have to clearly and coolly reflect in a self-defense case?

MR. STEPHENS: Well, Your Honor, there was a case where I don't recall the name where voluntary manslaughter was not given and the Court found -- the appellate court found that was appropriate where the person had gone out to their car after being assaulted, retrieved a weapon, and come back inside and shot someone.

If they had walked back inside after cooling and going out to get a weapon and the other person brandished a weapon

and tried to shoot them, they might be entitled to self-defense if they respond and kill the person. They would not be entitled to voluntary manslaughter because they coolly went, armed themselves, walked to the confrontation, and this happened.

In Mr. Duncan's version of events, well, the Court is free to disbelieve it. We're not talking about the weight of the evidence. He said that he wasn't looking for the confrontation and that he approached it to see if he recognized them. And then when he approached, there was the yelling and he was left with the uncontrollable impulse to shoot. In this case, he's entitled to both, but if the facts were slightly different, he might be entitled to self-defense but not involuntary -- voluntary manslaughter.

And that would be, Your Honor, if you walked up, Jestin either brandished a gun -- excuse me. Dominique brandished a gun or -- or threatened him and there was a pause and he either tried to run away and was chased. If he's running away and was chased and then turned around and shoots, clearly, he had an option. In this case, he shot. Your Honor, I think in that case he would be entitled to self-defense, but not to voluntary manslaughter.

There would be another case in which there was an argument that lasts a period of time where a person, as I said, might have gone to their vehicle, retrieved a weapon

while under threat, and then returned fire or a shot. In that case, a person also would be entitled to self-defense, but probably not voluntary manslaughter because they made a cold rational decision to arm themselves and defend themselves.

And there is part of the self-defense instruction about arming yourself doesn't make you the aggressor. If -- if Mr. Duncan had not been armed when this happened and had left his weapon with Dontarious or had dropped his weapon and he ran back to get his -- get his weapon because he thought he was being attacked and these guys are brandishing weapons, at that point he might be entitled to a self-defense argument. It might fail, but he'd be entitled to a self-defense charge. He would not be entitled to voluntary manslaughter because he had time to reflect and did not act on an immediate impulse.

This is different. This is -- I disagree with the solicitor. I think there are several incidents, which I just named a few hypotheticals, where a person would be entitled to self-defense but not voluntary manslaughter, but they are not antagonistic. In this case, they both happen to fit.

Again, if he has a chance to reflect and the Court can exclude the possibility that this was an impulsive act, then -- then voluntary manslaughter wouldn't apply, but he didn't. He acted immediately. He didn't go any kind of distance away. He didn't try to retrieve the weapon, come back. He

didn't circle the block, then come and end up in a confrontation. There hasn't been any question that this was the first meeting of these two people this day when this happened, Your Honor.

Thank you.

THE COURT: Thank you, Mr. Stephens.

MR. THORNTON: Judge, the only thing I would point out -- and I just forgot to mention it earlier. They keep talking over and over again about because of who he was dealing with. Yes, the person he was dealing with was the person he testified that he had no problem with, wasn't mad at, wasn't angry at, and to his knowledge wasn't angry at him. He testified that after the fight that Dominique didn't say anything to him.

MR. STEPHENS: Your Honor, since we're talking about the weight of evidence one way or the other, while the -- while the jury is welcome to believe Mr. Duncan and disbelieve other witnesses, they're also welcome to believe other witnesses and disbelieve Mr. Duncan.

If they believe another version of events in which, say, Mr. Dontarious Seay's version of events where there was yelling, there was all these prior words, they approached and, again, there's some kind of yelling and a shooting, I think in that case the Court hasn't excluded the possibility of voluntary manslaughter in one of those.

We had multiple versions of how this happened, Your Honor, and different ones might apply and the jury should be allowed to believe the witness they like. It is in the instruction on credibility of witnesses, Your Honor.

Thank you.

(WHEREUPON, there was a pause in the proceedings, after which the proceedings resumed as follows.)

THE COURT: All right. I am going to deny the request for a voluntary manslaughter charge and state, first of all, I agree with the position taken by the solicitor in his argument, but I'm going to go ahead and say that all of the cases that I've looked at that deal with this issue of fear also have other facts involved in there in addition to just a fear. For instance, threats in conjunction with someone being afraid. Heated argument, in addition to someone being afraid. For all of those reasons, I'm going to deny the motion.

What else do we need to do?

MR. THORNTON: I do think self-defense, as I said, comes in, Your Honor. We didn't talk about that one. I think that's pretty clear.

THE COURT: If everybody agrees on that, I think. Therefore, it would be my thought -- thoughts that I give the indictment to the jury and tell them to write -- there's not going to be a lesser-included.

MR. STEPHENS: Yes, sir.

THE COURT: It's a complete defense.

MR. THORNTON: The State believes -- the State objects -- the State does not object to whatever the Court wants to do with that, Judge. We're fine with it.

THE COURT: Any thoughts from the defense on that? I'm just going to hand them the indictment and on the back of it where it has on the form verdict of the jury.

MR. STEPHENS: Your Honor, we don't have any objection on principle. I think we had one kind of flub with that in a trial recently, but I think that was isolated.

THE COURT: Sometimes you'll end up with -- that's my thought, but sometimes you end up with allegations in the indictment that won't necessarily fit the facts that have been testified to.

MR. STEPHENS: Yes, sir. But I -- I don't think we have an objection to that.

Your Honor, I would ask -- I think we had --

MR. TRIPP: Your Honor, we have requested wording for a self-defense charge. That includes a couple of additions to a standard charge based on the particularities of this case. And the cases uniformly say self-defense charges must be tailored to the facts of the case.

THE COURT: In this case, specifically, what do you think -- what do you say is added or different?

MR. TRIPP: It's the -- essentially, the text that's in lowercase and not in uppercase on the bottom of the first page. Another paragraph on the third page.

THE COURT: Oh, I see.

MR. TRIPP: We can take those -- each of those up in turn, if that's agreeable with the Court.

THE COURT: Solicitor, what says the State?

MR. THORNTON: I mean, Judge, already just reading the first one, I mean I absolutely object to that language. I don't even know if any of that language -- they're citing case law. I don't even know if any of this has ever been approved to be a jury charge. Just because something is said, you know, the law of the state doesn't make it proper to charge the jury.

So I apologize. I'll have to go look these up and see if these were cases where these opinions -- where this language was actually approved as a charge in a particular case.

MR. TRIPP: I don't have anything saying it's approved as a charge. It's just case law in South Carolina. What a jury charge is is a charge to the jury on the law.

MR. THORNTON: Actually, it isn't, Judge. For instance, it's okay for me to argue flight as evidence of guilt, but it's actually improper for a judge to charge it. Those are entirely two different kinds of it.

And the -- you know, the law of South Carolina is replete with instances where cases are reversed. Just because somebody correctly states the law doesn't mean it's what the judge charges.

MR. TRIPP: If it's a comment on the facts. I hadn't heard that argument yet.

THE COURT: All right. We'll -- we'll regroup in the morning about 9:15 and talk further about it. Is there anything else we need to talk about?

MR. STONE: Not from the State, Your Honor.

MR. STEPHENS: Not from the defense, Your Honor. Thank you.

THE COURT: All right. We'll be in recess until 9:15 tomorrow morning.

MR. STONE: Thank you, Your Honor.

THE COURT: I'm sorry. One other thing. I think we had agreed to and, therefore, the Court will approve the agreement of 30 minutes each total of argument.

MR. STONE: Fine with me.

MR. STEPHENS: Your Honor, I'll -- I'll abide by that. I'll just have to speed myself up a little bit.

(WHEREUPON, the proceedings adjourned for the day.)

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(WHEREUPON, the proceedings resumed.)

THE COURT: One thing that I remember we left dangling

yesterday was the issue of additional language the defendant wished to have added to what I'm going to call our standard charge. I believe the State was going to take an opportunity to look into that.

MR. THORNTON: Yes, sir, Your Honor.

THE COURT: And where are we?

MR. THORNTON: Your Honor, we would object to the additional language and, if you want me to be heard on it now, I can do it in just a couple of minutes.

THE COURT: Sure.

MR. THORNTON: All right. Your Honor, as Your Honor has indicated, there is a standard. I think it's *State v. Davis* charge, Judge, on self-defense, which has been around and, obviously, it can be supplemented when the needs and circumstances arise, which is in the discretion of the trial court.

Your Honor, when going through the defendant's request, I'll take them in order. I think it's been made a Court's exhibit, Mr. Tripp; is that right?

MR. TRIPP: That's right, Your Honor.

MR. THORNTON: I believe it's been made a Court's exhibit, Your Honor, so I'll just go by page 1. They basically --

THE COURT: Let me take a moment to retrieve that --

MR. THORNTON: Yes, sir.

THE COURT: -- from the clerk, if I could.

THE CLERK: Which one?

THE COURT: Court's 2.

MR. THORNTON: I believe it's --

THE COURT REPORTER: I think you still have it. I think he still has it.

MR. THORNTON: That's the case law.

MR. THORNTON: Your Honor, I'll hand you -- I'll hand you up mine.

Your Honor, on the first page, they basically have added -- I don't know that it's every element, but some language. I'm acting under the assumption -- I just asked Mr. Tripp to correct me if I'm wrong -- that it's the standard *Davis* charge except for the wording that is in smaller font.

MR. TRIPP: That's correct.

MR. THORNTON: So as to the first page, Judge, the first element, the issue I have with it is they -- they -- the first sentence they talk about or first couple of sentences they cite to *State v. Douglas* at 411 S.C. 307. I looked through *Douglas*. That language that they want is actually not in what I would call the body of the case. It's actually a reference to footnote, Footnote 8, which is citing an Am Jur article citing an Arizona case.

I don't think -- for that reason alone, I don't think it's proper to include in a jury charge. As you know, they

need to be very specific and you have to be careful with these things, Your Honor, as you know, because we don't want to create jury issues where there are none.

They also asked or also put forth the next sentence, the accused's actions to bring about the difficulty must be in violation of the law and cite *State v. Bryant* from '99. I read *State v. Bryant*, Your Honor, and I did not see that quote in there. I'm assuming that's kind of a summary or a paraphrasing of it. I don't read *State v. Bryant* that way. I just -- I simply don't think that's a correct statement of the law.

State v. Cervantes-Pavon -- I apologize to the Court if I mispronounced that. That is a 2019 case, Your Honor, and I looked through it and this argument kind of coincides with the next one I'm going to make when I skip to the end of their -- at the last element.

That case is dealing with the 16-11-440, the Protections of Persons and Property Act, and whether immunity is proper. I read that as a discussion more along that. And for the reasons I'm about to talk about, I don't believe that that is proper.

If I could skip, Your Honor, to the last page, which is the last element where they talk about -- they basically want a charge under 16-11-440(c), which is the Protections of Persons and Property Act. I think that after the *Curry* case,

Your Honor, that that is improper. I think *Curry* and then *Manning* came after that. *Manning* was subsequently reversed, but on other grounds. But the *Curry* decision, Your Honor, is 406 S.C. 364, and I will hand that -- a copy of that to Mr. Tripp and also --

THE COURT: Wasn't that my case also?

MR. THORNTON: It was, Judge. I wasn't going to bring that one up though.

THE COURT: I know.

MR. THORNTON: And as Your Honor knows, what's interesting in that case, Judge, was that actually Justice Pleicones, who concurred in the result or concurred in part and dissented in part, gave a pretty good quote that was picked up by the Court in *Manning* later on.

And what it basically says is that -- that the -- the issue of anything under the immunity act should be dealt with pretrial and, if it's not, you know, it really has no business being charged to the jury. And I think *Curry* is pretty -- pretty directly on point and controlling. It doesn't leave any -- any ambiguity that it is improper for the Court to charge anything under the Protection of Persons and Property Act once you go beyond the pretrial stage as far as any kind of a jury issue.

So for that reason, I would -- I think that applies, basically, to the first part or the last part of their first

argument and to the last argument that they have.

My review of this, Your Honor, is that only one other element -- they didn't do anything to the second element. So the third element, they quote some of the language out of *Starnes*. My only comment on that, Judge, would be that I believe that's pretty close to charging on the facts of the case. It's pretty specific as it applies to this case.

I don't -- my reading of *Davis* and some of the cases after that, Your Honor, are that unless there's a reason, some unusual fact scenario involved in a case, that it's really not necessary for the Court to deviate from the basic self-defense language. It can be supplemented as necessary.

This seems to be a pretty standard self-defense type case. So my only argument as to *Starnes*, I believe that is -- is a -- is a correct quote out of *Starnes*, but my only issue with that is that I just don't think there's facts sufficient in this case to deviate from the standard charge.

But those would be my objections, Your Honor. Thank you.

THE COURT: All right. Thank you, sir.

MR. TRIPP: Thank you, Your Honor. I'll read from *Starnes* under Subsection A of I(A).

In *State v. Fuller*, this Court held it error for the trial judge to exclusively charge the *Davis* instruction on self-defense when the defendant requests additional charges

and the evidence supports the requests. The Court instructed the trial court to fashion an appropriate self-defense charge based on the facts and circumstances of each case.

So that's where we're starting from. With regard to our requested charge, the first addition we've requested deals with the first element of self-defense discussing whether the defendant was without fault.

I believe the first issue Mr. Thornton raised was that the *Bryant* case was paraphrased, which it is. I will read the actual excerpt from the *Bryant* case that I'm relying on. It's the third paragraph after the discussion in that page.

The Court said one who provokes or initiates an assault cannot escape criminal liability by invoking self-defense. Any act of the accused in violation of the law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to self-defense.

So in this case, there's an issue based off of the evidence with the jury's understanding of what is being involved in bringing on the difficulty. There's been evidence that this stemmed from a fight over the defendant's selling weed two days before, the defendant having a gun on him at the time of the shooting, and the defendant approaching the victim and Jestin before the shooting.

So without clarification, a jury has no way to understand what is meant by being at fault and the jury could

believe or decide that under the fault -- the *Davis* fault jury instruction that the State has proven beyond a reasonable doubt that he was with fault or that he wasn't without fault based on those things, but we know the law says differently. The law says at the time of the incident the defendant -- fault means that the defendant was in violation of the law.

And additionally, that's why we've included the language from *Cervantes-Pavon* saying that a person who arms himself at the beginning of the conflict isn't thereby at fault in the consideration of self-defense.

Moving on to the second request, and I'll just read it. Specifically, with regard to the -- it's actually under the right to act on appearances, which is the second element of self-defense. The defendant does not have to wait until the adversary is on equal terms or until he fires or has armed his weapon in order to act. He doesn't have to wait until his assailant gets the drop on him. He has a right to act under self-preservation to prevent his assailant from getting the drop on him.

In *Starnes*, the Court -- the South Carolina Supreme Court notes that that request was properly charged in the case it's looking at, the case it's discussing in the opinion, and I'm just continuing to read where I left off before when we were previously talking about the Court saying

that a trial court has to fashion an appropriate self-defense charge based on the facts and circumstances of each case.

In *Fuller*, the defendant requested a charge that he had the right to act on appearances. Quoting *State v. Jackson*, the Court set forth an appropriate charge on the right to act on appearances.

So in this case, the issue that we have is that based on the evidence, Mr. Duncan testified that he saw the victim pull something from his waistband or something and he believed that the victim was in the process of pulling something from his waistband and believed it was a weapon. And so that's square on point with the law that says that you're allowed to act on appearances.

The final addition that we have is under the -- under the fourth element of dealing with any duty to retreat. This appears to be an issue of first impression based on my research. If there's something else that's come up, I apologize for missing it.

But I'll refer to the *Curry* case by Justice Kittredge. I'm not very clear exactly what the position was by the defendant in that case, but at any rate, under jury instruction under Subsection II, capital B, Justice Kittredge writes that -- let me back up.

The Court charged both -- by charge, specifically read both the common law fourth element of self-defense, duty to

retreat, and Subsection 440(c), Protection of Persons and Property Act provision that a person has no duty to retreat if he is in a place where he has a right to be. So the Court -- Justice Kittredge said the full reach of the Act and whether the statutory provisions in the Act would extend beyond the common-law Castle doctrine are questions for another day.

In this context, meaning in this particular case that he's looking at, the error in the jury charge and any resulting ambiguity would cause no prejudice to an appellant. So this case was decided on grounds that there was no prejudice to appellant and the Court punts it on the issue of the interaction of the Protection of Persons and Property Act and the common-law self-defense traditional charge.

So that's why I say this appears to be an issue of first impression. We are requesting and we believe that the proper charge of the law in this case is that the defendant had no duty to retreat and the language from 16-11-440(c) is the proper charge, and that's just based on the plain language of the statute.

16-11-420, which is the intent findings of the General Assembly under the Protection of Persons and Property Act, Subsection E, states that the General Assembly finds that no person or victim of a crime should be required to surrender his personal safety to a criminal, nor should a person or

victim be required to needlessly retreat in the face of intrusion or attack.

And again, the language that we've requested in our charge is under 16-11-440(c), which puts that intent into effect. It states that a person who is not engaged in unlawful activity and who is attacked in another place where he has a right to be, including but not limited to his place of business, has no duty to retreat, has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or really the commission of a violent crime as provided.

In this case, our position is the black letter law says in South Carolina the legislature has put into effect the stand your ground law. Regardless of the evidence in this particular case, the self-defense charge, that's the charge that you give.

Nevertheless, in this case, the evidence supports that. You've got -- if you take the testimony in one way that Mr. Duncan was dealing with somebody who was manipulative, stole from him, set up a fight and represented that is somehow fair as a way to resolve this, and invited himself, depending on how you take the testimony, essentially trespassed into his friend's house with his buddies and brandished this weed in front of him and acted as if that was somehow some sort of

resolution to this situation and then, according to Mr. Duncan's testimony, stepped towards him and said something along the lines of you knew what this was going to be, that's somebody -- if the jury decides to take the evidence that way, that's somebody that has some scary sensibilities, sensibilities that are unpredictable.

And if the jury takes the evidence that way, from the plain language of the Protection of Persons and Property Act, Mr. Duncan is not required to retreat when dealing with somebody that unpredictable and dangerous.

THE COURT: All right. Thank you.

MR. THORNTON: Two very brief things, Your Honor, I just want to make clear.

State v. Bryant what it -- what the case says is -- and I believe Mr. Tripp correctly read -- read the quote from it. What it says is any act of the accused in violation of the law and reasonably calculated to produce the occasion amounting to bringing on the difficulty -- and now I'm going to paraphrase -- bars his right to self-defense, period.

What they want that to say is the accused's action that brings on the difficulty must be in violation of the law. Those are two mutually exclusive things. What -- what *Bryant* says is you don't get self-defense if you're in violation of the law when you bring on the difficulty. It doesn't say that you have to be in violation of the law in order to lose

that element. It's actually the exact opposite of that, Your Honor. So -- and I've got a copy of *State v. Bryant* here if you need it.

And just to clear up the record, I will read to you from the *Curry* opinion and this is -- I'm sorry. It's page 405 of the one I handed up to you. But this is Justice Kittredge.

The charge under the Act was indeed error. I don't know how ambiguous -- I don't know how that could be called ambiguous. And in Justice Pleicones' partial concurrence, I, therefore, agree that the appellant was not entitled to a jury charge on the presumption created by South Carolina Code Annotated 16-11-440(c).

I don't know how much more directly on point that could be. There's no ambiguity there. They said it's improper to charge under the Act. What they talk about in *Curry* is the fact that that -- those are pretrial issues. That's a pretrial matter if the defense wants to bring it at that point, but once it goes to the jury, it shouldn't be charged.

Thank you, Your Honor. I have nothing further.

THE COURT: Which is actually what Pleicones says just prior to the section you just quoted.

MR. THORNTON: Yes, sir.

MR. TRIPP: Your Honor, if I may take a moment to respond to that?

THE COURT: All right.

MR. TRIPP: Your Honor, in *Curry*, there was a couple of other issues that were the basis of the Court's statement that the Protection of Persons and Property Act shouldn't have been charged. In the last paragraph before the conclusion, the Court discusses that this was a person who was a visitor, a social guest in the home of another. It's a tough opinion to read, but my understanding of it is that part of the -- part of the reason the Court denied the Persons and Property Act language was that the Court looked at was this person a guest in the home of another.

That applied to the first -- one of the earlier sections of the Persons and Property Act -- Protection of Persons and Property Act. It's what I would call the Castle doctrine, which deals with whether you're in your home and whether you can get immunity for something that happens in your home or your car or somebody else's home.

And then another issue in the case was procedural, as Mr. Thornton said, when they were raising this. It's not really all that clear to me, but the discussion is over how the defendant in this case requested -- wanted to use the Protection of Persons and Property Act, I think in a directed verdict stage. It's just not real clear how the procedure went in that case and what the Court was responding to.

So all I can say is it's just not a super clear opinion, but my understanding is there was a procedural issue and

another issue of Castle doctrine that the Court hasn't really parsed out that clearly, but the language, the full reach of the Act, and whether the statutory provisions of the Act would extend beyond a Castle doctrine and common-law Castle doctrine are questions for another day.

So they didn't -- they specifically said it's a separate issue of whether this language that the legislature promulgated in the Protection of Persons and Property Act is supposed to create a stand your ground law in South Carolina where you don't have a duty to retreat in self-defense situations.

So that's our argument.

THE COURT: It seems like to me what you're saying is that the stand your ground law has done away with the right to retreat in a self-defense case.

MR. TRIPP: As long as the person is in a place they have a right to be.

THE COURT: Right. I'm sorry.

I don't read it that way. I understand your argument, but as to -- but I'd rather go ahead and make a decision on all these issues as to the additional language sought by the State with regard to the issue of fault or of being without fault. I'm sorry. The Court accepts the argument set forth by the solicitor and is going to deny all the additional language requested by the defense in that regard.

As to the right to act on appearances, the Court will grant the defendant's request to add the additional language.

And as to the request for additional charges on the no other way to avoid danger, the Court accepts the argument set forth by the solicitor and will deny that additional language.

Anything else we need to take up before the jury comes in?

MR. STONE: Nothing from the State, Your Honor.

MR. STEPHENS: Nothing from the defense, Your Honor. Thank you.

THE COURT: All right. Thirty minutes each. Let's bring the jury in.

THE FEMALE BAILIFF: The jury is entering the courtroom, Your Honor.

(WHEREUPON, the jury entered the courtroom.)

THE FEMALE BAILIFF: The jury is seated, Your Honor.

THE COURT: Good morning and welcome back, ladies and gentlemen. As promised, the attorneys are getting ready to make their closing arguments to you where they will attempt to convince you to see the evidence the way they see it.

Statements made by the attorneys at this stage in the -- well, at any stage in the proceeding is not evidence. It's merely argument that the attorneys make to you. They may see the evidence differently than you see the evidence. You

decide what the facts are in the case.

After doing all that, I will then tell you about the law that applies in the case and then let you return to your jury room to begin your deliberations. We will begin with the State.

Solicitor?

MR. STONE: May it please the Court, Your Honor.

Play the video.

(WHEREUPON, the surveillance video was played.)

CLOSING ARGUMENT ON BEHALF OF THE STATE

MR. STONE: That's it. **It's simple.** That's it. John Duncan walked up to Dominique Williams and put a gun in his face and pulled the trigger. No argument. No violence. No struggle. He walked up and said do you think this is a game. Hah. Boom. That's what you get. And then he ran off.

From the video itself, what you see is a murder. It's that simple. He walked up to him and he shot him. If that's all you have, if you saw this at your home, if you saw this on television, if you saw this from a newscast, you would look at that and you would say he just walked up to him and he shot him. It's murder.

The legal definition in South Carolina of murder is the unlawful killing of another with malice aforethought. That's the full definition. The judge will tell you that at the end of this case and after I get through talking and after the

defense gets through talking. The unlawful killing of another with malice aforethought. That's the legal definition.

What's the factual one? What are all the case -- all the information that you've heard, all the evidence that you've heard? If you summarize that and put it all together, what would be your factual definition of murder in this case?

Well, ironically, it comes not from the -- it doesn't come from Dominique Williams' friends. It doesn't come from the witnesses that were his friends that were with Dominique when the shooting took place. It comes from Dontarious Seay, and let's talk about who Dontarious Seay is.

Dontarious Seay was the guy that came in here and testified. He is and testified to the fact that he's John Duncan's friend. Dontarious Seay is who John Duncan's mother told you is who he hangs out with all the time. And certainly, on that Sunday, that's who he spent his entire day with.

And although Dontarious Seay didn't want to say it and he didn't want to testify, he summed up this case as a murder case pretty easily with one line. He did what he said he was going to do. Not he was afraid for his life. Not he thought he was going to get hurt. He did what he said he was going to do, and that didn't come from Dom Williams' friends. That came from that man over there's friend, who knows him better

than anybody. He did what he said he was going to do.

That, ladies and gentlemen, is murder, just like this video shows. He walked up, he said you think this is a game, are you with him? Boom. Chuckled. And then he said that's what you get. He did what he said he was going to do.

What acts do you know happened? What do we -- if you took all of the witnesses, what -- what's uncontroverted?

John Duncan left Hardeeville somewhere around 5:30, already with a .40 caliber handgun on him that he had gotten that day, not that he carried with him all the time for protection, that he went and got that day for this one job.

And he drove from Hardeeville and he met up with Dontarious Seay, the friend that pretty well describes what he did. And they walked around Coligny until he found Dominique Williams and, when he found him, he walked up to him and he shot him, point-blank range with a .40 caliber handgun that he had gotten that day to do just this.

What did Dominique Williams do? Do you see a gun in any of these pictures? I understand that Alex Contello just happened to be there already filming because he, like a lot of vacationers on Hilton Head, were there to enjoy the beach and, in fact, was doing the Snapchat and the video saying we're down at the beach, we're having a good time. But immediately after he hears the shot, he starts filming, and that's where these pictures come from where he says, oh, my

God. You can hear him in the background.

There's no gun in these pictures. When the people around start trying to help this boy, there's no gun. When they're still helping him when the police arrive, there's no gun. And as you see in that video, everybody is out of the way. Nobody was pulling a gun. Not Dominique, not Devon Williams, not Jestin Morrow. They're over here.

He doesn't even have a shirt on. None of them did. All of them, they don't have shirts, they don't have weapons. They were playing putt-putt. They didn't get geared up for a gunfight. Jestin Morrow was armed with a puppy. That's all they had.

The act alone, the video and the acts alone, which everyone admits to, everyone agrees to. Nobody argues. That's murder, but that's not everything that you heard because it's not just about those acts. It's about what John Duncan said and what he did surrounding those acts.

At the time of the shooting, according to Alex Contello -- who by the way is from Syracuse, New York. He doesn't know a soul. He hasn't talked to any of these people. Has no connection whatsoever. He said he hears the shot, he turns around, and the shooter says that's what you get. The exact same language that Jestin Morrow used. How did that happen unless it was true? How would a guy from Syracuse, New York, who had to fly back down here to testify, know what

to say if it wasn't the truth?

Ladies and gentlemen, that's what you get is not fear. It's affirmation. It's saying I did what I said I was going to do and that's what you get. That's right at the shooting. Right before the shooting, Devon Williams says he chuckled and then he heard the bam. Right before that, Jestin Morrow and Devon Williams both said the same thing. He walked up and he said do you think this is a game. Then he laughed and he shot him.

And what happened right after he ran away? Exactly three minutes after the shooting, he made a phone call to Jeffrey Wilson and what did he say? He's dead. Why did he do that? He's bragging. I did what I said I was going to do. He's dead.

And what's interesting about that, let's think about it from Jeffrey Wilson's standpoint because the defendant said that didn't happen, he didn't make that phone call. Well, here's the problem. There's a phone record that says you did. A lady from Florida from Verizon produces this and that phone record said you made a phone call, and Jeffrey Wilson said he said he's dead.

And if you want to think about how in the world Jeffrey Wilson could have made that up, it happened three minutes after he died. How would Jeffrey Wilson know when he died? It's on this timestamp, but Jeffrey Wilson didn't see that.

He's on the telephone right afterwards because he needed to tell somebody he did what he said he was going to do.

What did he do prior to that? When he got down to Coligny, he called Cedric Knighton. The phone records back that up too. And what did he say to Cedric Knighton? Where's Dominique? He was looking for him. Any reason for Cedric Knighton to make that up?

He's looking for him. That's not somebody that's afraid of somebody. That's somebody that's looking for him. And if there's any question about that, what's the next thing he says? I got that thing for him. And interestingly, he did.

Then he makes a call to Jeffrey Wilson. I'm looking for Dom. Where is he? And then what does he say to Jeffrey Wilson? I got a .40 for him.

If you have any questions about whether or not that's true, how would Jeffrey Wilson on a telephone call know that he had a .40 for him unless the guy who loaded the gun told him that? Because this .40 caliber bullet at pathology was pulled out of Dominique's head, and it wasn't until it was pulled out of his head and taken to SLED and measured that anybody knew it was a .40 caliber, except for one person. You've got to put the gun together, put the bullet in the gun. Do it all day. Say I'm going to get a .40. I'm looking for him.

So if you're wondering if Jeffrey Wilson could have made

that up, how did he get it right? How did he know unless that man over there told him?

The day before, right after the fight, right after the fistfight or whatever you want to call it, two people that are pretty much the same size and the same frame that he says he was afraid of, right after the fight when although John Duncan tells you he thought he won the fight, nobody else did, because at least two witnesses said I don't know that anybody won the fight. At the end of the day, John Duncan didn't walk away with either his stuff or his money.

What did he say? What did he say to Jestin Morrow right after the fight? If I don't get my stuff back, if I don't get my money back, he's going to get shot. I want my stuff back. I want my money back. The same thing he said in the courtroom on the witness stand. I need to get my stuff or my money.

And then what was the next thing he said to Pugg Robinson? Totally separate, what did he say to Pugg Robinson? If I don't get my stuff back, I'm going to go get a strap. Pugg said, well, he understood a strap to be a gun.

Well, here's what's very interesting about that. A strap, the exact same language that John Duncan used in his own Facebook post, State's Exhibit 38. There's John Duncan. That's his Facebook post. What does he say on the day of the fight right after the fight at 5:30? Excuse me, 5:21 to be

exact, to K Glizz Primus, somebody he described as his homeboy. He sends him a post on Facebook that says, yo, let me hold that 40 just for the day so I can catch a body. He's asking for a .40 caliber there. Nine minutes later, he sends another one to Jaquez Gadsden, another friend, totally different. Let me hold a strap so I can do something. Let me hold a strap.

Same language right after that Pugg Robinson said he used. He said he was going to get a gun and I'm going to shoot Dominique if he doesn't give me my stuff back and if he doesn't give me my money.

And then what's the last thing he said? Ten minutes later, someone tried to jugg me and he gonna get it when I see him. That's what he said.

By the way, somebody tried to jugg me. I asked him what that meant and what did he say? That's when somebody gets your stuff and drives off with it. Pretty exact, isn't it? Pretty exact what Dominique did to him. He took his stuff and drove off with it.

When he drove off with it, he sent a Snapchat and what did the Snapchat say? Tell him I got a bullet for him. He promised him that's what he was going to do and, interestingly, every time they didn't take him seriously, it probably made him mad. And he said this is what I'm going to do and he did what he said he was going to do and that,

ladies and gentlemen, is murder.

Now, the defense is going to ask you to consider that what John Duncan did he did as self-defense. There are three elements of self-defense.

Number one, that he was without fault in bringing on the difficulty. The difficulty, by the way, is when John Duncan drove from Hardeeville with a gun that he had already gotten that day and walks up to Dominique Williams, puts it in his face, and pulls the trigger. That's the trouble.

And in order for him to get self-defense, he needs to be not at fault causing that. And in fact, he did it all.

Number two, a defendant claiming self-defense has to not only not be without fault but also in fear of imminent death. He had to be afraid of Dom Williams, the same guy he had a fistfight with that you saw the video the day before. He's got to be afraid of him and he had to be afraid that he was reaching in his pocket and pulling out a gun.

Well, let's first talk about the timing of that because he talked about this on the thing. He told you when he supposedly started having this conversation with Jestin where he confronted him is the word he used. And by the way, how did he get there? By the time they got there, as Dontarious Seay described, he was speed walking to him. Once he found Dominique Williams after he had been calling people and asking where is he, once he found him, what did he do? He

started walking and he started walking fast.

Seems earlier that day when he was still looking for him, he's walking around beside Dontarious Seay. In fact, Dontarious Seay is a little bit ahead of him, but not when John Duncan saw Dom. He started, even as Dontarious said, speed walking towards him. Why? Because he was going to go do what he said he was going to do. That's what he had the gun for to begin with. And the minute he saw him, he went after him. That's why he's so far ahead of Dontarious by the time he gets there.

And once he gets there, according to them and what -- what you would have to believe is that not only was he not at fault for bringing about the problem, the shooting, but also that he was afraid that Dom was going to pull a gun out or some weapon. He had to be of fear of his own death or at least serious bodily injury and he had to develop that fear, according to him, in two seconds because that's how long it took to have this conversation where he confronted Jestin, why did you let your homeboy rob me, and then Dom had the time to say what do you mean by that, you know what the deal is, and then Dom had to come after him and kind of reach for something.

The weirdest thing. What do you mean by that is not even a threat and yet he says I was afraid of him.

Here's another thing about that. He's afraid of

somebody who had never pointed a gun at him before. He said it on the witness stand. Dom has never pointed a gun at me. He didn't point a gun at me when he ran off with my stuff and I've, in fact, never seen him pointing a gun in the past. Didn't even see him with a gun. Never has. But he was afraid he was going to shoot and he felt all of that in two seconds.

Then he had no other choice, because that's the third element of self-defense. He had no other choice. He had to. Somewhere along the way there seemed to be some conversation by the defense that, well, it was just an accident, he didn't really mean to shoot. It was a good shot.

And I suggest to you, ladies and gentlemen, that if you take a .40 caliber gun and you point it at somebody's head and you pull the trigger, you're going to hit them and they're going to die, just like the pathologist said, just like you can see on that video.

Here's the other thing and this is probably the most important thing. In order for John Duncan to have acted in self-defense, every single thing said by John Duncan and done by John Duncan the day before had to either be wrong or lies because everything he said is inconsistent with that.

That's what you get is not self-defense. That's murder. You think I'm playing is not self-defense. It's murder. Where's Dom? I've got a .40 for him. How about let me hold

that strap? I need a 40 just for the day. I need a body. None of that is consistent with self-defense. It's all consistent with murder and, in fact, if any one of those people, the guy from Syracuse, New York, Jestin Morrow, Jeffrey Wilson, Cedric Knighton, Pugg Robinson, if anything that they said, anything was true, it's murder.

In order for the defense for John Duncan to have acted in self-defense, every one of those people had to get up on that witness stand and lie and lie, and that includes his Facebook posts. That can't be real. And the telephone records, which say you made a phone call three minutes afterwards that he denies making where he said he's dead because I did what I said I was going to do. All of it has to be wrong, all of it, because if any one of that, any one thing, is right, it's murder.

I told you at the beginning of this case that it was about respect. I told you that John Duncan wanted respect. And if you go back and listen and think about a little bit of what Dontarious Seay told you and what he said in his interview, he'd been robbed before and he wasn't about to be robbed again. He was going to take matters into his own hands and he certainly wasn't going to be robbed by a little guy like Dom. And when Dom drove off with his stuff, that showed a total lack of respect to him and that fight didn't give him that respect he wanted. He says he thought he won

it, but everybody was laughing at him.

If you've got any questions about that, I want you to think about something that Jestin Morrow said when he was on the witness stand, the last question that I asked him. We'd already been through cross-examination and he'd already talked about and told the whole story. Then I asked him a question. When he told you he was going to shoot him, did you take him seriously? No, I didn't. Do you take him seriously now? Yes.

The irony of this case is John Duncan got exactly what he wanted. He got the respect. How did he do it? He killed for it.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

MR. STEPHENS: Ladies and gentlemen, I told you at the beginning of the case that, one, I'm not as polished as the solicitor. I don't have his -- near his experience. I mostly for the last 20 years did things with the Marine Corps. So I learned a little about PowerPoint and that's going to help me.

I also said at the beginning of the case that the arguments of counsel are not evidence, and that's very important. It's very good, especially because if the prosecutor or the defense counsel were crafting the story to submit to you as evidence in the case with little tiny packages like the solicitor has, we would clean up

inconsistencies and anything that might make you question whether we've met our burden or something like that.

But you are the finders of fact and you have to consider the evidence and not our arguments. I'm going to show you what I think the evidence has shown, including some videos that are in evidence, and point to little details that I'd like you, the jurors, to note.

But ultimately, you are the finders of fact. If anything that I say or the solicitor has said about what we saw in the evidence disagrees with your own memories, you can ask to come back and view or -- excuse me -- listen to the testimony that's come in. If there's a video, you can ask to view it. You can trust your own memories and you can ask to see that because I would assert to you that some of the things you just heard in argument were not the entire accurate representation of the evidence.

For instance, the solicitor just read a statement and said, yo, let me hold that 40 just for a day so I can catch a body. No, the statement is, yo, let me hold that 40 just for a day so I can catch a body of my grandma.

Again, the spelling is horrendous, but the defendant, Mr. Duncan, testified and I have the Facebook posts to show that the last several pages of Facebook messages preceding this, they were discussions with these folks about the tattoo of his grandma that he was getting on his arm and in those

Facebook messages preceding this was that that was -- that that costs $40.

That has not been contradicted. So the solicitor can make of that -- of that what he will, but you are the finders of fact and that's the testimony and you're welcome to have that testimony replayed if you'd like.

The testimony about let me hold a strap to do something, I will give you the 8 for the low, I'm glad the solicitor can interpret some of that, but I saw nothing about Dominique Williams or this incident in there.

And someone tried to jugg me and keep going. When I see him. Again, present, past tense, future. You can interpret that, whatever you believe that represents or its relevance to this case. I would argue that that is of exceptionally low relevance to the case.

I do want to talk about -- instead of going on with my lack of eloquence, I want to talk about some of the elephants in the room, some of the things that would be in my mind if I were sitting as a juror, some of the things that were brought up by the solicitor.

First, I want to deal with the comments allegedly made -- comments that were allegedly made on July 19th, 2015, the day of the shooting.

Sorry, ladies and gentlemen. One of the problems of technology is it failed at the last minute.

The first witness you heard who said something about a statement or comment on July 19th, 2015, was Alex Cotello or Contello. And as I -- as I recall, his testimony was that he was about 100 feet behind three African-American males who were playing or who were passing a basketball around. That he heard a -- that he heard a loud noise, looked up, thought there was a prank going on.

He saw someone standing over the body of a person on the ground. He believes he heard words that were, as he testified on the witness stand, that's what you are going to get. Again, you can ask to rehear his testimony.

Now, if you review the videos and you look at the point where John Duncan steps up to Jestin Morrow, you will see John standing in front of Jestin. You will see Dominique Williams in the last two seconds before the shooting move his way. You will see John Duncan turn with that movement. You will see John Duncan fire. What you actually see is Dominique fall down. Then you'll see John Duncan turn back towards Jestin and run away.

Ladies and gentlemen, no one else testified other than Alex before this -- excuse me. No one made any statement before this trial that John Duncan said that's what you get or that's what you're going to get, as Mr. Contello testified to. There were a number of eyewitnesses, as you saw on the video, to the -- to the shooting, in addition to Devon

Williams, who testified he didn't hear anything, and Dontarious Seay, who said there was something said but he didn't hear what it was, and a number of other people standing around. No one said anything about that's what you get or that's what you're going to get except for Alex Contello, who was about 100 feet away.

When Jestin Morrow was interviewed twice in 2015 and wrote a written statement, in neither interview or in the written statement did he mention hearing any kind of comment after the shooting, that's what you get, that's what you're going to get. And he came in here this week, he now remembers this. Both Alex Contello and Jestin Morrow mentioned having met with the solicitors and talked to them about their case, the initial documents, anything like that before they came in.

Mr. Contello testified that he'd been shown the surveillance footage before coming in here to testify. He was an eyewitness who had given a description of the person he saw make the statement and run away. He described that person as having a black windbreaker and black shorts on, no hat, standing over the body.

When I asked him about that description, he stated, well, that was before I saw the surveillance footage. That's exactly what you cannot do with an eyewitness. You cannot taint their testimony by trying to show them what someone

else has said or seen.

Jestin Morrow denied that he had seen Alex Contello's statement, that he had seen what Alex Contello said had been said, but Jestin Morrow also lied in his first interview. He left things out of his second interview that he only brought up here on the witness stand during cross-examination.

I asked Jestin Morrow about whether he was involved in arranging the purchase of the marijuana with John Duncan on Friday, July 17th, 2015, and he admitted he had been. In his first statement or first interview, he wouldn't even admit to knowing anything about the robbery. He said I think I heard something about marijuana. In his second interview, he admitted, well, I was there.

And now, on the witness stand, he said, well, I was there and I found out before we got there that there was going to be a robbery. Well, ladies and gentlemen, he's lied once, he's lied twice. Now, on the witness stand, he's come up with new information that just happens to match a statement of someone else's, a written statement made outside of the court.

And that other witness, again, said that he had seen other evidence not related to his own statement and that is -- that's a problem. That raises a question of that testimony.

Bear with me for just a moment. Again, I will have to

try to catch up with that if they get it loaded.

Other than Alex Contello, the other statements you had about -- about any kind of threats or comments made on July 19th, 2015, the day of the shooting, and Devon said he didn't hear anything. Dontarious said he might've heard something but couldn't say what it was. Only Alex Contello contemporaneously with what happened here said he heard anything.

Earlier in the day, the solicitor mentioned telephone calls. He said telephone calls with Jeffrey Wilson. Now, if you recall their testimony, when Cedric Knighton testified, he said that he got a call and that, this call, all he remembered was asking where Dom was and that I got something for him. He said he didn't think anything of it at the time and that was it.

Now, you see in the phone records that have been entered that phone call at 7:11 p.m. lasted for a minute and a half. Asking where Dom is, I've got something for him, that takes maybe four or five seconds. Mr. Knighton didn't remember anything else about the conversation, any background, only this, and he's asked about this after he already finds out that there's been a shooting and John is suspected of doing it. So he has that in his head.

He also told you that since the shooting he's been involved with Dom's mother's organization, Walk for Dom.

He's participated in it. He feels horrible about the shooting. His recollections of the phone call happened after he already finds out there's been a shooting and John is suspected. That's what's in his head. He doesn't remember anything else about that phone call. He doesn't remember calling anyone else afterwards.

But you also see on the phone records that approximately seven minutes after that phone call ends with Cedric Knighton, Jeffrey Wilson calls John. They had a conversation that's approximately two minutes long. When Jeffrey Wilson testified, I asked him if he was sure that John called him and he said, yes, he was absolutely sure that John called him. That was the only phone call he remembered from that day other than him calling to try to warn Dominique.

However, again, if you look at the records that are in evidence, he called John seven minutes after Cedric Knighton got off the phone. He denied knowing about or receiving a call from Cedric Knighton in this whole thing.

Ladies and gentlemen, this is a social group that communicates with each other. They share information. One of the exhibits that's been entered into evidence is part of Jestin Morrow's Facebook messages and some of the contents have been redacted and taken out for various reasons, but you'll see that Jeffrey Wilson is on a chain where some kind of files are being exchanged shortly after the fight on

Saturday.

You heard Investigator Reynells testify that those messages at that time were all about the fight. Jeffrey Wilson said he didn't know anything about the fight or the robbery until he talked to John on Sunday. Well, you saw the fight video. It is in evidence as well. There is all sorts of comments about the marijuana in the -- during the fight. Dominique mentions that he stole John's sack. There are comments. You hear them in the background. He stole your weed or words to that effect.

Ladies and gentlemen, again, these guys all know what's going on. They knew about the robbery. They knew about the fight. Jeffrey Wilson, again, after -- after the fact, remembers portions of the phone call about -- talking about Dom. He says he remembers an expression, I got that .40 for him.

However, despite everyone saying they didn't take John seriously, for some reason Jeffrey Wilson on this occasion says he took it seriously and tried to warn Dom, but there's no other indication that that happened. We don't have Jeffrey Wilson's cell phone records. We don't know what happened. Dominique Williams' cell phone wasn't examined; so we don't know what communications he made with others or what communications were made with him, other than what's been testified to.

And again, Jeffrey Wilson testified he didn't know about the fight, didn't know about the robbery, didn't take John's threat seriously, but he took it seriously enough to try to call Dom and warn him. That's inconsistent, ladies and gentlemen.

And again, Mr. Wilson didn't mention the other phone calls that John made to him. There is the one phone call that's two minutes initially. There's another phone call that's about a minute and a half. There's a phone call that's about 40 seconds. All before the shooting. This isn't, oh, I'm looking for Dom, can you tell me where he is. This is a friend who is calling another friend, another friend calls back, and that sort of thing repeats, ladies and gentlemen. There was no testimony that John was calling him repeatedly, I'm trying to hunt down Dom and -- excuse me. Jeffrey Wilson didn't know Dom's location.

Now, one thing that we do know factually -- all right. I spent a lot of time, ladies and gentlemen, asking witnesses where they live to put on this map. One of the things that I wanted to show is Jestin Morrow lives here on the northern tip of the northern part of Hilton Head Island. He lives very close to Dominique Williams' grandmother's home here on Hilton Head Island. Devon Williams lives here on the mid-eastern side of Hilton Head Island.

John Duncan and his friend, Dontarious Seay, live on the

southern part of Hilton Head Island next to Coligny Beach and Coligny Plaza. You saw other maps showing it was within walking distance of where they lived.

To rob John Duncan on Friday, the 15th -- or 17th, Dominique and Jestin Morrow had to drive all the way down Hilton Head Island to get to John's home. For anyone who lives there, I'd argue it's about a 20-minute drive unless you take the Cross Island Connector. They rob John and then they went somewhere. On Saturday, they again have to drive 20 minutes to this location to arrange for a fight between John and Dominique.

Now, you heard the testimony from Jestin Morrow where some folks are saying that John wanted to fight Dominique. I asked Jestin whether he had sent John messages that said he was scared to fight Dominique and he admitted that he had.

I mean, ladies and gentlemen, this was not John angrily wanting to have a fight with someone and driving to their house for a confrontation or anything like that. Jestin Morrow and Dominique Williams drove down. At first, they had their friends, Dajon Robinson and Drew Bouldin, come to this location. They first go to John's house to find him. When he wasn't there, they went to Dontarious' house to find him. And after they found him, they communicated with Jestin, hey, he's here and now we can have the fight.

One of the Facebook messages in evidence shortly before

this fight is a message from Jestin to Dajon or Pugg Robinson saying bring that shit to Chaplin. There was some testimony about Drew Bouldin's home off of Chaplin Park. We don't know what bring that shit -- pardon my language, ladies and gentlemen -- to Chaplin means. It could mean bring the marijuana that was stolen there. It could mean bring John Duncan there because there was testimony that they wanted John to fight at the home in Chaplin.

But again, ladies and gentlemen, these aren't, like, innocent bystanders. These are people who arranged for this fight after arranging for the robbery of John.

Now, let's see if we can get it to work. Fingers crossed I can kind of catch up to myself.

I've already mentioned -- I've already mentioned Alex Contello. One of the things I wanted to show you about his testimony, as I say, after -- he said that after hearing the bang, there was someone standing over the body of the person on the ground. Look where John is located right there. He's in front of Dominique Williams -- excuse me. Dominique -- my pardon. He's in front of Jestin Morrow and not Dominique Williams right there. This is at 8:20:29.

(WHEREUPON, a video was played.)

MR. STEPHENS: Ladies and gentlemen, there was never a point where John is over the body of Dominique Williams. He's -- there's a moment where he turns and fires. He faces

back towards Jestin and then he runs away. There are lots of other people around and there is no other testimony about what was said or heard. As I said, there's no testimony from any other -- from any other person who is seen in this video.

I want to turn briefly to the fight that happened on July 18th. There was talk from the solicitor about the threats were heard at the fight. Well, these -- John had to have an intent to shoot Dominique because of these threats that were heard at the fight, but if you consider the testimony you heard, ladies and gentlemen, no two people said the same thing about what was heard at the fight.

The testimony is there. Trust your memories. You can ask to hear it again, but Devon Williams said he heard no threats after the fight. Dontarious said he heard no threats after the fight. Dajon Robinson said he heard get the strap before seven or words to that effect. Jestin Morrow said he heard -- I'm not quite sure, but I think it's if I don't get my stuff, he's still going to -- he**'s** still going to be dead or words to that effect.

None of those are the same statement and, more importantly, none of those are recorded. There are five -- six young men. All have some form of cell phones. There's no recording of any kind of threat that was made towards Dominique from John Duncan. Jestin was filming the fight, filming afterwards. He showed you this, but there was

nothing of a threat against Dominique that was made there. Now, we don't know what Drew Bouldin would have said because he was not called by the State.

(WHEREUPON, the video of the fight was played.)

MR. STEPHENS: That's the extent of that recording that was shown. There's no threats, not recorded anywhere.

The third elephant in the room, the comments that Jestin Morrow said were made through Snapchat or however they might've been communicated after the robbery on the Friday. Jestin Morrow said that he received some kind of message that said I'll put a bullet in his head from John Duncan.

Well, as you heard testimony earlier about Snapchat, you can save those. You can do a screenshot. You can send them to someone else. None of that stuff seems to have happened in this case. There's no recording of the comment. There's no follow-up text message or any -- any other form of communication that was recorded about the comment.

Also, Jestin Morrow never mentioned it in the recording about the fight. There's no mention of threats to shoot Dominique that's in that video, only laughing and joking around, at least from the guys who were filming it and who arranged the fight.

Trey Days, the other person in the vehicle who participated in the robbery, was not called by the State to testify. So we don't know what he would have said about any

threats to Dominique.

Now, the biggest elephant in the room, threats aside because we can come back to them, but you heard the testimony from John Duncan that he doesn't recall making the threats. He didn't -- as I recall, he didn't deny making phone calls to Jeff Wilson. He just said I don't remember.

Even if he had said something on the day of the shooting, if he said something like that's what you're going to get, as you'll see from the -- from the video when you review it, just like I put it on the screen, he was facing Jestin and directing that towards Jestin and not the person on the ground.

Now, you heard the testimony from John Duncan. His animosity or whatever of the person he blamed for the robbery, the person he blamed for the fight, wasn't Dominique. It was Jestin. He told you he armed himself to protect himself and he wasn't trying to get even with Dominique, but Jestin is the person that he was concerned about, who had already participated in a robbery and already orchestrated this fight, and he wanted to know what was going on.

So most importantly, the shooting. The solicitor gave you a definition of murder under the law. Let me just remind the jury that the judge is the person who instructs you on the law. Anything that the solicitor or I might say about

what we believe the law is, that is just our opinion and to assist you in understanding our arguments. The judge will ultimately instruct you on what the law is.

We believe that the law for murder requires the State to prove beyond a reasonable doubt that there was a killing, which John took the stand, as hard as it was, and admitted to having shot Dominique. It also requires a few other things. One is that it be committed with malice aforethought. The judge will give you the definitions of malice aforethought.

It is also the State's burden and not the defense's burden to cover self-defense. The State, meaning the prosecutor, must disprove self-defense beyond a reasonable doubt. The defense doesn't have to prove anything. The prosecution has to disprove reasonable doubt, and we'll talk a little bit more about that.

We believe malice is basically hatred, ill will, evil intent. It's do you have some kind of intent or plan to kill someone. Arming yourself thinking that there might be trouble because you've been robbed, because you were confronted by a pack of older, bigger football players who made you fight this guy, that doesn't make you the aggressor in any kind of fight. You're still entitled to the defense of self-defense. Arming yourself doesn't make self-defense go away. It's what happens next. So if the State does not disprove self-defense beyond a reasonable doubt, you must

acquit John Duncan.

The solicitor covered what he believes the elements of self-defense are and the judge will instruct you after the closing arguments, but one thing I would like the Court -- the jury to keep in mind is that for self-defense to apply, you don't actually have to be in danger.

A person thinks that they are in danger and there is a reasonable belief based on the circumstances, based on past interactions, if they have a reasonable fear that they are in danger and it's a danger to their -- of loss of life or serious bodily injury. It doesn't have to be a shooting. It could be a stabbing, having three guys beat you up. It could be anything that could result in serious bodily injury. You are entitled to self-defense.

You heard the testimony of John Duncan that he armed himself. He wasn't planning on doing anything, anything happening. But he called Cedric and in that phone call to Cedric, Cedric and he talked about this party at the Tiki Hut that Dom and these other guys had been at and he wasn't there. There was some discussion about Dom. Dom had just come back to the area. Dom was now hanging out with these football players and suddenly they're robbing him, they're making him fight this guy. It's pretty serious stuff, especially for a 15-year-old.

These guys that he had hung around with, played football

with, gone to school with, went from being guys that he went to parties with and did things with them and football practice, now they are robbing him. They are coming over and making him fight someone. He didn't go to where they lived. They came to him in two packs. They went to two different addresses to find him to make him fight this guy.

He may not have been -- he said he was -- admitted he was angry about the robbery, but he cooled down. And it was a fight, but afterwards, he went to his dad's birthday party in Hardeeville. He didn't storm around and look for -- you know, look for the nearest knife and stab John -- excuse me -- stab Dom in Dontarious' apartment. He didn't borrow a car and drive to Dom's home, which he knew on the north side of Hilton Head. He went to his dad's birthday party.

And now, at some point, he got a gun to protect himself. He's 15. It was a stupid thing to do, but he had just been robbed. He just had to fight. He told you he was scared. And again, we'll talk about self-defense a little bit more, but I want to look at the -- at these videos one more time at the credibility of everyone who said something about how this shooting happened.

THE COURT: Mr. Stephens.

MR. STEPHENS: Sir, I'm sorry. I would ask the Court for more time just based on the --

THE COURT: Five more minutes.

MR. STEPHENS: I'll go fast, Your Honor.

I showed John a series of photographs yesterday as to what happened when he confronted Jestin, when he was yelling at him what's going on, you're with this guy who robbed me. And in a course of a couple of seconds, he goes from being in front of Jestin to firing.

There was testimony from Devon Williams and from Jestin Morrow that Dominique didn't do anything during that time, didn't say anything, didn't move. Now, if you look just to the right of -- I think there in the white shirt that's Dontarious Seay. You will see a white-colored hat on someone who is partially obscured by a tree. They are some distance -- I would estimate it about five to ten feet, maybe more like ten feet away from the defendant.

Now, half a second later, the person is still mostly obscured, but you see a little more of them. Another half a second and, as you look between the last two photos, that person has now gone from being half obscured by the tree to fully away from the tree, at least a foot or so away from the tree, and at the same time, if you will look, John Duncan -- John has turned away from Jestin.

You'll notice that a sudden -- that is a sudden movement in half a second from partially obscured by the tree there and now away from the tree and moving towards John. And that's when he fires, not as the solicitor stated that he

just walked up and put a gun in the face of someone and shoot and then run away. He's facing Jestin, talking to Jestin, arguing with Jestin about what's going on, and Dom moves from behind the tree towards him, a distance of an unknown number of the feet towards John, when he fires.

He testified his vision is not so -- not so good. He wasn't wearing his glasses that day, but he saw the movement and saw Dom reach for something. He told you that he heard Dom say something, something about this is how it is or words to that effect, and he told you that at that point he was in fear for his life.

And again, he's a 15-year-old. He's facing some older guys who have already robbed him and fought him and now one of them is moving in on him and he thinks he's reaching for something.

Ladies and gentlemen, I'm not sure how many folks in the courtroom have been under fire or been in a situation where you were worried you might get shot. I've been in that situation from two tours in a province of Iraq. I received incoming fire with other people, other Marines I was with. We didn't return fire because we couldn't determine where it was coming from and we were trained. In our rules of engagement at the time, we knew not to return fire unless we could determine the threat, identify it, but we were trained Marines.

This is a 15-year-old kid who just knows that there is a threat right there. Somebody is coming towards him. That he believed Dom was trying to find him that day. That he had two conversations, a conversation with Cedric Knighton and a conversation with Jeff Wilson, about them, that they were looking for him. If he asked where's Dom, that's not in isolation. I would submit to the jury that if you hear that someone has it out for you, one of your first questions, especially if that person has already come to your home to fight you, is where are they.

He's not going to be attacked again. He's not going to be robbed again. He is ready to defend himself, which he is legally entitled to do.

Again, ladies and gentlemen, just compare those first and second images. When you watch the video, if you ask to see the video, stop it and take a look at that. Now, if you do watch the video, there's just one other thing that I would like to point out to you.

THE COURT: Mr. Stephens, I don't mean to interrupt you, but how much longer do you think?

MR. STEPHENS: Your Honor, this is my last point. I'm cutting this short because I understand the Court's deal on time.

Okay. Ladies and gentlemen, there were questions from the solicitor to John yesterday about, well, when did this

so-called argument start, when did you start yelling at Jestin Morrow to try to claim this never happened, to say there was no argument.

Am I still hooked up?

UNKNOWN FEMALE: You are.

(WHEREUPON, there was a pause in the proceedings to try to set up the video, after which the proceedings resumed as follows.)

MR. STEPHENS: My apologies to the Court.

Ladies and gentlemen, if you watch the video, you will see at eight minutes, 20 seconds, and -- excuse me -- 8:20:16, there is a family walking in front of Jestin Morrow, Devon Williams, and Dominique Williams. When John Duncan is crossing the road, you can see her turn around and look back towards Dominique Williams, Jestin Williams, and -- excuse me -- Jestin Morrow and Devon Williams.

Now, we submit that that's the point where she heard the yelling. There's someone, John Duncan, talking here and this woman -- you can see her and you'll be able to see her on the center of the camera if you ask to view the video again -- that turns and looks at those other gentlemen. Again, the defense asserts that's because there was yelling. The fighting was already happening at that point.

Also -- and, Your Honor, I'm trying to wrap it but for the technical problems.

Again, they are -- that family is just to the left. That woman would have turned around and looked back at the noise from Dominique, Jestin, and Devon.

After the shooting -- after the shooting, Jestin Morrow and Devon Williams don't go to assist. They have a friend who has been shot. They walk away.

And I apologize.

You saw multiple times the videos with Jestin Morrow and Devon Williams after the shooting. They don't go and help out their friend. They walk away. They walk across the road. They disappear off camera to the right. They come back. Jestin Morrow disappears off the camera to the left for a period of several seconds.

The solicitor asked John yesterday if he had seen anyone with a gun, if he had seen Jestin Morrow or Devon with a gun and he said, no, he didn't. But again, we don't know what happened when those two walked away. We do know -- again, if you watch the video -- that they are walking calmly or Jestin is walking calmly off camera, walking calmly this way. It's over a minute before they walk back to the scene where the shooting was. That was plenty of time to get rid of anything that they did not want to be found with.

You heard the testimony from Staff Sergeant DiCarlo that when law enforcement arrived, these two did not come forward and volunteer any information. They had to be asked what

happened, and Staff Sergeant DiCarlo said that Jestin Morrow was too hysterical to provide a statement.

Ladies and gentlemen, again, you saw the videos earlier. Jestin Morrow walked off calmly. He doesn't even run away and yet a few minutes later when law enforcement arrives, he is hysterical. And neither one of them approached and tried to give any information to law enforcement.

Now, the solicitor told you that in his opinion you could take away any of these pieces of evidence and they have still proven murder. Ladies and gentlemen, each piece of evidence they've given you has some contradiction in it.

Jestin Morrow contradicted himself in two interviews in 2015. He contradicted himself again when he testified here. His behavior after the shooting is simply inexplicable. Even if he was in shock, why does he calmly walk off and is then hysterical just a few minutes later? He's either one or the other.

Devon Williams told you that he and Jestin tried to confront Dontarious, another witness in the case, a couple of days after this, so much that the Boys and Girls Club of Hilton Head had to be put on lockdown. Again, these are not the actions of innocent people who are grieving for a friend. There's something else going on, ladies and gentlemen.

All sorts of folks testified that they didn't know anything about the marijuana, they didn't know anything about

the fight, yet they are all involved. They're all passing around this information.

Ultimately, there is the shooting when Jestin Morrow and Devon Williams said that they were just walking along casually and they weren't trying to find Dominique Williams. They just happened to be where he lives. Not any of the beaches on Hilton Head, but where Dominique Williams lives -- excuse me -- where John Duncan lives at the time that John Duncan had just gotten back.

That is pretty coincidental that these guys, who had to come from the other side of the island, are now in John's neighborhood right when he's gotten back from Hardeeville. It's almost like somebody had called them to let them know. We know that there were these phone calls from Cedric Knighton and from Jeff Wilson. What we don't know is who else they called and what were they calling for.

THE COURT: Thank you, Mr. Stephens.

MR. STEPHENS: Your Honor, I would just like to make a closing statement.

THE COURT: You are way over your time limit.

MR. STEPHENS: I understand, Your Honor, but again, there were unexpected difficulties. I would just like to make a closing statement to -- to the jury.

THE COURT: All right. How much time do you need now?

MR. STEPHENS: Your Honor, I don't know. A couple of

minutes?

THE COURT: How many?

MR. STEPHENS: A couple -- couple of minutes, Your Honor. I think it would be --

THE COURT: A couple minutes. All right. Go ahead.

MR. STEPHENS: Again, I have to apologize for, again, the problems we've had trying to show you the PowerPoint presentation this morning. I also want to apologize for my own mannerisms, if they are going to annoy people. I know I'm horribly slow when I talk, when I cross-examine folks. I just ask for you not to hold that against John Duncan.

The State is saying that they have proven murder because they have these things, some statements that show a threat, some different statements that show a different threat, and ultimately that -- that John Duncan just appeared and put a gun in Dominique Williams' face. Ladies and gentlemen, that's not what happened and it is not enough to prove murder beyond a reasonable doubt.

Again, it has to be more than just the shooting. It has to be a killing with malice aforethought. And if you have any doubts as to whose story is correct, who was telling the truth and who is lying, well, the folks that we know were lying, everyone who gave a statement in 2015, gave multiple statements, contradicted themselves, all these things about threats that don't match each other. Do those impact their

credibility about the -- ultimately, about the shooting?

You are the finders of fact, but in your suspicion or a hunch or even a fairly strong belief that this was murder is not sufficient to amount to proof beyond a reasonable doubt. It has to be something that leaves you firmly convinced of the person's guilt.

In the military, we would say reasonable doubt is any doubt that's not fanciful or imaginative. I would say that if you have to imagine some unrealistic, improbable way to make -- to make the defendant not guilty, that's not reasonable doubt, but if you believe that the defendant may not have intended to shoot the victim when this shooting happened, that he was startled, surprised, in fear for his life because of sudden movement next to him by the guy that had already robbed and fought him, ladies and gentlemen, then you cannot find him guilty of murder and you must find him not guilty.

Any doubt -- any doubt that doesn't make you firmly convinced of his guilt, that there could be no real possibility that he is not guilty of murder, you have to resolve that in favor of the defendant and find him not guilty. Thank you.

THE COURT: Thank you, Mr. Stephens.

REPLY CLOSING ARGUMENT ON BEHALF OF THE STATE

MR. STONE: The defense said he is afraid. He was

afraid of confronting the big guy -- or -- I'm sorry. He didn't say confronting. John Duncan said confronting. What the defense attorney said is he was afraid of the big guys.

As he's walking across the street, does he look like he's afraid? Does he look like he's walking toward something because that he's afraid of? He's left Dontarious Seay. He's heading directly to what the defense wants you to believe is something he's afraid of, but that's not what John Duncan said. John Duncan got up on the witness stand and said I confronted Jestin.

By the way, he didn't shoot the big guy. He shot the little guy. He shot the same guy he fought with the day before, the same guy that ran off with his stuff, the same guy that's in the same class with him. They are the same size with one exception. John Duncan was a little bit bigger with a .40 caliber gun in his hand.

And then there's this vision thing. He couldn't see very well. He couldn't see Dominique, who apparently was behind a tree and came around. I thought he said he saw Dominique reach and grab something. Which is it? You can't see very well or you saw him grab something? Which is it? I didn't mean to shoot him, but if I did, it was self-defense.

Like I said, the truth doesn't come that way. It's not multiple-choice. It's not pick one. The truth doesn't come that way.

I told you at the very beginning that I would come back here and ask you one thing and one thing only and that's to tell the truth. If I haven't proven to you this case beyond a reasonable doubt, your job is to find him not guilty. If I haven't proven to you that he murdered him on July the 19th of 2015, come back here and find him not guilty.

But after you consider everything that you've seen and everything that you've heard, all of which would have to be absolute lies by everyone that came and testified, I'm going to ask you to come back here and tell us the truth, that John Duncan murdered Dominique Williams. Thank you.

THE COURT: Thank you, Solicitor.

Ladies and gentlemen, let's take a short recess before we begin the next phase, which is my 20-minute statement to you about the law that applies. I remind you it's too early to begin discussing the case.

THE FEMALE BAILIFF: Right this way.

(WHEREUPON, the jury exited the courtroom.)

THE MALE BAILIFF: The jury is clear, Your Honor.

THE COURT: Mr. Stephens?

MR. STEPHENS: Yes, sir.

THE COURT: I hated to interrupt you in front of the jury, but, you know, you had asked for 30 or 35 minutes. I said 30, and you were just a couple minutes short of an hour.

MR. STEPHENS: Your Honor, I spent a good portion of

that time just trying to make the system work that we had problems with earlier in the week with the different computers. I have no idea why it stopped functioning correctly. When we -- when we went to press play, it was working fine when we tried beforehand, Your Honor, and again, without the Powerpoint, we had to adjust it and try to make my argument in a different way.

I understand that the Court gave me some latitude. At the same time, I think that it would have been an appellate issue to cut short the arguments for the defense.

THE COURT: In other words, you could just talk forever?

MR. STEPHENS: I understand, Your Honor.

THE COURT: All right. Let's take 10 minutes.

(WHEREUPON, there was a break in the proceedings, after which the proceedings resumed as follows.)

THE COURT: I'm going to order lunch for the jury.

MR. STEPHENS: Do what?

MR. THORNTON: The judge said he was going to go ahead and order lunch.

MR. STEPHENS: Oh. No objection, Your Honor. I'm sorry. I didn't hear it.

THE MALE BAILIFF: Ladies and gentlemen, we're going to be locking up the courtroom again shortly.

Are you ready?

THE COURT: Is the State ready for the jury?

THE MALE BAILIFF: Let's come to order, please.

THE COURT: Are you ready for the jury?

MR. STONE: The State is ready, Your Honor.

THE COURT: Is the defense ready?

MR. STEPHENS: Yes, Your Honor.

THE COURT: All right. Bring the jury in.

THE MALE BAILIFF: Yes, sir.

THE FEMALE BAILIFF: The jury is entering the courtroom, Your Honor.

(WHEREUPON, the jury entered the courtroom.)

THE FEMALE BAILIFF: The jury is seated, Your Honor.

CHARGE ON THE LAW

THE COURT: Welcome back, ladies and gentlemen. We're almost there. It's now my time to tell you about the law that applies to the facts of this case.

First, I need to remind you that the fact that the defendant was arrested, charged, and indicted is not evidence in the case and cannot be considered by you as evidence, nor does it create any presumption or inference of guilt. The fact that the defendant was indicted is not to be considered by you. The indictment is simply the formal written instrument that brings the charges against the defendant. It's the document that brings the case into the courtroom.

The defendant has pled not guilty. That plea puts the burden upon the State to prove the defendant guilty. I tell

you that a person charged with committing a criminal offense in South Carolina is never required to prove themselves innocent.

I also charge you that it is an important rule of law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence that satisfies you of that guilt beyond a reasonable doubt.

The presumption of innocence does not end when you begin your deliberations, but it accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence that satisfies you of that guilt beyond a reasonable doubt. The presumption of innocence is like a robe of righteousness placed about the shoulders of a defendant which remains with the defendant until it has been stripped from the defendant by evidence that satisfies you of the defendant's guilt beyond a reasonable doubt.

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

A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Some of you may have

served on juries in civil cases where you were told that it was only necessary to prove that a fact was more likely true than not true, such as by the greater weight or the preponderance of the evidence, but in criminal cases the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know of with absolute certainty and, in criminal cases, the law does not require proof that overcomes every possible doubt.

If based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find the defendant not guilty.

As I told you earlier during this trial, you and I have had various different roles to perform. I have been required to rule on the admissibility of evidence during the trial. I tell you that you are to only consider the competent evidence before you. And if there was any testimony ordered stricken from the record in this case during the trial, you must disregard that testimony. You are to consider only the testimony which has been presented from the witness stand,

any exhibits which have been made a part of the record in this case, and any agreements that the attorneys may have announced to you.

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

As I previously told you, in every case tried before a jury, the jury becomes the sole and exclusive judge of the facts of the case, and a trial judge, such as myself, cannot intimate, state, comment on or make any statement to a trial jury about the facts of a case. Since you, the jury, are the sole judges of the facts of the case, you are not to infer from anything that I have said during the progress of this trial in ruling on the admissibility of evidence or otherwise or anything that I now say that I have an opinion about the facts of the case.

Necessarily, ladies and gentlemen, you must determine the credibility of the witnesses who have testified. Credibility means believability. It becomes your duty as

jurors to analyze and evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of witnesses who have testified, you may believe one witness over several witnesses or several witnesses over one witness. You may believe part of the testimony of a witness and reject the remaining part of the testimony of that very same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. And you may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in the case, and you may also consider the appearance and the manner of a witness while on the witness stand.

There has been evidence presented that one or more witnesses made prior statements which were not consistent with the present testimony given by that witness. You may use this evidence to decide whether to believe the witness. You may also use evidence of the earlier contradictory statements to determine the truth of those statements. It is up to you to decide whether to believe the earlier statements or the testimony given at trial.

If a witness has shown to you to have knowingly testified untruthfully concerning any material matter, you may consider this in determining whether to trust the witness's testimony as to other matters. You may reject all

of the testimony of that witness or give it all or part of that testimony the weight you believe it deserves.

If you recall, we had several expert witnesses in this case. I tell you that the rules of evidence ordinarily do not permit witnesses to testify as to their opinions or conclusions, but an exception to that rule is made for witnesses we call expert witnesses. A witness who by education or experience may become an expert in some art, science or professional calling may state an opinion as to the relevant and material matter in which the witness claims to be an expert and may state the reasons for their opinion.

You should consider any expert opinion received as evidence in this case and, like other evidence, you give it the weight that you believe it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience or if you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

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

During this trial, some of you may have taken notes. I tell you that these notes are only to be used to aid the

memory of the individual juror who took the notes, not to be considered superior to the independent recollection of other jurors.

As you know, the defendant is charged with murder. The State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought.

Malice is hatred, ill will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances the law may infer an evil intent.

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

Malice aforethought may be expressed or inferred. These terms, expressed or inferred, don't mean different kinds of malice, but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which were proved.

Express malice can be shown when a person speaks words -- excuse me -- speaks words such which express hatred or ill will for another person or when that person prepared

beforehand to do the act which was later accomplished.

Malice may be inferred from conduct showing a total disregard for human life. The law says that if one intentionally kills another with a deadly weapon, the implication of malice may arise.

If facts are proven beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would simply be an evidentiary fact to be taken into consideration by you, the jury. Along with the other evidence in the case, you give it the weight you determine it should receive.

The defendant has raised the defense of self-defense. I tell you that self-defense is a complete defense and if it is established, you must find the defendant not guilty. The State has the burden of disproving self-defense by proof beyond a reasonable doubt.

If you have a reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find the defendant guilty.

The following elements are required to establish self-defense.

First, the defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault, then the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

The second element of self-defense is that the defendant was actually in imminent death -- danger of death or serious bodily injury or that the defendant actually believed that he was in imminent danger of death or serious bodily injury. If the defendant was actually in imminent danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury. If the defendant believed he was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the same belief.

In deciding whether the defendant actually was or believed he was in imminent danger of death or serious bodily injury, you should consider all the facts and circumstances surrounding the crime, including the physical condition and characteristics of the defendant and the victim.

The defendant does not have to show that he was actually in danger. It is enough if the defendant believed he was in imminent danger and a reasonably prudent person of ordinary

firmness and courage would have had the same belief.

The defendant has the right to act on appearances, even though the defendant's belief may have been a mistake. It is for you to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation.

Once the right to fire in self-defense arises, I tell you a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act. The accused does not have to wait until his assailant gets the drop on him. He has the right to act under the law of self-preservation and prevent the assailant from getting the drop on him.

Evidence of prior difficulties between the defendant and the victim may be considered in deciding whether a threat existed and whether the defendant had a reasonable -- had a reason to believe that a threat existed and how serious the threat was.

The final element of self-defense, ladies and gentlemen, is that the defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular instance.

Ladies and gentlemen, in just a few moments, you are going to retire to your jury room, including our two

alternate jurors, but I tell you don't begin your deliberations until you receive word from me in the form of the exhibits. Once the exhibits are submitted to you, along with the indictment, that will be your cue to begin deliberations and for our alternate jurors to step out of the jury room and back into the courtroom.

For there to be a verdict in this case, the verdict must be unanimous, meaning all twelve of you must agree. When you reach a verdict in the case, I'm going to ask our foreperson if she would on behalf of the unanimous jury to enter the verdict. Of course, there can only be one of two verdicts. The verdict would be either guilty or not guilty. And sign her name.

On the back of the indictment, above the word true billed which is typed in blue ink, you will write that verdict, guilty or not guilty, and sign your name. Once you have reached a unanimous verdict, if you would please knock on the door to the jury room and advise the bailiff and then we will receive you back in the courtroom.

So, ladies and gentlemen, I would ask all of you, including our alternate jurors, to step in the jury room for a few minutes. When I send the exhibits and the indictment in there, if you'll just -- the alternate jurors step back in the courtroom. Thank you so much, ladies and gentlemen.

(WHEREUPON, the jury exited the courtroom.)

THE MALE BAILIFF: The jury is clear, Your Honor.

THE COURT: Any exceptions from the State?

MR. STONE: No, sir, not from the State.

THE COURT: From the defense?

MR. STEPHENS: Your Honor, I -- I do think -- Your Honor, I just think, if nothing else to preserve the record, the defense wants to challenge and move to strike the juror who we previously indicated as believing he had been falling asleep. I don't have his juror number. I'll try to get it. He's the large gentleman on the far left-hand side.

I believe -- I didn't see him falling asleep, Your Honor. However, during defense closing argument, I believe he motioned to someone. I am told that he asked about needing to go to the restroom and was making eye rolling and gestures about the length of time the defense was taking to get through their closing argument.

Your Honor, I'm afraid that might result in a prejudicial effect on his consideration of the defense argument and the evidence in the case.

THE COURT: Wait just one minute. Before I hear from the State, tell me again. You say you didn't observe him go to sleep or you did?

MR. STEPHENS: Mr. Tripp, my co-counsel, had observed this before.

MR. TRIPP: Your Honor, my notes yesterday during Mr.

Morrow's cross and Mr. Seay's cross -- that may have been the State -- and then Mr. Reynells' cross, I think Mr. Duncan told me he observed him sleeping. It became an issue at that point.

THE COURT: Who said he had been sleeping? I'm sorry.

MR. TRIPP: Mr. Duncan told me yesterday during Mr. Reynells' testimony.

MR. STEPHENS: I did observe him at one point with his eyes closed, but I didn't -- I didn't know if that -- I didn't realize he might be sleeping or resting his eyes.

MR. TRIPP: When I looked at him, it wasn't just closing eyes to relax. I watched him for 30 seconds at a time with his eyes closed, Your Honor.

THE COURT: And is that before or after we discussed this?

MR. TRIPP: That was before we brought the issue up to you yesterday. During -- the only time I really saw him alert was during -- and he was paying attention was during John's testimony yesterday.

And then today, I just noticed he asked the jury attendant and the jury attendant approached you about, I assume, a juror needing a break, needing to stop, and I saw before that that she was speaking to him and he gave an eye rolling gesture that he wanted to get up.

You know, that was during the time when Mr. Stephens was

going along with his argument. And then Mr. Stephens continued on talking for, you know, probably five more minutes after that. Things proceeded after that. So that's what I observed.

THE COURT: Let me make sure I understand what you're saying. That today you think he was giving eye rolls because he thought Mr. Stephens was taking too long?

MR. TRIPP: And -- and he wanted to, I assume, get up and go to the bathroom. I don't know. The attendant spoke to him and then came right over to you and whispered something. We could -- we could ask the jury attendant to testify.

THE COURT: I'm sorry. Say that again?

MR. STEPHENS: I think he means the bailiff might have spoken with that juror and I mean she might be able to clear that up, but there was something about wanting to go to the restroom during the argument or even about how long it would take, Your Honor, and I think there might be some prejudicial effect. I just want to know what was -- what that was.

THE COURT: It wasn't this bailiff?

MR. TRIPP: No.

THE COURT: Is she out there?

THE MALE BAILIFF: Bring her in?

MR. TRIPP: Your Honor, we've got two good alternates. I know one of them specifically was taking notes. This is a

situation that there's no reason not to use one of those as a backup.

THE COURT: Well, I haven't heard from the State yet. Let me see what we've got here.

(WHEREUPON, the female bailiff entered the courtroom.)

THE FEMALE BAILIFF: Yes, Your Honor?

THE COURT: The defense counsel would like to know what juror -- one of the jurors apparently spoke to you about needing to go to the -- take a restroom break?

THE FEMALE BAILIFF: Yeah.

THE COURT: Was that today?

THE FEMALE BAILIFF: When they were doing closing, he was -- I could see was getting a little uncomfortable. So when they were looking on something on the video, I said -- I mouthed to him do you need to go to the bathroom, and he said yes. And just, you know, confirmed yes. So I said, okay, and then that's when I came up to you and asked before you went into your information that we needed a bathroom break.

THE COURT: Do we need any further inquiry of the bailiff?

MR. TRIPP: Did he appear to you in his mannerisms to be exasperated?

THE FEMALE BAILIFF: No. I mean just needed to go to the bathroom.

MR. STEPHENS: I'm sorry to belabor the point, but how

-- when did you notice that made you ask him about whether he needed to go to the restroom?

THE FEMALE BAILIFF: Just he was crossing and uncrossing his legs and he was a gentleman that needed to go to the bathroom yesterday. So -- and he always make sure he goes to the bathroom before he comes in.

MR. STEPHENS: Your Honor, just to -- just to, you know, continue the point. Again, you heard from the defense is that if he needed to go to the restroom, in addition to having, I think, nodded off during the -- during the presentation of evidence, that he needed to go to the bathroom such that the bailiff noticed and had to ask him about it during closing arguments, he may not have been able to pay attention to closing arguments and may have drawn some negative feelings by the amount of time the defense took because of technical problems to finish our argument.

My concern is that if he has a negative feeling about that, that he would take that into the jury room and also may not have been attentive and able to hear the presentation of the evidence. Thank you.

MR. STONE: We started out with him saying -- with defense alleging that he had fallen asleep. He didn't fall asleep during my closing. I was watching all of them. I didn't see him fall asleep at any other time and, obviously, it sounds like from the bailiff's standpoint he needed to go

to the restroom.

Your Honor, there's no reason to replace the juror for that. That's -- so obviously, he wasn't asleep during that time either.

THE COURT: So the sleeping complaint -- I'm going to call it the sleeping complaint -- was about yesterday before we discussed the sleeping issue?

MR. TRIPP: Correct.

THE COURT: So I guess that means when we discussed the sleeping issue, there wasn't a problem?

MR. TRIPP: No. We said we would continue to watch him and I asked for anybody else to keep an eye on him in case they saw it. Yes, I didn't see him sleeping anymore after we spoke about that.

THE COURT: All right. Anything else?

MR. STONE: Nothing from the State, Your Honor.

MR. STEPHENS: Nothing from the defense, Your Honor.

THE COURT: All right. I understand. I just don't see the prejudice and I'm going to deny the motion to replace that witness [sic].

MR. STEPHENS: Your Honor, can we just identify the juror number for the record?

THE COURT: I don't know. I don't know. I guess we can ask the bailiff if she knows who he is.

THE MALE BAILIFF: I don't know if she does or not. Do

you want me to ask her?

THE COURT: Let's see if she can identify which one he is.

MR. STEPHENS: That's the only thing we want is to identify the juror number for the record. Nothing else from the defense though, Your Honor. Thank you.

MR. STONE: Should we go ahead and get these exhibits together, Judge?

THE COURT: Yeah. That's a good idea.

(WHEREUPON, there was a pause in the proceedings, after which the proceedings resumed as follows.)

MR. STONE: Your Honor, the State is satisfied all the evidence is in or collected and organized for the jury.

THE COURT: What about it, Mr. Stephens?

MR. STEPHENS: Yes, sir. We only had three; so we're good.

Sean, are you satisfied? We have --

MR. THORNTON: I'm sorry. I meant --

THE COURT: Make sure they haven't snuck anything in --

MR. THORNTON: Yeah.

THE COURT: -- that wasn't in.

MR. THORNTON: No, sir. The State is satisfied that both the defense and the State's evidence are correct, Your Honor.

MR. STEPHENS: The defense as well, Your Honor. Thank

you.

THE COURT: All right. Are we ready for the jury to begin deliberations?

MR. THORNTON: The State is ready, Your Honor.

MR. STEPHENS: The defense is ready, Your Honor.

THE MALE BAILIFF: Judge, are they allowed to open any of this if they want to open it?

THE COURT: What is it?

MR. THORNTON: It's a bullet. But it was sterilized. It's not a biohazard. They've got gloves. So the State has no objection if they want to.

MR. STEPHENS: The defense doesn't.

MR. TRIPP: We don't care.

MR. THORNTON: Your Honor, if they want to play the video, I'm assuming we're going to bring them back in here to play that for them?

THE COURT: Yeah. They don't play it back there.

MR. THORNTON: No, sir.

THE BAILIFF: Are we sending any CDs in with them for them to see or not?

MR. STEPHENS: That was my question. Do you want to have the disks out here, Your Honor, or back there?

THE MALE BAILIFF: No, we are sending them back there. They are here.

MR. THORNTON: I had them back there, Judge, for this

reason. They are labeled so they could at least tell us what they wanted to see.

THE COURT: Okay.

MR. THORNTON: Because I don't think they've got the ability to play anything if we don't send something back there with them.

THE COURT: That's correct.

MR. STEPHENS: And I would concur with that as well.

THE COURT: Let's send them back.

MR. THORNTON: Okay.

THE MALE BAILIFF: Okay.

(WHEREUPON, the exhibits and indictment were delivered to the jury room and the jury began deliberations.)

THE COURT: All right. And we will receive the alternate jurors back in the courtroom.

THE MALE BAILIFF: Yes, sir.

(WHEREUPON, the alternate jurors entered the courtroom.)

THE FEMALE BAILIFF: The alternates, Your Honor.

(WHEREUPON, the alternate jurors were dismissed off the record.)

THE COURT: All right. Court will be in recess for 10 minutes.

MR. THORNTON: Thank you, Your Honor.

(WHEREUPON, there was a break in the proceedings, after which the proceedings resumed as follows.)

THE COURT: The bailiff indicates he believes the jury has reached a verdict. Is the State ready to receive the verdict?

MR. STONE: The State is ready, Your Honor.

THE COURT: The defense?

MR. STEPHENS: Your Honor, I just want to note for the record that Mr. Tripp had to attend a plea in the other courtroom. The defense waives his presence at this time, Your Honor.

THE COURT: So we're ready for the jury?

MR. STEPHENS: Yes, Your Honor.

THE COURT: Let's bring the jury in.

THE MALE BAILIFF: Yes, sir.

THE FEMALE BAILIFF: The jury is entering the courtroom, Your Honor.

(WHEREUPON, the jury entered the courtroom.)

THE FEMALE BAILIFF: The jury is seated, Your Honor.

THE COURT: Welcome back, ladies and gentlemen. Let me ask our foreperson, the bailiff indicates he believes the jury has reached a verdict. Is that correct?

THE FOREPERSON: Yes, Your Honor.

THE COURT: Was it a unanimous verdict?

THE FOREPERSON: Yes, Your Honor.

THE COURT: Did you write the verdict on the back of the indictment?

THE FOREPERSON: I did.

THE COURT: Would you please pass it forward?

(WHEREUPON, the foreperson complied.)

THE COURT: Okay. Madam Clerk, would you please publish?

VERDICT

THE CLERK: The State of South Carolina versus John Ira Duncan, Indictment Number 2016-GS-07-02133. We, the jury, unanimously find the defendant, John Ira Duncan, guilty.

THE COURT: Anything else? Anything from the defense?

MR. STEPHENS: Yes, Your Honor. The defense just requests the jury be polled.

THE COURT: All right. Madam Clerk?

THE CLERK: If you could please stand when I call your number. Juror Number 318, is this your verdict?

JUROR NUMBER 318: Yes.

THE CLERK: Is this still your verdict?

JUROR NUMBER 318: Yes.

THE CLERK: Juror Number 297, is this your verdict?

JUROR NUMBER 297: Yes.

THE CLERK: Is this still your verdict?

JUROR NUMBER 297: Yes.

THE CLERK: Juror Number 45, is this your verdict?

JUROR NUMBER 45: Yes.

THE CLERK: Is this still your verdict?

JUROR NUMBER 45: Yes.
THE CLERK: Juror Number 273, is this your verdict?
JUROR NUMBER 273: Yes, ma'am.
THE CLERK: Is this still your verdict?
JUROR NUMBER 273: Yes, ma'am.
THE CLERK: Juror Number 376, is this your verdict?
JUROR NUMBER 376: Yes.
THE CLERK: Is this still your verdict?
JUROR NUMBER 376: It is.
THE CLERK: Juror Number 180, is this your verdict?
JUROR NUMBER 180: Yes.
THE CLERK: Is this still your verdict?
JUROR NUMBER 180: Yes.
THE CLERK: Juror Number 311, is this your verdict?
JUROR NUMBER 311: Yes, ma'am.
THE CLERK: Is this still your verdict?
JUROR NUMBER 311: Yes, ma'am.
THE CLERK: Juror Number 178, is this your verdict?
JUROR NUMBER 178: Yes.
THE CLERK: Is this still your verdict?
JUROR NUMBER 178: Yes.
THE CLERK: Juror Number 108, is this your verdict?
JUROR NUMBER 108: Yes, ma'am.
THE CLERK: Is this still your verdict?
JUROR NUMBER 108: Yes, ma'am.

THE CLERK: Juror Number 347, is this your verdict?
JUROR NUMBER 347: Yes.
THE CLERK: Is this still your verdict?
JUROR NUMBER 347: Yes.
THE CLERK: Juror Number 44, is this your verdict?
JUROR NUMBER 44: Yes.
THE CLERK: Is this still your verdict?
JUROR NUMBER 44: Yes.
THE CLERK: Juror Number 210, is this your verdict?
JUROR NUMBER 210: Yes.
THE CLERK: Is this still your verdict?
JUROR NUMBER 210: Yes.
THE COURT: Thank you, Madam Clerk.
Anything else before the jury is discharged?
MR. STONE: Nothing from the State, Your Honor.
MR. STEPHENS: Nothing from the defense, Your Honor.
THE COURT: Ladies and gentlemen, a few things before we let you go. I previously told you you could not talk about the case. Now you are free to talk about the case. You can talk about what happened in the courtroom, as well as what happened in the jury room. You have the right to talk about it or not talk about it.
I don't have any reason to think anybody is going to bother you about your verdict. If anybody persists and bugs you or bothers you and you don't want to talk to them about

it, tell them you don't have to, tell them you don't want to, if that's how you feel. If they really bother you, please report them to the Clerk of Court, but one more time, I don't have any reason to think that's going to happen. I just wanted to make sure you all knew you had that right to talk or not talk.

I want to thank you for your service. Is there anything we can do for you? We're getting ready to let you go for the week. You don't have to come back anymore. You can stay with us if you want, but I suspect you all want to leave. So, ladies and gentlemen, you're excused. Thank you so much.

THE FEMALE BAILIFF: Follow me.

(WHEREUPON, the jury exited the courtroom.)

THE COURT: Anything else from the defense?

MR. STEPHENS: Well, Your Honor, the -- since we had agreed to bifurcate the proceedings, I don't know whether to renew all prior motions and objections at this point or next, but out of an abundance of caution, I'm renewing all my prior motions and objections just for the record.

I've got a pending funding order relating to an expert who is going to testify at the sentencing proceeding, Your Honor. I know that that sentencing proceeding is going to at least be in front of yourself. So I'm sure that I'll get with the Solicitor's Office and we'll figure out when we can do that scheduling.

THE COURT: Have y'all looked at the schedule to see when I'm going to be here?

MR. STONE: I have not, Your Honor. I can check that relatively quickly.

THE COURT: And I'm scheduled to be here on a civil term of court in a couple of weeks.

MR. STONE: And we will be ready whenever you're available, Your Honor, but I will check the calendar and see.

THE COURT: Coordinate with your expert.

MR. STEPHENS: Yes, Your Honor. And I have not gotten my funding order back from Judge Mullen for her. So I'm having difficulty locking her into a court date until I've got the funding order and she can be scheduled for evaluations of Mr. Duncan.

THE COURT: Okay.

MR. STEPHENS: Thank you.

THE COURT: All right. This case is continued then, I guess, for the purposes of receiving additional evidence on defendant's motion, which was to object to the case being forwarded to -- from Family Court to Circuit Court.

MR. STEPHENS: Yes, Your Honor. And my expert is also testifying generally on sentencing.

THE COURT: And on sentencing?

MR. STEPHENS: Yes, Your Honor.

THE COURT: All right. Anything else we need to do?

MR. STEPHENS: Nothing from the defense at this time.

THE COURT: All right. Court is adjourned until further order.

MR. STONE: Thank you, Your Honor.

MR. THORNTON: Thank you, Your Honor.

(WHEREUPON, the proceedings ended.)

--- END REQUESTED TRANSCRIPT ---

Office of the Clerk of Court
RANDOM STRIKE SHEET

JUDGE NAME :
TRIAL TYPE : Criminal
PANEL ID : 2016A0710300354
COURTROOM CTR

DESCRIPTION : State VS John Duncan

Sorted by: Random Nbr
Trial

	NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1	Taylor, Rebecca L	345	W	F	( )	(X)	( )	
2	Seno, Kelsey G	318	W	F	( )	( )	( )	
3	Harris, Michael K	138	B	M	(X)	( )	( )	
4	Russell, Tonya D	306	W	F	( )	(X)	( )	
5	Gunyou, David J	131	W	M	( )	(X)	( )	
6	Russell, William A	307	B	M	(X)	( )	( )	
7	Teresi, Debra F	347	W	F	( )	( )	( )	
8	Yaralian, Lorraine M	396	W	F	( )	(X)	( )	
9	Robertson, Sarah F	297	W	F	( )	( )	( )	
10	Buck, Tami L	46	W	F	( )	(X)	( )	
11	Bryant, Sandra M	45	W	F	( )	( )	( )	
12	Payne, Linda L	273	W	F	( )	( )	( )	
13	Kronen, Linda J	186	W	F	( )	(X)	( )	
14	Weltzer, Louis E	376	W	M	( )	( )	( )	
15	Kennedy, Theodore M III	180	W	M	( )	( )	( )	
16	Donsbough, Lawrence A	91	W	M	(X)	( )	( )	
17	Parrott, George D	270	W	M	( )	(X)	( )	
18	Bly, Janice J	32	W	F	( )	(X)	( )	
19	Sargent, Markus A	311	W	M	( )	( )	( )	
20	Al-Rashed, Sahra A	3	B	F	( )	(X)	( )	
21	Caylor, Michael C	57	W	M	(X)	( )	( )	
22	Keniston, Rebecca J	178	W	F	( )	( )	( )	
23	Fitzgerald, Victoria	108	H	F	( )	( )	( )	
24	Willis, Michael J	388	W	M	(X)	( )	( )	

Office of the Clerk of Court
RANDOM STRIKE SHEET

GE NAME :
.IAL TYPE : Criminal
ANEL ID : 2016A0710300354
COURTROOM CTR

DESCRIPTION : State VS John Duncan

Sorted by: Random Nbr
Trial

	NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25	Turner, Rebecca R	358	W	F	( )	(X)	( )	
26	Bryan, Prince R	44	B	M	( )	( )	( )	
27	Lu, Dongfeng	210	A	F	( )	( )	( )	
28	Cobb, Matthew L	64	W	M	( )	( )	( )	Alt. II
29	Izzo, Jesse L	162	W	M	( )	( )	( )	
30	Dube, Christina	93	W	F	( )	( )	( )	
31	Bailey, Franklin S	14	W	M	( )	( )	( )	
32	Oberg, Douglas G	262	W	M	( )	( )	( )	
33	Lynch, Rowena A	211	W	F	( )	( )	( )	
34	Bonino, Laura J	34	W	F	( )	( )	( )	
35	Talcott, William G	343	W	M	( )	( )	( )	
36	Baker, Charline S	16	W	F	( )	( )	( )	
37	Caramante, Katherine J	55	W	F	( )	( )	( )	
38	Coxwell, Michael S	69	W	M	( )	( )	( )	
39	Robinson, Maria M	298	H	F	( )	( )	( )	
40	Brown, Melvin	43	B	M	( )	( )	( )	
41	Kollar, Anthony P	184	W	M	( )	( )	( )	
42	Craft, Laverne L	70	W	F	( )	( )	( )	
43	Ball-Muinix, Amy L	20	W	F	( )	( )	( )	
44	Black, Barbara A	31	B	F	( )	( )	( )	
45	Vicuna, Thomas A	364	H	M	( )	( )	( )	
46	Madison, Linda C	213	B	F	( )	( )	( )	
47	Delaguila, Lisa A	85	W	F	( )	( )	( )	
48	Hengel, Steven J	145	W	M	( )	( )	( )	

State of South Carolina)

) Certificate

County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 712, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Beaufort County, South Carolina, on the 6th through 9th days of May, 2019, as taken down by Official Court Reporter Aileen Butler and transcribed by me to the best of my ability.

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

s/*Krystal J. Smith*

Court Reporter

Florence, South Carolina

March 16, 2020

770 **WITNESSES**

S Reynells- BCSO

ARREST WARRANT NUMBER

2016A0710300354

Foreperson of Grand Jury

Date:

VERDICT

Guilty

True Bill

Foreperson of Petit Jury

Date: 09 May 2019

INDICT

DOCKET NO. 2016GS0702133

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

June Term 2017

THE STATE

vs.

John Ira Duncan

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

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

Defendant

I

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

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT

2016GS0702133

At a Court of General Sessions, convened on June 22, 2017 the Grand Jurors of Beaufort County present upon their oath:

Murder

That in Beaufort County, South Carolina, on or about July 19, 2015, the Defendant, John Ira Duncan, did, with malice aforethought, kill Dominique Williams and Dominique Williams did die as a proximate result of his actions, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor

True Bill

772

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort)

STATE) INDICTMENT/CASE#: 2016GS0702133

VS.)

John Ira Duncan) A/W#: 2016A0710300354

AKA:) Date of Offense: 07/19/2015

Race: Black Sex: Male Age: 20) S.C. Code §: 16-3-10

DOB: [redacted] SS#: [redacted]) CDR Code #: 0116

Address: [redacted] Old Charleston Hwy, Hardeeville, SC 29927)

DL# * SID#) SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ MANDATORY GPS (CSC w minor 1st or CSC w minor 3rd) ☐ §17-25-45

The charge is ☒ As indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury (def's initials)

The plea is ☐ Without Negotiations or Recommendation ☐ Negotiated Sentence. ☐ Recommendation by the State

ATTEST:

(Solicitor) (SC Bar #) (Defendant) (Attorney for Defendant) (SC Bar #)

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,**

for a determinate term of 37 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years

and or to pay a fine of $ _____ ; _____ provided that upon the service of _____ days/months/years and or payment of $ _____ ;

plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered** **PTUP** _____

Total: $ _____ plus 20% fee: _____ $ _____ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

☐ Obtain GED

☐ Attend Voc. Rehab. Or Job Corp. _____

Recipient: ☐ May serve W/E beginning _____

*Fine: Public Def. Fee		$	40.00
§14-1-206 (Assessments 107.5%)		$	
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$	100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$	
§56-5-2995 (DUI Assessment)	$12	$	
§56-1-286 (DUI Breath Test)	$25	$	
Proviso 61.6 (Public Def/Prob)	$500	$	
§14-1-212 (Law Enforce. Funding)	$25	$	25.00
§14-1-213 (Drug Court Surcharge)	$150	$	
§50-21-114 (BUI Breath Test Fee)	$50	$	
§56-5-2942(J) (Vehicle Assessment)	$40 each	$	
3% to County (if paid in installments)		$	3.75

☐ Substance Abuse Counseling

☐ Random Drug/Alcohol Testing

Fine may be pd in equal consecutive weekly/monthly pmts of $ _____ Beginning _____

$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel

Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

TOTAL $ 168.75

Clerk of Court/Deputy Clerk Joseph Hinson

Court Reporter: Becky Hill

Presiding Judge:

Judge Code: 2139

Sentence Date: November 6, 2019

MP-SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	INDICTMENT NO: 2016-GS-07-02134 WARRANT NO: 2016A0710300355
STATE OF SOUTH CAROLINA	)	
vs.	)	
	)	Nolle Prosequi
John Ira Duncan, Jr., Defendant.	)	*in custody*

2019 JAN 14 P
JEORI ALLEN
BEAUFORT CO
CLERK OF

THIS INDICTMENT IS *NOLLE PROSEQUIED* on January 14, 2019 by Assistant Solicitor Julie Butner for the following reason:

The charge of Possession of a Weapon During a Violent Crime cannot be waived from Family Court.

Julie Butner

Assistant Solicitor
14th Judicial Circuit

774

WITNESSES

S Reynells- BCSO

ARREST WARRANT NUMBER

2016A0710300355

Foreperson of Grand Jury

Date:

VERDICT

True Bill

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2016GS0702134

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

June Term 2017

THE STATE

vs.

John Ira Duncan

Indictment For

Possession of Weapon During Violent Crime

SC Code: 16-23-490

CDR Code: 0549

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

Defendant

I

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

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2016GS0702134

At a Court of General Sessions, convened on June 22, 2017, the Grand Jurors of Beaufort County present upon their oath:

Possession of Weapon During Violent Crime

That in Beaufort County, South Carolina, on or about July 19, 2015, the Defendant, John Ira Duncan, did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime and John Ira Duncan was convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor

True Bill

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2016-GS-07-2133

STATE OF SOUTH CAROLINA,	)	
	)	
	)	
	)	
v.	)	TRANSCRIPT OF RECORD
	)	
JOHN IRA DUNCAN,	)	
	)	
DEFENDANT.	)	
	)	

NOVEMBER 6TH, 2019
COMMENCING AT
BEAUFORT COUNTY COURTHOUSE
BEAUFORT, SOUTH CAROLINA
BEFORE THE HONORABLE BROOKS GOLDSMITH, JUDGE.

APPEARANCES:

SOLICITOR ISAAC MCDUFFIE STONE, ESQUIRE
FOURTEENTH JUDICIAL CIRCUIT SOLICITOR'S OFFICE
POST OFFICE BOX 1880
BLUFFTON, SOUTH CAROLINA 29910
Attorney for the State of South Carolina

MR. JEFFREY STEPHENS, ESQUIRE
POST OFFICE BOX 525
BEAUFORT, SOUTH CAROLINA 29901
Attorney for the Defendant

Rebecca H. Hill
Official Court Reporter

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May it please the Court, Your Honor. We are here before you on Indictment 2016-GS-07-2133.

This was the original indictment charging John Ira Duncan with the offense of murder. This case was tried to a jury which convicted the defendant on May the 9th, 2019. The defense at that time asked for a continuance for the purposes of sentencing. I think, under current law, because the defendant was waived up from Family Court, and because this offense carries the possibility of life, that is proper under Aiken v. Byars.

So Your Honor granted that motion and we're here today. I think you have received the report from the defendant and we are willing and ready to move forward. We also have family members of the deceased here as well. I will hand you up the indictment, as well as the sentencing sheet.

THE COURT: I am unaware that I received any information from the defendant.

MR. STEPHENS: You haven't, Your Honor. I didn't think it was proper, since it hadn't been admitted as an exhibit. I did send a copy to the Solicitor's Office. I borrowed a copy of the report from the expert that is retained by the defense and we intend to offer that up at the appropriate time, Your Honor.

THE COURT: All right. Who is going to present first?

SOL. STONE: Your Honor, and I think this will clarify

issues as well, and I have, in fact, received the expert's opinion, and it seems to be broken into two sections. One of which I think is proper to hear before Your Honor and the other one I do not.

The first 36 pages outside of the background that the expert did on the defendant is referencing the Family Court waiver procedure. I do not believe that that is proper before you.

Now, I do believe starting at page 37 where it discusses sentencing, and, in particular, expert testimony concerning the mitigation and sentencing, considering your sentencing ranges from 30 years to life, I think that is proper.

I think not only is it mandated under Aiken v. Byars, but I also think it would be proper information for you. So accordingly, I would object to the expert testifying as to anything concerning the waiver hearing. That is, as far as I can tell, I did a decent amount of research, along with my staff, on the concept of whether or not the waiver procedure -- were it even a bad waiver procedure, would that be appealable to you as a circuit court judge or to the court of appeals in the supreme court. And I think our case law, Your Honor, is pretty clear on that point.

If you will, I will go ahead and explain my position on

that. It starts in 1980 with State v. Lockhart. State v. Lockhart is a Supreme Court Opinion and it really bases -- it is one of the rare one-page Opinions that I've ever seen. At the very bottom of it, it talks about that the transfer of a juvenile from a juvenile procedure through the waiver process into adult court is one that is not appealable before a final judgment. And the final judgment in this case, Your Honor, is not just the conviction, but it's also the sentencing. That is clarified in the next case that I will hand up to you, which is State v. Rice.

State v. Rice is actually not directly on point in the concept of a family court waiver. It brings in a different issue; but Justice Pleicones in his Dissent is pretty specific about what areas are appealable directly to the Circuit Court, what have to go to the Court of Appeals, and he cites what I believe is well-established law.

In fact, at one point, Judge Pleicones said this is well-established law. His quote, and I'm starting talking on page five of the six-page-Opinion that I handed up at the very bottom paragraph on the right column: "It is well settled that a juvenile who has been waived to General Sessions may not immediately appeal that Order but must wait like other criminal defendants until he has been sentenced." Again, the conclusion of the case has to be not just a conviction but also the sentence.

Justice Pleicones goes on to say in that paragraph ahead of that one that "Appeals from a Family Court Order are cognizable only in either the Court of Appeals or the Supreme Court."

Again, at the beginning of that same paragraph, the Circuit Court jurisdiction over an appeal from a Family Court Order in only one circumstance is when the family court judge has denied the State's motion for a waiver. So had we gone to Judge Fuge in Family Court and asked him to waive the defendant up to General Sessions, and Judge Fuge denied that, we could then bring that to you, but that is the only one, and Justice Pleicones specifically refers to South Carolina Code Section 63-19-210 and the subsection is (6). In that section, and I'll hand you a copy of that code as well, it specifically states that the only thing that is appealable is that denial because then the Circuit Court judge has the opportunity to go in and say, "No, it is proper in front of my Court."

I think what's interesting about all of this as well, Your Honor, and this is brought out in a case called State v. Sanders, and I'll hand this up. This is a very brief statement. On page two of this Opinion, the second paragraph, and I think this kind of sums it up is that the jurisdiction of the Family Court Order over juveniles is a privilege rather than a matter of right and the best

interest of the public or of the juvenile may require that the juvenile be held accountable.

These cases, along with the same language, was noted in State v. Isaac and I'll hand this up; this is the last case. This case also states basically the same thing. This is a post-conviction relief. The issue there is what is appealable and what is not and it's noted in a paragraph. Again, citing back to Lockhart that a Family Court decision of a waiver process has to either go to the Court of Appeals or the Supreme Court; it cannot be addressed to the Circuit Court.

Having said all of that, Aiken v. Byars, and I know, Your Honor, you're familiar with this case, sets out the five parameters that you have to consider when you are considering a sentence that carries life. I think it's actually arguable that what it really says is before you give a defendant life in prison, you have to consider those five factors.

I do believe that it is appropriate to hear from the expert as to mitigation, but the State strongly objects to any testimony concerning the waiver process, whether or not the Kent factors, which is what the expert talks about is that the Kent factors are outdated and that South Carolina shouldn't use them. She also states that mandatory minimum sentencing shouldn't be used.

There are a number of things, Your Honor, that simply aren't before you and cannot be before you. I understand that the defense may need to build a record for appeal, but today's process, really, Your Honor, I believe needs to be focused on the actual sentencing of the defendant and that includes any mitigation that she is going to offer. But that, to me, and I believe from the State's position that is that that has to be limited simply to mitigation and not a waiver of process, because I don't believe that's proper before you.

THE COURT: All right. Thank you, Solicitor. Mr. Stephens?

MR. STEPHENS: Your Honor, I agree with the solicitor about the current state of the law up to a point that there are a couple of things in the case that was handed up and that the challenge to the Family Court Waiver of Jurisdiction would be proper prior to sentencing in this case.

If the Court recalls, I had discussed this briefly in listing the challenge to the family court waiver in our pretrial matters, and it was clear at that point that this was not something that was appropriate before sentencing, so I don't disagree with that.

However, Your Honor, we are -- contrary to what the solicitor said, the defense believes that we are here for

actually two proceedings. The first is the sentencing of the defendant; the second part would be the defense's opportunity to make a motion for new trial, which we would do.

In that motion for new trial, Your Honor, I believe that we have the opportunity as the solicitor said to build a record for appeal, if nothing else, we believe would have been errors in the case that amount to a basis to order a new trial, Your Honor.

Your Honor, while we believe for the issue of judicial efficiency, it would be easier to allow our expert to testify just one time and offer her report; at that time, the defense is prepared to recall her during our motion for new trial and offer -- proceed with the Family Court Waiver at that time, Your Honor.

As the State has said, we have an obligation to build a record for which the Court can order a new trial or the Court of Appeals can review the matter to make sure that the family court jurisdiction waiver was done properly.

In the motion for new trial that the defense intends to offer up, the transcript of that hearing, the report of the DJJ Psychologist who did the assessment of the defendant, and the Order from the Family Court, so it's within a part of the record instead of a Court of Appeals trying to have any of that transcribed or located within the family court.

Since that court reporter for the family court hearing has already retired, Your Honor, we believe that the interest of justice kind of require us to build a record now, as they may not be able to build one on appeal later. But as to the solicitor's point, we understand that we would not be able to offer a challenge to the family court waiver jurisdiction in the sentencing.

I believe there is going to be some overlap in the assessment of the defendant as with the testimony of Dr. Kleinfelter, defense expert, but we're not challenging for sentencing purposes the Family Court Judge, Judge Fuge's decision or determination to waive family court jurisdiction in that case.

THE COURT: But you think that nevertheless that portion of the expert's testimony would be proper as part of the motion for a new trial?

MR. STEPHENS: Yes, Your Honor. I believe that would cover cradle to grave everything that's happened in the case. Otherwise, the Court of Appeals would have no record of any potential errors that happened. If the Court disagrees with the position of the defense, we would just ask that in the alternative that we be allowed to proffer this information again to build that record for the Court of Appeals. Otherwise, it will not exist and that would be a miscarriage of justice, in our opinion, if the Appellate

attorney cannot properly challenge the transfer of jurisdiction.

In fact, while I don't have the citation in front of me, Your Honor, I have -- I am aware of at least one South Carolina case where the Court of Appeals has found the issue waived if the challenge of jurisdiction was not raised by the defense. They held that that was not a jurisdictional issue, even though we used the term "jurisdiction", but judicial and not waivable jurisdiction.

THE COURT: All right. Thank you, Mr. Stephens. Solicitor?

SOL. STONE: What he has described is an appeal. He has not described a motion for a new trial, and here is how I think we can summarize this. Let's say you grant it. Let's say the Court says, "You know what, I'm going to give them a new trial." Where would we be? We would be back here in circuit court trying the case just like we started out to begin with. Because at this point, that is an issue for the Appellate Court, not for you. And I have great respect for the bench, and certainly -- I think the procedure is pretty clear. What he's describing is an appeal, not creating a record for what happened in the courtroom that you presided over; that you tried. And so asking for a new trial would be some error, a judicial error, or some other factual error, or some error that the

jury was involved in that would allow us to -- or require us to start that General Sessions trial all over again and try it again. Not overturn the decision of the family court judge from a waiver process. The only entity that can do that is an appellate court.

THE COURT: Well, let me ask you this, Solicitor. The defense counsel says that if I agree with the argument that you just made, then he does think it would be appropriate for him to submit part B as a proffer.

SOL. STONE: And that's fine. I actually talked to the attorney general about this specific issue and that's going to come into the record one way or the other; whether they put it in here or they put it in through -- if he wants to introduce that, that's fine. But we're talking about the -- the entire report is 39 pages. And the actual sentencing information starts at page 37.

Now, a good bit of the first of it is background of the defendant and certainly that is proper. But a good bit of this entire report is based simply on that waiver process. If he wants to introduce that as a court exhibit, I think it goes in; I think it builds the record. But whether or not we have a full-blown hearing on the waiver process is what I'm objecting to. I don't think that is fair to the family to have to go through that.

THE COURT: Anything else from the defense on that issue?

MR. STEPHENS: No, Your Honor. I think that while we are here for our purposes here and for Appellate purposes, we maintain that challenging the family court waiver is appropriate and a motion for new trial, but based on how the Court rules, we're also prepared to go forward with a proffer just to build that record if need be, Your Honor, while maintaining our position and objection on that issue.

THE COURT: All right. Well, I'm prepared to go ahead and rule on this issue. The Court disagrees with the defendant on that issue, except the argument of the State as it relates to waiver and appealing that in this proceeding. But you do intend to move forward with documents at this part of this hearing?

MR. STEPHENS: Yes, Your Honor. Right now it is marked as a Defendant's Exhibit. I don't know if the Court wants it marked as a Court's Exhibit, but either way, we're intending to offer it even if it is just to have it based on the Court's ruling just as a profferable record. Your Honor, we also offer the testimony of Dr. Kleinfelter for the same reason to proffer the defense's position, and again, if the ruling of the Court is challenged on Appeal so that the Court of Appeals has a proffer on what Dr. Kleinfelter would have testified to as a sentencing matter, I'm sorry, Your Honor, on the motion for new trial, if it is determined to be proper on a motion for new trial.

So if it's alright, Your Honor, we have Dr. Kleinfelter and we intend to recall her on our motion for new trial or to at least proffer for that testimony into the record, along with her report for the Court of Appeals.

THE COURT: All right. And you said you want to hear your motion for new trial first before we proceed?

MR. STEPHENS: Your Honor, based on the Court's ruling, we're satisfied to go forward and offer -- attempt to qualify Dr. Kleinfelter and then offer her testimony at the appropriate time on sentencing. It would just be recalling her to proffer further testimony in our motion for new trial.

THE COURT: Solicitor?

SOL. STONE: I think handing up the document is proper, but ---

THE COURT: Is there going to be anything substantially different than what's in the document?

MR. STEPHENS: I don't expect, Your Honor, that Dr. Kleinfelter is going to testify any differently than what's reflected in her report. I don't believe there is going to be any additional testimony. If the report would serve as to evidence of what she would testify to, then the defense would be satisfied to just proffer that report at the appropriate time and then we will make a motion for new trial. But we are prepared to go forward with sentencing,

again, we offer Dr. Kleinfelter's testimony for her assessment of the defendant that she has conducted in this case with background information. We do not have a litigation specialist, but Dr. Kleinfelter would be offered on her information that she has gathered and her assessment of the defendant at the time.

THE COURT: All right. Are you ready to call your witness, then?

MR. STEPHENS: Yes, sir. If the Court wants to take it in that order; I'm not sure if the State has any witnesses.

THE COURT: I got the impression that the State agrees with you, but I'm not sure I know that.

SOL. STONE: I'd like to go ahead and hear whatever she has to say for mitigation. Our family would also like to be addressed, but I don't want to clog that down with a bunch of other stuff.

THE COURT: Mr. Stephens, you may proceed.

MR. STEPHENS: Your Honor, at this time, we would call Dr. Kate Kleinfelter.

(WHEREUPON, THE WITNESS, DR. KATE KLEINFELTER, IS DULY SWORN.)

DIRECT EXAMINATION

BY MR. JEFF STEPHENS:

Q Good morning, Dr. Kleinfelter.

A Good morning.
Q Dr. Kleinfelter, could you please state your full name and spell your last name for the record?
A It's Katherine Joyce Kleinfelter.
Q How do you spell your last name?
A It's K-L-E-I-N-F-E-L-T-E-R.
Q Thank you. And Dr. Kleinfelter, what is your current occupation?
A I'm a licensed clinical psychologist in private practice.
Q All right. Would you please tell us about your education?
A I have a bachelor's degree in psychology from Clemson University, a minor in sociology. I have a PhD in clinical community psychology from the University of South Carolina. I attended an APA, American Psychological Association approved internship in Chicago at Illinois-Masonic Medical Center and I'm licensed to practice psychology in South Carolina since 1991.
Q Just hitting the high points, what kind of work have you done since completing your education?
A I've worked primarily with State agencies and non-profits in South Carolina. I mainly work with adolescents and families. I have worked with kids who have had juvenile justice involved for quite some time through the alternative

schools and through regular public schools and through therapeutic foster care agencies and I've worked on a grant for the University of South Carolina and Center for Disease Control on a program designed to train counselors in the Lowcountry part of the state how to prevent serious behavior problems in children.

Q And you were previously employed by the South Carolina Department of Juvenile Justice?

A Yes.

Q And what did you do with work relating to juveniles?

A Well, I was the director of the psychology program for the girls at Broad River Road Complex, BRRC, behind the fence initially. I provided crisis work for the boys who were behind the fence there. And before, I became director of the Midlands Community Evaluation Division and there I supervised psychologists who were completing physician evaluation reports, and in that capacity, I also conducted pre-waiver evaluations around the state, and I started up -- I initiated the two work groups: one to improve general evaluations that DJJ were conducting, but also to improve the waiver evaluations that DJJ was conducting, to make them more evidence based.

I trained -- I was a trainer for the agency as well. I trained all the psychologists on psychometric features of tests and what were good tests to use for this population of

kids and what were tests that were not good to use for this population.

Q All right. Since you left DJJ and went into private practice, what do you primarily focus on in your private practice?

A Initially, I was conducting therapy and general assessment, but I was receiving quite a number of referrals for forensic evaluation, so I shifted into doing that just primarily. So that's what I do primarily, now, is forensic evaluations. I still consult with DJJ trying to help them with their evaluations.

Q Now, what type of specific or part of the training have you had in the area of forensic assessment of juveniles?

A Specialized training in it?

Q Yes, you mentioned different assessment tools. What tools do you use and how have you been trained on them?

A Right. Well, for forensic tools, I use a couple tools that I can talk about more if you want, but it's the -- one that is specific to waiver is the RSTI: Risk Sophistication Treatment Inventory, and it was developed by a man named Dr. Randy Salekin at the University of Alabama. So I've taken training from him and I've also reviewed the text in the manual. I also consult with him regularly on cases. Anytime I have a new case that comes up, I would talk to him about the proper use of that instrument. Then, there is the

-- I also use the SAVRY, which doesn't require as intensive training as the RSTI does. So it's not as challenging to use.

Q What's the ---

A I'm sorry, it's the Structured Assessment of Violence Risk in Youth.

Q And these are assessment tools or tests just for juveniles; for assessing juveniles?

A Yes, they're for juveniles, and they assess issues that are specific to the KENT factors. So that's one thing that is particularly helpful about them is that they look at "What do we know?" What does the research base tell us about risk factors and maturity factors in juveniles?" and they're monitored over the treatment.

Q Now, you say that you've conducted the forensic assessment of juveniles. Can you estimate about how many forensic assessment of juveniles you've conducted at DJJ and in private practice?

A I would say that I've conducted general forensic assessment of juveniles, about 50 or 60. I think that a supervised -- other psychologists doing evaluations, and I'm just supervising, maybe over 400. But as far as waiver evaluations in particular goes, I've probably conducted about 10 and I've supervised about the same amount.

Q And in South Carolina, is that few or many?

A These type of cases don't come along very often at all, especially ones that are at that age range that's allowed by the State to be considered for a transfer. There just aren't that many to come along. Psychologists might do one in a year.
Q In the different forensic assessments of juveniles that you've done, how often have you had to prepare a report potentially to go to Court on those cases?
A I've prepared a report in all of those cases.
Q And about how many times have you been called upon to testify in a South Carolina Court on a forensic assessment of juveniles?
A I've only been called to testify about half the number that I've conducted, so about five. There's a variety of reasons why that happens, like after the evaluations are completed, either the solicitor may decide to go ahead and keep the kid in family court or they may decide to charge him. In one case, they brought the charges. So there are all kinds of things that can happen.
Q All right. And what types of courts have you testified in?
A Primarily, Family Court.
Q Have you ever testified in a General Sessions Court before?
A Yes.

Q And about how many times now?
A I think once.
Q Now, in your previous testimony in Family Court and General Sessions Court, were you qualified as an expert in those cases?
A Yes, sir.
Q And did any judge in any of those cases refuse to have you qualified as an expert?
A No.
Q Have you ever failed to be qualified when you were offered as an expert in a South Carolina Court?
A No.
Q Now, just briefly to make sense of what you mean by forensic assessment of juveniles, what are those forensic assessments looking for? What were they meant to do?
A Are you talking about forensic assessment with regard to waiver or in general?
Q Well, that kind of brings me to the next question. So are there different types of forensic assessment of juveniles that you would do?
A Yes.
Q And some of them would be for Family Court Waiver Hearings?
A Yes.
Q And some of them would be for other matters?

A Yes.
Q Okay. For the Family Court Waiver Hearings, what would the assessment be intended to address?
A We want to address very specifically the juvenile's risk of future violence, the risk of future violence, the level of sophistication and maturity, and their amenability to treatment, and the services available within the Juvenile Justice System that might serve that youth.
Q All right. And you said there were other assessments you might do for other matters as well? I'm sorry -- there are different types of assessments, but that is what you would do for pre-waiver?
A For waiver, specifically, yes.
Q Okay. And are those -- in the conduct of the pre-waiver assessments, are those laid out anywhere by statute or code for DJJ?
A They're not laid out by statute, but there are ethical guidelines that are provided to us in our profession.
Q Now, have you ever published in the field of forensic psychology?
A In general, yes.
Q Do you know about how many articles you've published or co-authored on general forensic psychology?
A I think maybe four.
Q In the specific area of forensic assessment of

juveniles, have you published anything in that area?
A No, I have not.
Q Have you trained any other professional in that area?
A In which area?
Q In forensic assessment of juveniles?
A Yes.
Q And would that be why you were at DJJ?
A Yes.
Q Have you done any other training of any other psychologists in the field of forensic assessment of juveniles?
A I'm sorry?
Q As a private attorney, do you continue to teach or do any kind of training in that area?
A As a private psychologist, not at this time. I'm not training anybody at this time.
Q And do you still have any training of attorneys practicing in the area of juvenile justice?
A Yes, I do. Yes, I have.
Q And I think as you stated, you maintained a currency in the best practices for conduct of forensic assessment of juveniles?
A Remained current, is that what you said?
Q Yes, ma'am.
A Yes -- yes, I do.

MR. STEPHENS: Your Honor, subject to objection by the State, at this point, I would offer Dr. Kleinfelter as an expert in the field of Forensic Psychology and Assessment of Juvenile Offenders.

SOL. STONE: If I may, just to ask a few questions, Your Honor.

THE COURT: Sure.

SOL. STONE: May it please the Court?

CROSS-EXAMINATION

BY SOL. STONE:

Q Doctor, the RSTI, the Risk Sophistication Treatment Inventory, which was one of the tools that you just discussed that you utilized?

A Yes, sir.

Q And you believe that is one of the better tools that you in fact utilize?

A It's one of the better tools that we have for waivers.

Q Let me ask you specifically, did you utilize that tool in this report?

A Did I use it?

Q Yes, ma'am.

A No, I did not.

Q You did not use that tool?

A I didn't administer it, no.

Q Okay. So what is the ---

A He's 20 years old now.
Q Pardon me?
A He's beyond the age range for it.
Q Okay. So that section of this report doesn't need to be in here. That doesn't have anything to do with the report then?
MR. STEPHENS: Objection, Your Honor. At this point, pointing to the Court's prior ruling, the report of the expert is not in evidence at this point. We agree if the State -- defense intends to proffer it in a motion for new trial, but the State moved to exclude references to that -- the portions of the report not directly dealing with sentencing. I'm not sure if the State is opening the door to all of that right now.
SOL. STONE: It's not an issue that I could open the door to anyway, Your Honor. That's an Appellate issue. The question is, though, she's testifying, she's trying to be qualified as an expert. She uses a particular tool. I'm trying to find out what this tool is and she mentions the tool, but I'm not understanding what that is. So I'm actually asking her about the tool that she testified on Direct that she uses.
THE COURT: All right. I will overrule the objection. You may proceed.
SOL. STONE: All right. Thank you.

Q So let me just -- it's the RSTI; am I getting that right?
A Yes, sir.
Q I think there is a Dr. Randy Salekin? Did I pronounce that correctly?
A Salekin, uh-huh (affirmative).
Q And he's the Alabama doctor that ---
A Yes, he is.
Q All right. I was noticing on your CV the certifications that you have. That's not listed as a certi - - is there a certification process to use that tool?
A There is not.
Q There is not, okay. And is that a tool that is currently used by the South Carolina Department of Juvenile Justice?
A It is actually just started to be -- it just started. They had their first case where they've used it now.
Q So they are using that?
A They just started it.
Q So that has now been -- because I was reading in your report where it says that -- and let me make sure I get that right. The South Carolina Department of Juvenile Justice Psychology Department had discussed adopting this for several years, but have not. So have they adopted it or are they just still looking at it?

A What has happened is, and DJJ can speak better to this themselves, but they talked about using it for a long time, but just didn't get around to it. Then, they finally did some training on it and it sort of stalled out there. Now they've officially had their first case where they've used it and I think they're planning to start having everyone use it now.

Q Okay. But in this case, you didn't use that anyway?

A I didn't use it because he was 20 years old, so he was beyond the age range for it, so I just explained it. I described the instrument in the report.

Q Okay. When you have been qualified as an expert, what is your expertise been as far as the Court? What has the Court determined you to be an expert in?

A I'm a clinical psychologist.

Q A clinical psychologist. And so, basically, any evaluation concerning a juvenile in a capacity of being a clinical psychologist?

A Yes.

SOL. STONE: I don't have any objection as far as her qualifications, Your Honor. I think that somewhat limits, again, what she can testify to, but I think she has already clarified that.

THE COURT: Your motion to qualify the witness is granted.

MR. STEPHENS: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUES

BY MR. STEPHENS:

Q Dr. Kleinfelter, you were just asked a question and I want to clarify something you stated when answering a question from the Solicitor a moment ago. You said that you did not use the RSTI in assessing John Duncan, the defendant, in this case; is that correct?

A That's correct.

Q And I believe you testified that that was because he was outside the date range, or age range, that's recommended for use of that assessment tool?

A That's correct. Also, it was intended to be used closer in time to the offense itself.

Q Okay. Is it possible to do a retrospective assessment using that tool?

A It is possible to do that, yes.

Q And did you attempt to do a retrospective use of the RSTI in assessing John Duncan?

A I spoke to Dr. Salekin about it actually to see what he thought, and he thought it was a good case to do a retrospective RSTI on. The problem was that there was delay in the Court Order, in me receiving the Order and there was, I think, like funding was cut in half, so we just didn't have the time or the resources to do it. It's a very

tempting evaluation to do, as you can imagine, to go back in time.

Q So I believe you just said that you weren't able to do it because lack of funding and time?

A Time, yes, and funding, too.

Q All right. Now, in the assessment, you were able to do on John Duncan, what type of records or documents were you able to review in your work in this case?

A It is stated in my report, too, pages one and two, but I reviewed the general police file, which included the Court Orders, Petitions, Affidavits, witness reports, the autopsy report, police incident supplementary report, the cell phone video of the fight between John and Dominique on July 18th, 2015.

I also looked at video footage of the index of him. I looked at the waiver evaluation that was conducted by Dr. Dunn. I looked at the MDJJ. I looked at the DJJ social summary. I looked at the school grades, attendance, and discipline records for Ninth and Tenth Grades. I reviewed the transcript of the waiver hearing, specifically for the testimony of the DJJ representative, Ms. Smalls, and Dr. Dunn. I looked at the Transfer of Jurisdiction Order completed by The Honorable Peter Fu -- I'm not sure how to pronounce his name, sorry.

Q Fuge.

A Fuge, okay. The Beaufort County Detention Center records, and I looked at -- I referenced the State Newspaper series that came out this past year and I also referenced the manuals for the two instruments I recommended he get a waiver, RSTI and SAVRY; and so, I think that was it for his records.

Q Did you review any records or literature in the field that was not contained in the Family Court Record in this case?

A Yes. I reviewed well over 100 research articles and scientific journals on the issues as related to waiver and all the major textbooks that are out right now on forensics and juveniles.

Q Other than the records that you were able to review at the time relating to Mr. Duncan, or John, did you do any other gathering of information in the case?

A I did -- I came and interviewed John on two separate days, and I also interviewed his mother, Mrs. Duncan, and I also interviewed his paternal aunt, Ms. Dupont. And I had contact with the newspaper reporter who wrote the article about SCDC to get more information; and also with Ms. Jenny Barr who is the director of the young offenders program at SCDC, and also spoke with Dr. Amanda Newmoyer who wrote an article that I reference in the report itself.

Q Now, you were talking about assessment tools that are

used for juvenile assessments earlier in your qualifications. Do you know how old John was when you met with him to do your own assessment?

A He was 24 years old.

Q And did you -- if those assessment tools for juveniles weren't appropriate based on his age, did you use any other assessment tools?

A I didn't use any other forensic instruments with him. I only used one instrument, which is in the report, which is the Juvenile Victimization Questionnaire. And the reason I used that is because it's -- he had given some indication of -- and the records indicated that he might have been bullied, but he was having a hard time of understanding the concept of talking about it, so this instrument is used by the Office of Juvenile Justice Delinquency Prevention and they find it to be more easily understandable to youth who are reading it.

So it other words, instead of asking a youth, "Have you ever been emotionally abused?" Well, kids, a lot of times don't understand what that means, so it breaks it down more into specifics; that's all it does.

And why, again, why did you feel like it was appropriate to use that Juvenile Victimization Questionnaire?

A Because I kept getting indicators that he had been

bullied and trapped and I wanted -- he was having a hard time though understanding like he really didn't understand what the concept -- I asked if he had been bullied and he said, "I don't know." He wasn't sure exactly what that meant.

Q What indicators did you get in your interviews or reviews of documents that led you to believe that he might have been bullied in this victimization questionnaire that was inappropriate?

A Well, the records indicated that he had -- and the report too was that he had been bullied when he got -- mainly around Ninth grade -- Eighth grade, Ninth grade, and he even had said -- this really sort of stuck out to me, he said he had wanted to change schools because of this. And so, that's a pretty, relatively drastic move to make, you know, to want to change schools; so it suggested to me that maybe more was going on than he was indicating. Also, he was very reluctant to talk about being victimized in any way.

It was, I think, somewhat a threat to his masculinity to be considered a victim in any way. But in talking with mom and him, for a while they revealed some other things too in this assessment. Such as, they revealed that there was domestic violence in the home. That Mr. Duncan was physically and emotionally abusive toward John's mother and they were

reluctant to talk about it. Partly just, I mean, a lot of people are reluctant to talk about such things. They feel ashamed and it's a hard topic to talk about. But mom had said that she was becoming more open about this with the help of her church.

She was trying to work on more honesty between her and John, too, and about all the family problems they had faced. The evaluation itself when I read the waiver evaluation, the family was described as just so perfect. It just was like -- it was too perfect. And so that kind of raised a red flag for me, as well.

Q Now, in your assessment, you conducted -- excuse me. You stated certain things about John's mental status. I believe that is on pages six to seven of your report, just to orient you. Is there anything you can tell the Court about your observations and determinations about John's mental status and functioning?

A There wasn't anything particularly remarkable in the mental status exam with John. The only thing that kind of came up was that he did seem pretty hopeless about his life situation and he -- another thing I noticed was that he -- he had some difficulty with higher order thinking. Like, he -- direct basic communication he could get, but if you talked in hypotheticals or anything like that, he had a harder time following along with that. That sort of

sophisticated level of thinking.
Q Were you able to gather any information about -- is there anything about his developmental history that would have contributed to, in your opinion, would have contributed to the incidents in this case, like the shooting of the victim? I think you got information with all the history on pages nine through eleven of your report.
A I think the main things that I wonder about is -- or what I think may have contributed, and it's more about I think going back to -- I think there were several things that may have contributed, but as far as his developmental history goes, I think that witnessing domestic violence over an extended period of time is going to have an effect on a child. We see a lot of youth in the Juvenile Justice System who have witnessed domestic violence or violence in the home and who wasn't able to talk about it and they haven't been able to talk about it for a long time. So -- and mom even said to me, his mother said to me that she felt guilt and shame for exposing John to that for such a long period of time, but that's not unusual. Domestic violence is a very secretive thing still to this day.
Q Is there anything you can tell the Court about the general psychology of a juvenile as far as brain development that might have affected John's decision making in this case? You said he had a hard time with his decision making.

A Well, I mean, we've got layers we're talking about here. We've got the layer of the immature brain of an adolescent, which is pretty well known at this point in the judicial system. You know, so many decisions have been made in the Supreme Court based on what we know about adolescent brain development. About him having like simply an immature prefrontal cortex and limbic system.

So they've been able to show this with modern brain scans and that's pretty well held up at this point in the court system. So we have already an immature brain where he's got a limited ability to -- he knows -- you know, people know right from wrong. It's the part about making decisions, looking into the future. Kids just don't think into the future like adults do. They don't think about long-term consequences. Anyone who has a teenager knows that for sure. They -- you've got this combined faulty brake system here and then you have this active limbic system that deals with mood and emotions, and it is overactive right now in the adolescent stage of development.

So overactive emotions combined with inability to inhibit your behaviors is a tough combination for adolescents. They're much more risk-taking at this stage of their life than they ever will be at any other point in their lives. You combine that with somebody who's dealt with trauma, who's dealt with domestic violence, and he's

also had some other problems too in his life.
Like, he witnessed a child, a friend of his, being shot on a basketball court when he was eight years old at a very young age, and that really stuck with him for a long time. So you got this kid who's got -- but I think domestic violence is more consistent on a daily basis.
So what happens is, this already overactive limbic system gets revved up even more. That's what they -- they can see this in brain scans now if you experience chronic trauma. So it gets revved up even more such that these kids are very hypervigilant. They're on edge even more; kind of looking to be hurt in some way by somebody. So if something that somebody does that might seem nothing to anybody else or kind of benign to anybody else, it's seen as much more of a threat to these teenagers.
Q Is there any kind of general trend in regarding recidivism among juvenile offenders? I mean, it is different in adults or is it pretty much the same?
A Most of research says that -- the experts will say this, they'll say -- like Steinberg, and all these people, national experts in this area, will say that most youth, even those who offend in serious or violent ways do not go on to do so into adulthood. The actual severity of the offense is a fore marker of maturity. A lot of times we base it on the type of offense that is committed, actually

not on -- again, we say it over and over, the Supreme Court Decision, the heinousness of the offense is not the best marker for making these decisions.

Q And were you able to form an opinion based on your assessment and work with John as to the risk of recidivism in his case?

A No, I did not do that.

Q Are you aware of any violent history or anything like that, that got your attention when you were reviewing his records?

A There was some fighting -- and previously, because there was some history of two fights in high school; that was about it.

Q Were you aware of any involvement he had with the juvenile justice system?

A No, he had no involvement at all with the juvenile justice system.

Q So ---

A Actually -- I'm sorry ---

Q No, please, go ahead.

A Which actually, I just want to add, that that is what stuck out for me, why I weighed on his case is that he had no history of juvenile justice involvement, and that is considered to be even more of a predictor of future violent behavior in adults than a single offense, a single, violent

offense.
Q Understanding that you were able to interview and assess John initially ---
A I'm sorry. I meant juveniles, not adults.
Q So you weren't able to interview and assess John contemporaneously with the offense, but based on your interview of Dr. Dunn's assessment in Family Court and any other records in this case, do you have an opinion about his maturity at the time the offense was committed.
A Yeah. There were things that -- well, first of all, she said that he was -- his maturity was the level of an average 15 year old adolescent. And what stuck out to me on that was, first of all, that's not the goal line at all. A 15 year old adolescent isn't functioning in the same capacity of maturity level that an adult is. And then, maybe, what happens, you know, development occurs in different domains in different time periods. So for example, some kids will become physically developed by the time they are 13 or 14; you know, they may be six feet tall, so they look like adults, but in other capacities they're not.

Now, I think intelligence, they made a comment at about age 16, you can be at a competent intelligence level as an adult. It's not going to get much higher after that point. So it may be comparable in some way cognitively to adults at

age 16. But in other areas, they tend to lag far behind, and that's in the areas of social, emotional development, and those play critical parts in decision making. It's not just how intelligent you are, it's also about how much emotion and some peer influence take over and influence your decision making. We know that is much more pronounced in youth than in adults.

Q Based on your assessment of John, did you receive any information about his amenability to treatment or use of any sources that may be offered at the South Carolina Department of Corrections?

A Yes. One mistake that people tend to make in these evaluations to begin with is they will ask if they are interested in treatment. If you ask a teenager if they're interested in treatment, especially if he is at the pre-juvenitory stage at the detention center, you're going to get all kinds of answers. Most of the time it can be "no". Here's why: first of all, if you're a boy, boys are not jumping with joy to go into therapy; especially teenage boys. So the other thing is that sometimes they're afraid that if they say they're going to -- if you ask them if they're interested in treatment, they will be afraid that will indicate guilt somehow at the pre-adjudicatory stage. Or they will say they're afraid that they are going to go to a hospital. Or they will say that they're afraid it means

that they're crazy or something like that.
There is a lot and many more reasons why a kid will say no they're not interested in treatment than they are going to say yes. What we have to do is break it down for them and explain to them that it's not just treatment, its rehabilitation; and what does that entail? What does rehabilitation mean? So it means things like -- and so that's what happened to John. He was just asked when he was 15 years old if he was interested in treatment, he said "no", and a lot of kids do. But when I talked to him about it, he said he couldn't understand -- he asked me what does that mean exactly. So I broke it down for him and explained what rehabilitation means. It means education. It means skill building. It's not just about therapy and talking about feelings. It's about what skills you need to develop to reduce your symptoms. That's the whole focus. And so he said to me -- he said, "Well, no one has ever explained it to me like this before." Then, he, you know, he also talked about some things that he enjoyed. Like he talked about in the juvenile detention center, he talked about they had somebody come in and do some training on mindfulness, which is a big thing in psychology right now. It helps people to calm their feelings and emotions. John was always talking about "I would like to be better." That was a theme for him, he wanted to be better than he was. He wanted that in

education. He wanted that to manage his emotions. He wanted that in several realms. And it wasn't like he had a prepared speech for me when he said this. This came out through after spending some time together.

And also to add his family. I forgot to mention his family. He expressed an interest in becoming involved when they would have a way to come down and meet. I've been doing therapy for over 25 years, and I actually think that this is a family that would benefit from treatment, and would have benefited from treatment. Unfortunately, they never got any in the first place.

Q Now, are you aware of any correlation between long-term confinement and chances of rehabilitation? In other words, is there any literature that you're aware of in clinical psychology about for the longer terms of incarceration for an increased chance of rehabilitation?

A Well, confinement in general is not considered to be inductive to improve behavior. There's all kind of reasons why people are confined; I understand that. But we know that first of all, I don't know if I can mention this or not, because I mean, when it was brought up at the waiver hearing that the adult system had more services for John and that was agreed to, that was the most shocking thing of the whole waiver hearing to me.

No psychologist that I know would say that youth are better

off in the adult system versus the juvenile system. That just hasn't been proven. The juvenile system is much more attuned to kid's developmental needs and when they've done a study of studies -- they take all the studies and they determine what are the best studies and what conclusions can you draw from those.

When you have youth who are equally matched and a bunch of different characteristics, equally matched, and you have one kid who stays in the juvenile system and one kid who goes into the adult system, the kid who goes into the adult system has a -- their recidivism rate is I think 34% higher. They reoffend more quickly, sooner, and more often than the kids who are retained in the juvenile system do.

The other concern is, of course, and I mentioned in my report that there is a great difficulty in kids getting access -- or anybody really, getting access to services at SCDC right now. I mean, the ratio of security to inmates is so high that no one can get anywhere. The problem is transporting the kids to the services so they can't get there. And I know in the juvenile system they can get there; there's just a different ratio. And services in the juvenile system are more developed and more appropriate.

Q Thank you, Dr. Kleinfelter.

MR. STEPHENS: I don't believe I have any further questions at this time for the witness on sentencing, Your

Honor.

THE COURT: Solicitor?

SOL. STONE: Yes, Your Honor.

CROSS-EXAMINATION

BY SOL. STONE:

Q Doctor, let me ask you a few questions and I want to make sure that I'm clear. I know that at some point, Dr. Dunn had gotten a different impression of the family than you did; is that correct? Dr. Dunn is a -- forgive me, a psychiatrist/psychologist of ---

A She's a psychologist.

Q And she is the one who did the initial evaluation which was in fact pretty close to the time that the crime took place?

A Yes, she did.

Q And at that point, he was 16, I guess?

A He was 15.

Q Okay. When the crime took place, he was one month from his 16th birthday; did you know that?

A Yes, I did.

Q Okay. So assuming that she does the evaluation, he has either already turned 16 or he's pretty close; is that right?

A When she completed the evaluation?

Q Yeah. When she actually did the evaluation when she

evaluated him.
A I think when she completed the evaluation she said he was 15.
Q Okay. Let me -- I'll get back to that. The point being is that when Dr. Dunn spoke to Duncan and when Dr. Dunn did the evaluation, this was close to the time of the event. He was at that point, age appropriate for the various tools that I think you previously described. And she, quite frankly, got a different impression than you did from the family; is that right?
A She did.
Q And I'm assuming that a lot of that is because when you are gathering this information, a great deal of the information and a great deal of the decisions that you make are going to be determined by, number one, who you interview and what they tell you; is that fair?
A Yes.
Q I'm not saying an entire thing is subjective, but certainly from context of what you have to do, you have to get the information from them. What information they give you is going to be dependent on what your decision makes; is that fair?
A Yes.
Q Okay. So in the context of the information that you gleam from the people that you interview, which included the

defendant, the defendant's mother, and the defendant's aunt, you see one picture, which was different than the people that she interviewed. But those people are the three primary people that gave you this information for you to make your decision?

A Decision? I'm sorry. Decision about what?

Q About your testimony today.

A Well, I think my testimony is based mainly on forensic protocols.

Q And I'm glad you brought that up, because from what I understand from your earlier testimony is that the forensic tools that were available or could have been available when he was 16, 15, are not available to you now. So you didn't have the forensic tools. So not only are you limited by what the people are going to tell you, but you are also limited in the tools you can use; is that correct?

A I'm sorry. I'm confused by your question.

Q All right. The RSTI, is that correct, RSTI?

A Yes, sir.

Q Can't use that because of two things is what you told me. Number one, couldn't use it because of his age. He is 20. He wasn't 15, he wasn't 16. Second thing you said was because it's not meant to be used so far removed in the time of the crime itself; is that correct?

A That would be correct, yes.

Q All right. So even in the -- not only does your outcome determine about the people that you talk to, but it is also somewhat limited because you have less tools to use; those forensic tools that can be used. For instance, the RSTI was not available to you; is that correct?
A The RSTI was not available to me.
Q Now, when we talk about his age, we -- I think you testified that the problem with somebody this age, there's two things. One is they are impulsive. The other is they lack foresight; is that fair?
A Yes.
Q All right. I'm assuming that you've talked to a lot of people in the South Carolina Department of Corrections. You've interviewed probably a healthy hundred or so; is that fair?
A Interviewed people?
Q That are actually serving time in the South Carolina Department of Corrections.
A I have not interviewed hundreds of them, no.
Q Okay. Have you interviewed anybody in the South Carolina Department of Corrections?
A I've spoken with people who are inmates in the SCDC.
Q Have you talked with any of them that have foresight?
A I didn't assess them for that.
Q Well, I don't know if it's an assessment as much as

it's I don't know how many people actually like being there. They committed a crime, and in fact, when they committed the crime, they were looking at the immediate and not the foresight of "Hey, I might end up in prison."

A Oh, I see what you're saying. Actually, adults are better at that. They are much better at looking in to the future. They tend to plan more.

Q Could you give me a list of anybody in the South Carolina Department of Corrections that you think has foresight? I'd like to see that. Have you ever met anybody that does? Any of those people that you interviewed?

A I'm not sure how to answer that, because I don't walk into SCDC and start interviewing people.

Q All right. Well, let's talk specifically about John Duncan. Let's talk about his impulsiveness. You studied the incident report. You studied somewhat of the case itself; is that right?

A Yes.

Q So you're familiar with his trial and what happened in the trial?

A I did not attend the trial.

Q No, I know you didn't attend it. Did you read the transcript?

A No, I did not.

Q Okay. So what are you going off of? You're going off

of police reports and interviews with John Duncan, basically, about what happened?
A Went off of the most what?
Q The information that you're providing here in the courtroom, I'm just kind of wondering how much of this case do you know about. Do you know what happened in this case?
A Yes, I do.
Q Okay. And let's talk specifically about the impulsiveness of this case. You're familiar, are you not, that this case didn't happen as a "he happened to have a gun on him, he pulls it out and shoots Dominique Williams in the face". This is something that took place at least over a three-day period; are you familiar with that?
A Yes, I am.
Q It starts out because John Duncan is selling marijuana and Dominique Williams supposedly takes it from him. That's on a Friday; is that right?
A Yes.
Q They have a fist fight, and I think you saw the video that took place on Saturday, again, concerning the theft of the marijuana that John Duncan was trying to sell. Did you see that video?
A Of the fist fight? Yes.
Q Yes. Okay. And the fist fight, you would agree with me, looked to be pretty voluntary on both of those people's

part; would you not?
A I don't know how voluntary it was for either of them.
Q For either John Duncan or Dominique Williams? Well, let's limit it to them since Williams is the one who is actually dead. John Duncan, at some point in time, was actually on top of Dominique Williams beating him in the head; you saw that part of the video?
A I saw him holding him down.
Q Okay. All right. So at least as far as these two people fighting, it was pretty voluntary as far as the fight, and I don't even know that anybody could determine who won the fight; is that fair?
A Yeah, I would say that was fair.
Q All right. And that is Saturday. You're familiar, are you not, with the after the fight that John Duncan says, "You better give me my dope back or I'm going to shoot you. I'm going to kill you." Are you familiar with that? John Duncan saying that?
A (No answer.)
Q I'll rephrase it. Are you familiar with the fact that even after the fight, John Duncan told Dominique Williams, "If you don't give me the drugs back, I'm going to kill you"?
A I'm not exactly sure what all the specifics were they exchanged between each other after the fight.

Q Okay. Are you familiar with John Duncan saying that to other people?
A I knew there were threats going back and forth between all of the boys.
Q Okay. I'll get to the threats from the other boys in just a second, but let me just stay on this one. So Friday, Duncan is mad at Williams for stealing his marijuana. Saturday, they have a fist fight. Saturday afternoon, Duncan threatens to kill Williams if he doesn't give the drugs back. Then, later on that afternoon, are you familiar with the fact that John Duncan posts on his Facebook page, "I need a gun, because somebody tried to rob me"? Are you familiar with that?
A I have some familiarity with some of the aspects of this case, yes.
Q All right. And then Sunday, even Sunday, all day at some point, Duncan gets this gun and then goes down to Hilton Head to find Williams to kill him; are you familiar with that?
A Yes, I am familiar with that.
Q All right. This was, in the trial of the case, State's Exhibit 15.
SOL. STONE: And this is an exhibit, Your Honor, that we had that was referenced and was not actually introduced into evidence which is why we still have it.

Q This was used by a number of people who testified. This indicates that Duncan left his house at somewhere -- or was actually in Hardeeville between 5:06 and 5:37 and drove to Hilton Head, which is about 30 miles away before he finally found the victim somewhere around 8:30 before he shot him; are you familiar with that?
A Yes.
Q All right. Now, the school records that you reviewed, did you review any school records from any other place other than Hilton Head?
A No, I was only provided with records from Hilton Head.
Q Okay. I was just curious, he is actually coming from Hardeeville. Do you know if he actually went to school in Hardeeville at one point?
A I think his mother mentioned that.
Q Is it possible that he actually went to Hardeeville, transferred from Hardeeville to Hilton Head High School?
A I don't know.
Q Is it possible that the bullying that you have heard about actually took place in Hardeeville and he had already transferred to Hilton Head and was actually in Hilton Head? So the bullying that you're talking about, and this bullying that you got the information about is not concerning something that is currently happened, but something that used to happen? Is that possible?

MR. STEPHENS: Your Honor, I understand this is an opinion witness, but this still calls for speculation on her part. She has testified about the information she had.

THE COURT: I'll sustain the objection.

SOL. STONE: Okay.

Q But you don't know one way or the other; is that fair to say?

A I'm not exactly sure at which school the bullying took place. I think -- I know they said Ninth Grade.

Q All right. Now, I show you another chart which shows the Coligny Circle and the cameras. The reason I want to do that is because you said, I think, you watched the video of the actual shooting; is that right?

A Yes, I did.

Q Okay. Did you also see the video footage from the Frosty Frog restaurant up here at the top? Did you see that footage?

A Not that I'm aware of.

Q Did you see the footage of John Duncan walking -- and I'm going to point to the right of this, but, basically north along this circle?

A I was provided with some video footage of the actual, I think, around the time of the actual shooting.

Q All right. And the video footage back here that I'm assuming you saw, which was the actual shooting, John Duncan

is walking south when that happens, in this direction, is that right?
A I don't know.
Q Okay. Point me -- did you see any video footage of John Duncan spending the time that obviously the cell phone tower indicates going back and forth on Hilton Head looking for Dominique Williams?
A No, I did not.
Q Did you take a look at any of the text message or phone call records or anything like that indicating that he is calling people that have testified who, in fact, testified in the courtroom that he is calling people during this time period looking for where Dominique Williams is?
A I know there were some phone calls that were going in and out, yes.
MR. STEPHENS: Your Honor, I would also object to this line of questioning. He's pitting her against the other witnesses who have testified in the case.
SOL. STONE: Judge, she is testifying that -- her entire testimony is speculation based on the information that she received. I think it's important to find out, and as an expert is required in the rules, they can gather information from both in the court, outside of the court. She is a different witness. You don't pit those type of witnesses. As an expert witness, she can gather information

from whatever source she wants to, to give her expert opinion. So I want to know how much information she actually had before she gives this testimony. It sounds like there is a good bit of stuff that I think she doesn't know about, which is fine; but I think it's relevant for me to ask about that.

THE COURT: I agree. I overrule the objection.

BY SOL. STONE:

Q All right. And one other thing, too, would it change your opinion any of the situation when you talk about bullying if, in fact, he had been bullied in another school and not the one he was currently attending? Would that change your opinion at all?

A If these boys were not bullying him at all, then, yes, I would change my mind.

Q All right. Well, let's talk about that. I know in your report you talk about he is the younger. You understand that at the time of the event, Duncan was 15 years and 11 months. So in fact, by the way the law stated at that time, had this occurred 30 days later, this would have been an automatic case in adult court.

A Yes, it would have.

Q He would have been 16. The people that he was hanging around, the people that were involved in this, the people that you see on the video, Jestin Morrow, Dontarious Seay,

Cedric Knighton, Dajon Robinson; are you familiar with those names?

A Yes.

Q All of them are 16, are they not?

A Are 16 or ---

Q At the time were they 16?

A Were some 17?

Q Those people I just asked you about were 16. Jestin Morrow, Dontarious Seay, Cedric Knighton, Dajon Robinson, all whom are involved in this and all of the people in this video, and all the people that they are talking back and forth on, all the people that he is making threats to, are all the same age.

MR. STEPHENS: Objection, Your Honor. Facts not in evidence. I believe that some of these people were 17, Honor. Some of these facts are not in evidence.

SOL. STONE: I'm sorry, Your Honor. I'll be more specific.

THE COURT: Okay.

Q Jestin Morrow born [redacted], at the time of the event was age 16. Dontarius Seay born [redacted], [redacted], was age 16. Cedric Knighton who was born [redacted], was age 16. Dajon Robinson was born [redacted]. He was at the time of the event age 16. Those are the people I'm specifically asking about. There are two

other ones that are 17 and I'm going to get to those. But for those 16 year olds, they are all the same age and they are all in the same grade; are they not?

A I don't know if they are in the same grade or not.

Q Devin Williams is 17 and Jeffrey Wilson is 17. In fact, Jeffrey Wilson was born [redacted]. At age 17, he is the oldest of the entire crowd. Are you familiar with Jeffrey Wilson?

A I have heard the name.

Q Are you familiar with the fact that Jeffrey Wilson, his testimony and other testimony that confirms that actually told Duncan not to shoot Dominique Williams. To calm down and to stop. Are you familiar with that?

MR. STEPHENS: Objection, Your Honor. Again, facts not in evidence. I don't believe that was the testimony.

We don't have a transcript.

BY SOL. STONE:

Q Are you familiar with the fact that Jeffrey Wilson told Duncan not to shoot him?

MR. STEPHENS: Objection, Your Honor. It is not a fact.

SOL. STONE: I believe it is, Your Honor. And certainly, the transcript would weigh that out, but again, if the expert is testifying to this, the question is what does she know about the case?

SOL. STONE: I'll move on. I'll move on, Your Honor.
Q Let me ask you one more thing as far as bullying is concerned. You interviewed Mrs. Duncan; did you not?
A John's mother?
Q Yes.
A Yes.
Q Okay. You interviewed John Duncan?
A Yes, I did.
Q Okay. I'm assuming you interviewed Duncan in the Department of Corrections, or in the detention facility?
A Yes, I did.
Q Okay. And I'm assuming that Ms. Duncan, you interviewed her at her home or somewhere?
A At a local establishment.
Q All right. Did you review any jail telephone calls between the two; between John Duncan and his mother?
A No, I did not.
SOL. STONE: I'm going to ask, if we could, Your Honor to play this. It has been marked as a disc as State's Exhibit One. I'm going to ask you if you could identify these voices as Mrs. Duncan and as John Duncan.
(Whereupon, Exhibit is marked and State's Exhibit One is received into evidence.)
(CD begins play; CD is stopped after 8 seconds.)
Q Do you recognize that as John Duncan's voice?

A I couldn't -- couldn't recognize that as his voice. I take your word for it.

SOL. STONE: Play that again, please.

Q Do you recognize that as Ms. Duncan's voice?

A I'm not sure what they're talking about though.

Q I'm not asking you what they're talking about. I'm asking do you recognize John Duncan's voice and Ms. Duncan's voice from your interviews with them?

A I can't say that I recognize the voices on this, but I ---

SOL. STONE: Your Honor, we have, if there is any question of it, we have jail people, but I would like for you to actually review this if you don't mind, please.

THE COURT: Sure.

(CD begins play of jail call and then stopped.)

Q Would you agree with me in that jail call at least twice, if not three times, John Duncan indicated that he was not being bullied?

A He said that, yes.

Q And would you also agree that it doesn't sound like his mother even thought he was being bullied.

A I couldn't tell that.

Q In fact, the bullying concept, at best, came from some post on the Island Packet which is our local newspaper.

A Okay.

SOL. STONE: I don't have anything else, Your Honor.
THE COURT: Redirect.
MR. STEPHENS: Thank you, sir.

REDIRECT EXAMINATION

BY MR. STEPHENS:

Q Dr. Kleinfelter, I want to ask you some questions about your knowledge of the shooting. I think there was something about the defendant coming from Hardeeville looking for the alleged victim in the case. Are you aware in the course of your work in this case why the defendant was in Hardeeville prior to this shooting?

A From the police records, it said that he was visiting his grandmother, his paternal grandmother.

Q And did you get any information from John or his family members about them being in Hardeeville visiting his grandmother?

A I think that ---

Q If you don't recall that, that's fine.

A I'm not absolutely sure about that. I think John may have said something about that, but I'm not positive.

Q And at the time of the shooting, there was some discussion about some telephone calls. Were you aware of the fact that one of those people brought up by the solicitor initiated the phone call with John on the day of the shooting?

A Yes. I did take notes looking at what calls were incoming and outgoing.
Q And were you aware of social media postings about the fight that had gone on between John and Dominique Williams?
A Yes.
Q Did he have any information about taunts to John about the fight with Dominique Williams?
A I read in the police reports that the witnesses talked about there was a lot of, sort of, mocking and talking of John having lost the fight and then asking why he hadn't done anything yet.
Q Are you aware that just prior to the shooting, John and were walking away from the area where they alleged the victim and his friends were coming from? Have you reviewed that video of them?
A I'm not exactly sure of the -- those exact words. You said something about before or after?
Q Just before the shooting.
A Just before, yes.
Q They were going in a different direction. Are you aware that Dominique and his friends did something to call out to John and his friends?
A Yes.
Q Were you aware that John and his friend kept walking away from the victim and his friends at first?

A They turned around like after a second call or something?
Q Did you review any of that in a video?
A Yes.
Q And did you ask John any questions about why he ultimately shot towards Dominique Williams?
A I did ask him some questions about that. He said something about -- well, he said a couple of things. He said -- let me look. I asked him what he was thinking surrounding this incident, and John said "I was thinking in the heat of the moment. I didn't want to get robbed or shot, but the way I was thinking that's not normal. I think back to how I acted then, how we all acted then; it was crazy."
Q All right. Now, there was some questions about the video recording of the fist fight between John Duncan and Dominique Williams. Did you said you reviewed the video of this fight?
A Yes, I did.
Q And you were asked by the solicitor whether or not that was a voluntary fight?
A Right.
Q Were you aware that friends of Dominique Williams went to find John that day for the fight?
A Yes, I was.
Q In your report, let me ask this -- when you watched and

listened to the fight, did you hear comments by any bystanders, the other young men around the fight?
A Yes, I did.
Q Do you recall what kind of things they were saying?
A Yes, I do.
Q It's on page 12 and 13 of your report.
A Yes.
Q What kind of things were they? Was it yelling?
A Well, in general, what was happening was there was a process where as soon as the boys started to fight at all, there would be cheers and laughter and approval; any kind of fighting was being reinforced. As soon as they stopped fighting, that's when the smack talking would start. There were things like, you know, "Hit, nigger" "Square up, Nigger" "Why do you not swing?" "Here, let me fight both y'all. Y'all wasting my time"

Then, as soon as they would start fighting, they would go "That's what I'm talking about." They would laugh and cheer. And as soon as they would stop fighting, say, "Hey, you ain't done. Ain't done. You know that's the weakest fight I've ever seen. We could have beaten both those niggers. One of my puppies could have fought you."
So every time they would start to fight, they were getting cheers and screams and laughter, and as soon as they would stop fighting, or try to stop fighting, you know, they would

get jeers and mocked and jabs like that. It was really like that throughout the entire video.
Q And in clinical psychology, is there literature about the effect of peer pressure? The presence of peers on decision making?
A Well, it's actually interesting, they found that even like, Steinberg, who was one of the great adolescent clinical psychologists and he found that just the mere presence of peers can activate parts of the brain and make kids act in much more risky ways. So it's one reason why rental places don't want kids in the car before they're 25; they don't want other kids in the car with them. But that's just the mere presence of peers. This went beyond the mere presence of peers. This was incitement to violence.
Q At the time of the shooting, were you aware of the presence of peer groups for John and for the victim, Dominique Williams?
A I'm sorry, what?
Q At the time of the shooting, are you aware of the presence of other peers ---
A Oh, yes. There were peers present, yes.
Q Now, you testified earlier about bullying. Is there a clinical or psychological definition of bullying or is that just a loose, kind of, catchall?
A It can involve anything from like verbal to physical

threats or intimate them toward another kid.
Q And when you ---
A --- it's usually a crying victim.
Q When you interviewed John and discussed bullying by boys in his peer group, I believe you testified that you had to explain some of that to him.
A Yes, I did.
Q So would it be fair to say that he didn't necessarily have an understanding of what bullying entailed before you had this discussion with him?
A He didn't have -- he was tested -- again, there's problems with the testing, but he had low average IQ. I think if he had taken the more current IQ test, it probably would have been even lower. He also didn't have this higher order thinking abilities that would enable him to think in more sophisticated ways. Bullying, in some ways, is sort of a sophisticated term; just like treatment is.
Q And in Dr. Dunn's assessment, what was her opinion as to Mr. Duncan's maturity when she did her assessment?
A She thought he was at the maturity level of a 15 year old boy.
Q And his intelligence or mental functioning, was that at a low average scale?
A Yes, it was low average IQ. Although, when Salekin looks at this forensic instrument called the RSTI to look at

sophistication and maturity, he finds that sophistication and maturity isn't necessarily as strongly related to IQ as it is related to other factors. For example, autonomy, like the level of influence that peers have over you or cognitive capacity might be like -- that's criminal sophistication and emotional maturity.

Q Now, you were asked about your inability to use these forensic tools such as the RSTI and the SAVRY based on John's age. Are you aware of whether Dr. Dunn used any forensic assessment tools when talking to John?

A She did not. And to clarify, DJJ was not using any at all at that time, so it wasn't just her.

Q But these forensic tools did exist at that time, correct?

A They did exist for many years.

Q Is it fair to say those were more structured interviewing and questions with the forensic assessment tools?

A If you pick up any textbook in forensic psychology at this point, it's going to say you should use some kind of forensic instrument because what happened is it's a structured interview format. So you're asking questions that are specifically related to your recidivism, which is what we're concerned about. Not questions that are related to things that have nothing to do with recidivism.

Q And do you know if John discussed the actual shooting -- the incident that led up to the shooting with Dr. Dunn?
A I believe that he did not talk about the shooting. I think that Dr. Dunn said that he was -- that his attorney recommended he not talk about the events.
Q All right. So are you aware of whether John had spoken to any other psychologist about the bullying activities or the incidents that led up to the shooting?
A He had not spoken with a psychologist or counselor at all, except I think he had met with a guidance counselor one time in middle school.
MR. STEPHENS: Beg the Court's indulgence. I don't believe I have any further questions for Dr. Kleinfelter.

RECROSS-EXAMINATION

BY SOL. STONE:
Q You heard what John Duncan said after he shot Dominique Williams?
A I know what I read in the police report in regards to what he said, yes.
Q Are you familiar also as to what the witnesses said that after he shot him, he looked at him and said, "That's what you get."
A I read that in the police report, yes.
SOL. STONE: No further questions, Your Honor.
MR. STEPHENS: I do have one redirect question, Your

Honor.

FURTHER REDIRECT EXAMINATION

BY MR. STEPHENS:

Q You did see the video of the shooting, correct?

A Yes.

Q And do you recall immediately after the shooting, the defendant ran away?

A Yes.

Q Do you recall any period of time in which the defendant stayed on the scene after the shooting that you saw in the video? A It would be difficult for me to say.

Q But you did see in the video that there was a shooting that you saw him fleeing the scene, correct?

A I did.

MR. STEPHENS: No other questions, Your Honor.

SOL. STONE: No, sir, Your Honor.

THE COURT: Thank you. You may step down.

(WITNESS IS EXCUSED FROM THE WITNESS STAND.)

THE COURT: Mr. Stephens?

MR. STEPHENS: Your Honor, I have a number of family members who would like to be heard on sentencing. If they may speak from the gallery.

THE COURT: Yes, sir.

MR. STEPHENS: I think the defendant's mother would like to go first.

THE COURT: Just ask her to try to speak up.

MRS. ADA DUNCAN: Good morning. I'm Jay's mother. I probably know him better than anybody in here. I never thought in a thousand years that I would be standing up here trying to defend my son in a sentencing, but I am.

The Lord would not put me here. He would not put more on me than I know I can't bear. I'm asking Him in the midst of this storm to be with me. No storm is bigger than this. Jay, have to remember, has never been in trouble, never been to DJJ, he never was before a judge until now. Yes, he got in trouble at school, but as a teenager that happens. You turn it around and he turned it around. You made me proud of you making the honor roll. He got in a honor class.

Jay is not a monster. Jay is not a killer. He just only -- he only wanted to be their friends. He wanted to be in the crowd. He came from -- yes, he did come from Jasper County. He came from Pompano Beach, Florida, but I wanted him in a better education environment, so I took him to Beaufort County Schools. So he got to get into an in crowd, and in a crowd, you choose your friends. The friends that he thought was his friends wasn't his friends.

One particular night they came to his house. My son doesn't deal drugs. They came and got something from him, but in the meantime, they took it, but that's not what they talking about. They talking about Jay. The next day, they came

back to his house and one of the two carloads of kids, one child at this house.

His father, we was scared that Sunday. Jay went to the beach like he always does, always. And now they are saying he's a killer. That he went to protect himself. Yes, it's a lot of ifs and a lot of that. And bullied? Yes, he was bullied. They're saying now that he wasn't bullied. There's a lot of things -- but Judge, as he comes before you, I'm asking to please give him another try, another chance. It's hard for a mother. It's hard. And everybody keep saying it's one side. It's not one side; it is two sides, because I'm going through a lot. I turned to church. I turned to - most important, I turned to God. I'm asking you to please give him another chance. That's all I ask.

THE COURT: All right. Thank you, ma'am.

MR. STEPHENS: Your Honor, I have the defendant's aunt, Rosetta Anderson.

MS. ANDERSON: Good morning, Your Honor.

THE COURT: Good morning.

MS. ANDERSON: My name is Rosetta Anderson. I'm a mother of two. I'm the wife of a veteran. And I'm a 15-year business owner. Most importantly, I am the biological aunt of John Ira Duncan, III, who I affectionately call "Jay."

From the time my nephew was born, Your Honor, he has

been a very meek and mild mannered child. Not in a million years would I expect to be standing before you with him, lawyers, and defending such actions as he has been accused of and begging the Court for mercy and leniency on his behalf.

You see, Jay was only 15 years old at the time of this crime. He was a young man living the life of a typical teenager. He was working a summer job and he was playing football. Football was, actually is his passion. It has been since he was seven years old. That was the one thing that he did at his best. His aspirations was to one day make it to a pro team. Jay was always respectable. He was a well-behaved child. Never getting into any trouble. Looking forward to going to prom and keeping himself groomed so that he could start dating.

Living the life of a teenager at 15 when his life was abruptly halted by fear. Yes, he is a human being, not a monster that some have called him, and not a saint, as some have portrayed others to be. God knows the truth and the roles could have been reversed. But he was living with fear of the unknown actions of bullies, instigators and young men who called themselves gang members.

You see, these young men for months have been coming at my nephew time and time again. From the north end of the island all the way to the south end of the island where he

lives at his home. And cars of children coming to fight him. The day when he got in the fight, his mother was at my place of business and he called us crying because these gentlemen, or these boys, I don't know what they're called at 16, they came in car loads to get him to fight, to taunt, and to pressure him into joining their gang and fight.

She explained to me that Jake was dealing with anxiety and fear of the young men and what she felt she had no way of helping him because we had never experienced anything like this before. You don't hear about gangs in Hilton Head; it just wasn't at the time. Yes, he has a mother and a father, and a family, and we are hurting, too. We are Hurting for him, because we know who the bully is and not who they portray him to be.

We are not without pain. My nephew was living in fear of his own life being taken by the hands that were bullying. But not once -- not once did he speak of revenge or going down to the north end of the island to even confront these young men who had been texting him, that had been calling him, and bullying him and taunting him.

And finally, finally, he decided to defend himself. Now, he sits here at the mercy of this Court to decide his future. A future that was taken from him for the past four and a half years as he sits in jail while these bullies run around and go to college and do things that he should have

been doing. I feel sorry for both mothers, because I know Ruby and I knew Dominique. I was a counselor. I was a -- I was on the youth organization at the church that we both attend. So I know the young man as he was growing up and I know my nephew as he was growing up. And it hurts me, because I know both of the children and I know that I have two children and I would never want my children to be bullied, because I was bullied.

I was bullied. I was called tar baby. I was called little black girl, and it hurt me and scarred me. It made me do things I regret doing, but I have changed my life because I had a second chance, and I turned my life around and I believe that my nephew can turn his life around. I believe that he can be rehabilitated. I believe that he can get the education that he needs to get himself where he needs to be in life.

I think my nephew -- I believe that my nephew deserves to be able to not live behind the bars that others caused him to be in.

Jay, I say to you that I love you with all of my heart and my soul. I will be here for you until the end of your life. From now until then, whenever, whatever, however you need me, I am here. Your family is here. Hold your head up because God knows the truth and you also said that you had no malice in your heart when these boys came after you, and

God knows that. We believe you.

It's a very unfortunate situation. It's very unfortunate because a mother is crying because she lost her child. Now, my sister and my brother is crying because their son is going to be lost in the system of grown men when he was only 15 and forced to make decisions of an adult by these bullies.

But I believe that my nephew will one day see a better life. My nephew, John Ira Duncan, acted in fear and is very sorry for his actions. He too deserves a second chance to prove that he can be a successful citizen.

Me, myself and my family pray for the victim's family and we also pray for leniency and the Will of God and the mercy of this Court.

John, I love you. Thank you, Your Honor.

THE COURT: Thank you, ma'am.

MR. STEPHENS: Your Honor, the defense doesn't have any more to offer on sentencing other than argument at the appropriate time after the State's case.

SOL. STONE: We have three family members, Your Honor, that would like to address you, if you would hear from them.

THE COURT: Sure.

SOL. STONE: I would like to ask them if they would come up here. This is Ruby Milton, Leroy Williams, and Ulga Williams.

MS. ULGA WILLIAMS: Good morning, Judge. It has been exactly 1571 days since Dominique was killed. He was a loving son. He was an only son to Ruby. He was an only son to Leroy. He was an only bonus son to me, because I'm his stepmom, and he's the only brother that Lindsey had.

What he did is irreversible. I now have a daughter that talks to a picture and imagines it's her brother. He isn't there anymore to hold her hand or protect her like big brothers do. Instead of hearing Lindsey and Dominique playing and laughing and joking and Dominique videoing her, now all we hear is Lindsey talking to her superheroes and her toys telling them how she wants her brother back.

Lindsey rides to school every day and most of the days tells me did I talk to God yet, because I tell her that God answers prayers, but Dominique hasn't called her. Dominique isn't here and he's not coming back. Lindsey said today when we left Court, are you sure Dominique's not coming back with us? So because he made this decision to take Dominique, I ask that he gets out when Dominique gets up. That's all I have to say.

THE COURT: Thank you, ma'am.

LEROY WILLIAMS: Giving honor to you, Judge. I am here today. You know they say a man will perish for lack of knowledge. My only son, as a father, you know, I was bullied, but it made -- you know, in my day, we fought, and

we began to be friends. Not in a million years did I ever think that we would pick up a gun and come to a fist fight.

So you know, I taught Dominique, you know, I taught Dominique how to be conservative of people's feelings. And you know, I wish he was here today, you know, because both families has lost. When John pulled the trigger, everybody lose. And we have to give account for everything we do on this planet, in this world, on our jobs, wherever we are. We have to give account for what we do in this world in this society.

Now, my heart goes out to his family, but they can go to the jailhouse and see their son. Over four years I haven't been to the grave, because I'm trying to still process in my mind. I don't hate John. I don't hate his family. I'm a man of love. Love is my religion, but at the end of the day when we're in society and I see what went on. You know, we have to get our children where we can cultivate them to where they can be the best, do the best, and where they can have what they ought to have.

I'm sorry that it turned out this way for John. You know, when you're looking for power, real power comes from God. God give you real power. Real power don't range from a barrel of a gun. It comes from using your mind. And in my mind, I look at the situation. I look at both families. And I can honestly say that my heart goes out to both

families. But at the end of the day, we lose.

This could have been easy settled. You know, when we fought, we was friends after that. You know, now like I used to tell Dominique, "Dominique, be careful, because you know young kids don't play fair." And he said, "Daddy". The last two years of his life when he came to Savannah. I'm a 20-year entrepreneur, and I was talking to him about being the job. I said, "Well, son, I couldn't work for nobody else. I had to be my own job. That's why I'm an entrepreneur." So he said, "Dad, that's good." He said, "Could you teach me how to work the business?" I said, "Son, well, you're learning every day. You're learning when I get up and go to work. You're learning when I treat your mother right. You're learning." It's like I didn't have Dominique in a disrespectful atmosphere. You see, kids be in atmospheres where they don't belong. And it's the parent fault to get their kids out of the atmosphere that they shouldn't be in. So I take all that into consideration that what the mother is saying, what they saying, when I look at John. I see no male role model. I see no role models behind him that's pushing him to say, "John, you don't have to do that."

So just like I say, Judge, a man will perish from the lack of knowledge. My heart goes out to John and his family. And John can get out, when my son can get up.

Thank you.

THE COURT: Thank you, sir.

SOL. STONE: Your Honor, this is Ruby. This is Dominique's mother.

MS. RUBY MILTON: Dominique was my only child. There is no do over with me. Dominique was my only child. I don't get a second chance to be an active mother to Dominique. I have been robbed. I have been robbed of being a mother. The pain that I have endured there are no words, there is no words. Nobody can feel what I feel, because I don't get a do over. I'd have another child, but I can't make it up with another child. He took my heart. He just took it so selfishly and I cannot explain. There are no words to make it right. I pray and I want John to live every single day. I want him to live every day to get rehabilitated. I do. To get back to do the right thing. Repent to God. Come out so that no other person makes the mistake that he did. No other mother feels the pain that I will feel for the rest of my life. You don't get over this. I will never get over losing my child. Even after today, it doesn't stop. The pain doesn't stop. I cannot explain. You have interrupted my entire life. You have interrupted Leroy's entire life of being a father. It can't be replaced. A check can't cash this. You took a whole person's life. A whole person's life. But you say that's

what he gets.

John, I pray you get your life together. However long it takes. I pray you go to God. You can allow him to work on you. That's what you have to do for yourself, not your parents, not your aunt, not your dad. That's what you have to do. You make sure that nobody else do what you did. If it takes your entire life doing that, that's what it takes. That's what it takes. You think about every day, every day, what you did in the lives that you have wrecked. You have wrecked forever. My life will never be the same. Never be the same. After four and a half years, I still, still have to go to therapy. God bless you, John, and your family.

THE COURT: Yes, sir. I'll be glad to hear from you.

MR. WILLIAMS: I have one thing I need to read. John, this is for you. We need more light about each other. Light creates understanding. Understanding creates love. Love creates patience. And patience creates unity. Thank you, Your Honor.

THE COURT: Thank you. Solicitor?

SOL. STONE: Your Honor, I've done all the arguing. You know the case. You looked through it. You saw it. I don't think there is anything I could possibly tell you to give you any other insight other than what you already have. And I certainly cannot paraphrase what the family just got through telling you and the pain they have gone through.

This is obviously a difficult situation. It is obviously a difficult sentence for you to hand out. The range is great. I do not believe that, again, Your Honor, that there is anything I can tell you that you don't already know having tried the case. So I leave it to you.

MR. STEPHENS: Your Honor, I've already been cautioned by the Court before on how long I can talk, so I'm going to try not to be long-winded in this case.

As the solicitor said, you sat through the trial and you've heard the positions today from the State and the Defense. I don't believe that this was a -- I don't know if there is a typical murder case. If there was, this certainly wouldn't be it. We had argued for a charge on voluntary manslaughter, which again, we will address in the way of a motion, but even without that charge, there was a lot that was going on between these boys, and they were boys.

Your Honor, the man sitting here next to me and who sat next to me at trial is not the boy who committed this shooting. That boy was five-three, 130 pounds, maybe, soaking wet. He's grown now, but he has to answer for the offenses of that boy. You've heard Dr. Kleinfelter's testimony about the brain of an adolescent, and it's certainly a popular culture now about how brains develop, especially adolescent males, and they don't appreciate the consequences of their actions.

A life is lost. John has to answer for it. He understands there is a mandatory minimum 30-year-sentence in this case, Your Honor. While I would like to argue that even that is disproportionately severe, the mandatory minimum of the legislature is opposed.

Your Honor, there is no reason to sentence John Duncan to a year, a month, a day longer than the 30-year mandatory minimum. It will not assist in his rehabilitation. If anything, it will be incredibly difficult for him even after a 30-year-sentence, which he may very well serve day for day, to reintegrate himself into the community.

Last month when we originally had this hearing scheduled in the wake of my 30th year high school reunion, I spent all that weekend thinking about John's case. I went to a very intense magnet school, a governor's school, here in South Carolina and had some of the best friends of my life aged 16 to 18 when I went to that school. Many of them I haven't seen in 30 years. Many of them, surprising number for me, since I'm only 48, many of them are now dead. Many of them had careers I had no idea about. They graduated and went to college, had life experiences, got families and careers that I had no idea about. We had to catch up over the weekend. I couldn't recognize most of my classmates we had all changed so much in 30 years. I certainly don't look like I did when I was 16 or 18. We all went off and did

different things and we are completely different people. It struck me that John Duncan, after 30 years, he won't be recognizable.

He won't have the chance to go off and go to college or have any life experiences, to raise a family, to have kids or grandkids. He will be in a cage. And Your Honor, again, there is nothing that 35 years, 40 years, 50 years, nothing that can do to rehabilitate him or to make him pay for the death of Dominique Williams more than he has already suffered as a man beginning to come to terms with what happened.

He has to go to prison for the mandatory minimum for 30 years, Your Honor, but again, we would ask that the Court consider the mandatory minimum because this is not a typical case. Only a few times in a given year will there be a juvenile murder case like this and thankfully so. They are tragedies to everyone involved. It's definitely a tragedy to Dominique Williams' family. I'm sure that he and his friends regarded all of this as playful until the end.

It's a tragedy for John's family, because they're not going to see him. They won't be able to hold him for possibly a full 30 years if the Court just gives the mandatory minimum. His family members may die and he will never get to see them or hold any of them again.

We've progressed a long way from the justice of the Old

Testament of an eye for an eye. I'm not going to belabor doling out theories of punishment, Your Honor, but nothing good can come out of locking John up practically for the rest of his life or making him reign of the world as an old man who has never lived nor gotten a job, never done anything.

At least, Your Honor, a sentence at or close to the mandatory minimum will allow John to re-enter the world at middle age in his Forties where he would be able to possibly get a job, possibly do something productive with his life to try and make up for what our community and Dominique Williams' family has lost. We just ask you to give him that Opportunity to make something of his life after the mandatory minimum sentence has been served, Your Honor.

THE COURT: Thank you. Mr. Duncan, I am going to give you a break because of your lack of prior record and your age of 15. I sentence you to the South Carolina Department of Corrections for a period of 37 years. Credit for time served.

MR. STEPHENS: Your Honor, would you like the amount of time served? I have 1,569 days from the day of his arrest, but that's four years, three months, 16 days that he has been in DJJ or the detention center.

THE COURT: Do we still have another motion?

MR. STEPHENS: Yes, Your Honor. At the appropriate

time, we will have a motion for new trial; but based on the Court's earlier ruling, that's going to be pretty limited.

THE COURT: All right. Let's take a five minute recess.

(WHEREUPON, THE COURT IS IN RECESS; THEREAFTER, COURT RESUMES AND THE FOLLOWING IS HELD ON THE RECORD.)

THE COURT: Mr. Stephens, your motion.

MR. STEPHENS: At this time, Your Honor, the Court moves for a new trial. I would be happy to put the basis on the record.

THE COURT: Let me hear from you.

MR. STEPHENS: First, Your Honor, just to address the Court's ruling prior to the sentencing hearing. The defense just wanted to restate our objection to the Court's ruling not to consider challenges to the Family Court Waiver hearing in this case. As stated, during that argument, Your Honor, this time the defense would like to proffer again for appellate review purposes, Defendant's Exhibits One through Four, copies which have been provided to the State. Again, the defense would be recalling Dr. Kleinfelter if we did go forward with that on a motion for new trial.

THE COURT: Yes, give them to the court reporter.

MR. STEPHENS: Your Honor, with respect to the trial in General Sessions court in this matter, the defense will restate what we moved in based on all prior motions. I just

want to address some specifically.
The defense does not have any new argument, Your Honor, this time. Noting that, again, for potential appellate purposes, starting with the jury selection, the defense had made a Batson challenge that's caught in the record to the State's exercise of their peremptory strikes of two African-American males. I believe the Solicitor had given a non-prejudicial reason for the use of the challenge on the jury strike on those two African-American males. I believe one involved a DUI arrest, but not conviction, that was rather old. If I remember, it was 20 years old. The State did give examples of two other people who were struck for prior arrests, Your Honor. But we would just again like to raise that issue for basis for the motion.

Second, the defense was prohibited from offering evidence related to the victim's suspected gang affiliation. I believe there were some photos showing the victim wearing colors associated with a particular gang. There were some references in the fight video in this case with a victim having a black bandana on his head that's associated with that gang and the use of the term, "You ain't no G", which again would be a gang reference. I believe the Court's ruling was that was denied on a relevance basis, Your Honor. Again, no new argument on that

Your Honor, while I don't have all of my notes on the

defense's motion for directed verdict we made at the close of the State's case, Your Honor, again, just for appellate purposes, we believe that there was evidence of provocation where this would have been a voluntary manslaughter charge, which would go right next to the last issue the defense had which was the denial of the defense's request for a jury charge on voluntary manslaughter, Your Honor. I'm sorry if I misspoke on that.

We believe that there was evidence presented that this was a shooting that happened in the heat of passion. The defendant testified about being -- not having the intent to shoot the victim at the time he confronted, or was face to face with the victim and his friends, that he believed that he was threatened. We understand that the Court gave a self-defense charge. We also believe that a voluntary manslaughter charge should be given. And Your Honor, no new argument on those issues that the Court previously ruled.

THE COURT: All right. Solicitor?

SOL. STONE: Your Honor, you made a full record on all of those issues and I don't want to confuse the record by misstating anything. So I will rely strictly on what is already in the record. I think all of those have basis in law and, in fact, from your analysis, they were properly denied when the defense made those motions. We just ask Your Honor to deny those as well. I understand his need to

put that in the record.

Also, as far as the documents and everything that he's presented as proffer, we understand that would become part of the record for the appellate purposes on the waiver as well. We think that approach, as we just argued that previously, is the proper way of handling that.

MR. STEPHENS: Nothing further from the defense on the motion, Your Honor. Thank you.

THE COURT: All right. Mr. Stephens, the Court understands the motion. The Court understands the grounds for the motion of new trial. The Court denies the motion for a new trial. Any other motions?

MR. STEPHENS: Your Honor, I want to make sure I haven't missed anything, but I don't believe so. Begging the Court's indulgence, Your Honor. I believe that while it would definitely be a stale thing to say, I believe I have repeatedly renewed any prior objection motions and I don't believe I have anything further at this time. No other motions by the defense at this time.

THE COURT: All right. Court's adjourned.

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF COLLETON)

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of General Sessions for Beaufort County, South Carolina, on the 6th day of November 2019.

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

March 10, 2020

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED
Mar 29 2021
SC Court of Appeals

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This 29th day of March, 2021.