

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

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Apr 07 2021

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANTHONY KWAME MAYS,

APPELLANT

APPELLATE CASE NO. 2019-001918

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1 Q And then you took your first right.

2 A Yes, sir. And then stopped my vehicle.

3 Q Now, why did you stop your vehicle?

4 A Because I wanted to go get my friend that had passed
5 out.

6 Q Tell me his condition when you went up to him.

7 A When I ran up on the hill and I picked Mr. Cook up,
8 he was not like "woozing," but like he was trying to talk
9 a little bit. And when I picked him up, you know, I said
10 things like, you know, "It's me. I've got you." I picked
11 him up. I tried to take him to the vehicle. I set him on
12 the ground for a second. I opened the car door. I tried
13 to put him in the car, but I was having trouble getting
14 his foot in the door.

15 Q All right.

16 A But he was still moving at the time and making
17 movements and sounds. He wasn't talking, but he was
18 making sounds like, you know, like he's in pain.

19 Q Okay. At that time, did you notice anything else
20 going on up in Court 22?

21 A I was really all just focused on my friend at that
22 point when I got to the car.

23 Q All right. Did you finally get him into the car?

24 A Yes, sir. But I was unable to get his foot in the
25 door. That's why the door was hanging open. I know

1 people said a body was hanging out, but it was really just
2 his leg. I couldn't get his leg all the way in the car,
3 because on the video, you see me trying to put him in the
4 car.

5 Q Did you call 9-1-1 at that time?

6 A Yes, sir. I called -- with my car at the time, it
7 was bluetooth, so I was calling at the time while I was
8 also dragging him into the car.

9 Q And did you do anything to try to save his life?

10 A I tried to keep him awake.

11 Q All right. And how did you try to keep him awake?

12 A I was shaking him just a tad bit trying to keep him
13 awake.

14 Q And then what did you do?

15 A Well, I was -- after I did that, trying to keep him
16 awake, I came in on the driver's side. I got in the seat.
17 I was driving a little bit, but I seen that the door
18 wouldn't close, so I stopped. I ended up getting back out
19 of the vehicle, trying to see if I can get him fully all
20 the way in the vehicle, which, at the time, it was really
21 hard and frustrating and I couldn't do it.

22 So his foot was hanging out a little bit, and then I
23 just decided to drive to the Spinx gas station. Because
24 the more and more time that was going by, he looked like
25 he was losing consciousness.

1 Q All right. And which way did you exit out of Boulder
2 Creek; do you remember?

3 A I just know it's by the Spinx way. I don't know the
4 actual street.

5 Q And you went to Spinx?

6 A Yes, sir.

7 Q All right. And what happened at the Spinx station?

8 A When I pulled up to Spinx, I first looked in my
9 rear-view mirror and I seen two cars following me. I
10 didn't know at the time if it was the suspects or if it
11 was just somebody standing by. So I pulled into the Spinx
12 gas station on the side. And it's an estimate, but I know
13 it was either three or four ladies had followed behind me.
14 They was in the vehicles behind me. And they got out of
15 the car, and they tried to help me with my friend and I
16 was still on the phone with the EMS.

17 Q All right. And once the EMS arrived, the EMTs, where
18 did they take you?

19 A As soon as they came, they first went over -- I seen
20 -- I glanced. They went over to Mr. Cook first. And then
21 after that, one of the EMS persons, they came to check on
22 me, and I was lying on the ground.

23 Q Okay. And did you get into the ambulance?

24 A Yes. They put me on a stretcher and put me in the
25 ambulance.

1 Q All right. They took you -- where did they take you?

2 A To Greenville Memorial.

3 Q How long were you in Greenville Memorial?

4 A Are you talking about with surgery or ---

5 Q I'm talking about the entire time you were in the
6 hospital. Do you remember?

7 A I was in there for a week and a day. I got out -- I
8 wasn't supposed to get out early, but I got out early
9 because I didn't want to miss my friend's funeral. And
10 then I had to go check myself back into the hospital.

11 Q Okay. The wounds that you suffered, what are the
12 ongoing effects that you are suffering from today because
13 of the wounds?

14 A I eat once a day. How everybody just went to lunch,
15 I didn't eat anything.

16 Q And why is that?

17 A Because my stomach is smaller from the doctor
18 removing pieces of my colon and my stomach and liver.

19 Q Okay. All right. Let's back up a little bit here.
20 Do you remember having a conversation with law enforcement
21 on the day after this incident?

22 A Yes, sir. They came to see me in the hospital.

23 Q Okay. And do you remember talking to them?

24 A Yes, sir.

25 Q Were you able to talk to them at that time?

1 A Yes, sir.

2 Q All right. You previously said there was two men at
3 the driver's side; is that correct?

4 A Yes, sir.

5 Q And how many went around to the passenger's side?

6 A Two.

7 Q Okay. Do you remember telling them that only one
8 went around to the passenger's side?

9 A No. I do not recall that.

10 Q You don't recall that?

11 A No, sir.

12 Q And do you remember how many men had a gun?

13 A I only seen one.

14 Q You only saw one gun?

15 A Yes, sir.

16 Q All right. Previously, in that same -- you spoke
17 with Investigator Picone and Investigator Evett. And
18 previously, you talked to him about not seeing Marcus out
19 there at all; do you remember saying that to him?

20 A I do not recall that.

21 Q You don't recall that?

22 A No, sir.

23 Q You don't recall saying Foster was not out there?

24 A I probably was confused on the question, because like
25 I previous said, I talked to him early before the

1 incident, and when the incident happened, he was standing
2 in front of the vehicle.

3 Q And also today you used Mr. Rice's name here in the
4 courtroom, but at that time, you had no idea who that was,
5 correct?

6 A No, sir. I still don't know who he is.

7 Q And as a matter of fact, on the day after this
8 incident, you were unable to identify him at all; isn't
9 that correct?

10 A No, sir. I've never seen him before.

11 Q Right. You could not identify him.

12 A No, sir.

13 Q You had no idea who was with the guy with the gun.

14 A No, sir. The only person I knew was Mark Foster.

15 Q Okay. I'm going to show you what has been previously
16 marked as State's Exhibits 92 and 93. Will you take a
17 look at that document, please. 92 specifically.

18 A (Reviews exhibits.)

19 Q Do you recognize those?

20 A Yes, sir.

21 Q When was the last time you saw Exhibit Number 92?

22 Now look at the top. I'll show you what -- you might not
23 be able to see the exhibit number. Let me just point that
24 out to you. Exhibit Number 92, that's Exhibit Number 93.

25 So let's talk about that 92 first, okay? When were

1 you shown that?

2 A April 3, 2017.

3 Q And do you remember who showed you that?

4 A It was one of the two officers that came to interview
5 me. I can't remember exactly at the time which one.

6 Q Okay. And that was in the hospital; is that correct?

7 A After I came out of surgery.

8 Q Okay. Do you remember having a conversation with
9 them?

10 A Yes, sir.

11 Q Were you able to communicate with them?

12 A Yes, sir.

13 Q Were you able to answer their questions?

14 A Yes, sir.

15 Q Were you able to understand what they were asking
16 you?

17 A Yes, sir.

18 Q When they handed you that, what did they tell you to
19 do?

20 A They told me to look at it carefully and see if I see
21 the shooter on the paper.

22 Q Okay. And did you take your time in looking at that?

23 A Yes, sir, I did.

24 Q All right. How long did you take looking at that?

25 A It took me about five minutes because the

1 similarities on the paper are kind of different. Because
2 at the time, the shooter's hair was not this short when I
3 seen them.

4 Q Okay.

5 A It was a little longer.

6 Q Well, hold on for a second. Let's talk about that
7 for a second. Now, initially, when you identified that,
8 did you tell the police how sure you were?

9 A 80 percent.

10 Q All right. And why did you say 80 percent?

11 A Only just because his hair was different.

12 Q Did you make any statements to police to indicate
13 that your choice would be different if that were
14 different?

15 A If his hair would have been a little longer in this
16 paper, it would have been 100 percent.

17 Q It would have been 100 percent. All right.

18 Now, did the police ask you to do anything with that
19 piece of paper to indicate who you're picking out of the
20 photo lineup?

21 A No, sir.

22 Q All right. Are your initials on that piece of paper?

23 A Yes, sir.

24 Q All right. Did you put your initials on there?

25 A Yes, sir.

1 Q All right. Did they ask you to circle that picture
2 as well?

3 A Yes, sir.

4 Q Has that been altered in any way since the last time
5 you saw it?

6 A No, sir.

7 Q Is that a fair and accurate representation?

8 A Yes, sir.

9 MR. GREGORY: Your Honor, at this time, the State
10 would introduce Exhibit Number 92 into evidence.

11 THE COURT: Ms. Ross?

12 MS. ROSS: No objection.

13 THE COURT: Mr. Chambers?

14 MR. CHAMBERS: Your Honor, subject to my earlier
15 objection.

16 THE COURT: All right. So noted. And I'll admit --
17 that's exhibit number what? I'm sorry.

18 MR. GREGORY: It was Number 92, I -- yes. 92.

19 THE COURT: All right. I'll admit State's 92.

20 MR. GREGORY: Thank you, Judge.

21 (WHEREUPON, State's Exhibit Number 92 was admitted into
22 evidence.)

23 BY MR. GREGORY:

24 Q Now, Mr. Poole, if you will look at State's Exhibit
25 Number 93. It's the other piece of paper up there.

1 A (Reviews exhibit.)

2 Q Do you recognize that?

3 A Yes, sir.

4 Q And how do you recognize that?

5 A It has my signature and the date on it.

6 Q All right. Were you able to sign that on
7 April 3, 2017, while you were in the hospital?

8 A Yes, sir.

9 Q And what did the police ask you to do with that piece
10 of paper?

11 A He told me to write down how sure I was if that was
12 the suspect or not.

13 Q Okay. And what did you write down?

14 A I wrote down, "I am 80 percent sure he shot at us at
15 Boulder Creek Apartments."

16 Q All right. Why did you not write down what you just
17 told us about being 100 percent sure?

18 A Because in this picture, his hair is really short and
19 looks like he has a little haircut, and at the time when I
20 seen him, his dreads was by his ear.

21 Q Okay. And when -- you had a good opportunity to look
22 at him at the incident location on April 2nd; is that
23 correct?

24 A Yes, sir.

25 Q No problem with seeing through your tinted windows.

1 A No. He was right at the front door window.

2 MR. GREGORY: Okay. Your Honor, at this time, the
3 State ---

4 BY MR. GREGORY:

5 Q Has that document been altered in any way?

6 A No, sir.

7 Q Is it in substantially the same condition as when you
8 signed it?

9 A Yes, sir.

10 MR. GREGORY: Your Honor, at this time, the State
11 would introduce Exhibit Number 93 into evidence.

12 THE COURT: Any objection, Ms. Ross?

13 MS. ROSS: No, Your Honor.

14 THE COURT: Mr. Chambers?

15 MR. CHAMBERS: And, again, I would just renew my
16 previous objection.

17 THE COURT: Certainly. And I'll admit State's 93.

18 MR. GREGORY: Thank you, Judge.

19 (WHEREUPON, State's Exhibit Number 93 was admitted into
20 evidence.)

21 BY MR. GREGORY:

22 Q Mr. Poole, today in the courtroom, do you see the
23 individual who shot you and Zay?

24 A Yes, sir.

25 Q And will you please point them out and tell them what

1 he's wearing.

2 A A white T-shirt. It looks like either a black or
3 blue tie.

4 MR. GREGORY: Let the record reflect that he pointed
5 to Mr. Mays.

6 BY MR. GREGORY:

7 Q When you say "T-shirt," what do you mean?

8 A Well, a collar shirt.

9 Q A collar shirt.

10 A Dress shirt.

11 Q But white in color; is that correct?

12 A Yes, sir.

13 THE COURT: All right. It so reflects.

14 MR. GREGORY: Thank you, Judge.

15 Please answer any questions the defense has for you.

16 THE COURT: All right. Ms. Ross?

17 CROSS EXAMINATION

18 BY MS. ROSS:

19 Q Hey, Mr. Poole. Now, I represent Shyheem Rice
20 sitting right there. You said you've never seen him
21 before?

22 A Not at all.

23 Q And, in fact, I'm going to go to the date -- that day
24 after you were shot in the hospital, were you shown a
25 lineup by the investigators?

1 A Yep.

2 Q And was this the lineup? Does this look similar at
3 all?

4 A Yes.

5 Q And you were unable to pick anyone out of that
6 lineup?

7 A No.

8 Q In looking at the top right-hand side, what is the
9 name of that person?

10 A It says Rice, Shyheem.

11 Q Okay. Now, you're not in a gang, are you?

12 A Not at all.

13 Q Okay. But you were smoking weed in the car at
14 Boulder Heights with the girls, right?

15 A And what does that have to do with me getting shot?

16 Q Nothing. It's just a question.

17 A Oh. Okay. I'm sorry.

18 Q I'm trying to -- it's just a question. But you were
19 there, and that's what was going on, and that was why.

20 Was there anything about buying weed going on at all?

21 A Nope.

22 Q Now, you had gotten -- you'd been texting back and
23 forth with Kennedi, a friend of yours, right?

24 A The female I was trying to talk to.

25 Q Okay. And then eventually, it sounds like you're

1 saying you went up to the 22 building?

2 A I had to walk up the hill.

3 Q And got her?

4 A Uh-huh.

5 Q And came back and then you got in the car.

6 A Uh-huh.

7 THE COURT: I need you to say "yes" or "no,"

8 Mr. Poole.

9 THE WITNESS: I'm sorry.

10 THE COURT: That's okay.

11 THE WITNESS: Yes, ma'am.

12 BY MS. ROSS:

13 Q And at the car, you stated that you were approached
14 by one person who came and knocked on the window?

15 A I said three males. One male approached the window.

16 Q Okay. Now, do you remember at the Spinx after this
17 happened a lady came up and helped give Cook chest
18 compressions and mouth to mouth because you were having
19 trouble getting your air?

20 A Yes, ma'am.

21 Q Do you remember talking to that lady at all?

22 A The lady just asked me what happened, and I told her
23 me and my friend were shot.

24 Q Now, didn't you say something about you remember two
25 guys with dreadlocks?

1 A No. No, ma'am. I do not recall that.

2 Q You don't recall saying that at all?

3 A No, ma'am.

4 Q Okay. And that's at the Spinx right afterwards?

5 A Yes, ma'am.

6 Q Okay. Now, I'll just take you to the next time
7 you're taken to the hospital and undergo all this surgery,
8 and the next day you're talking to law enforcement. And
9 you give a statement, right?

10 A Yes, ma'am.

11 Q And are you aware that statement was recorded?

12 A Yes, ma'am.

13 Q Okay. Now, on that statement, didn't you -- you said
14 something about a guy with short dreads was tapping on
15 your window?

16 A Yes, ma'am.

17 Q And that you started to drive off at that point?

18 A I was trying to drive off. Remember, the vehicle was
19 turned off and backed in. I had to cut the car on first.

20 Q Now, did you say anything about it being real dark or
21 anything like that?

22 A You'll have to explain.

23 Q Just in that statement. I can move on.

24 And you told them you were parked by Building 22 and
25 explained who all was in the car?

1 A Yes, ma'am.

2 Q And then you said there were random dudes next to the
3 car and started to get ready to pull off?

4 A Yes, ma'am. Because I've never seen them before.

5 Q And you said the girls were still in the car when
6 they started shooting.

7 A I do not recall that. I remember they jumped out
8 before the man tapped on the window. The man tapped on
9 the window, he said, "What's up with y'all?" And then he
10 said, "Are y'all Woo Gang?"

11 I said, "No."

12 And the females got out of the car.

13 Q Okay. Do you recall that back when you gave that
14 interview the day after this happened, you didn't mention
15 anything about Woo Gang at that time?

16 A I possibly said they said -- they asked are we Woo
17 Gang, but that was it.

18 Q Okay. Could they have just -- could it have been
19 that you just said in that statement, "Yo, what's up?"
20 that they came up and knocked and said, "Yo, what's up?"

21 A Not at all.

22 Q Okay. Now, at that point, you stated at least four
23 people walked up and one came up and said, "What's up?"
24 and shot. Do you recall saying that?

25 A Not in that order.

1 Q Okay. And do you recall saying there was no fight
2 whatsoever? Was there a fight?

3 A There was no fight. The doors were locked.

4 Q All right. And do you recall saying that you didn't
5 see Mark Foster there?

6 A I do not recall any of that.

7 Q Okay.

8 A I already told investigators he was there. I spoke
9 to him.

10 Q So you're denying you said that he -- you didn't
11 recall him being there?

12 A I don't recall saying that. I don't know why that's
13 in the paperwork, but it's not my words.

14 Q Okay. Now, do you recall some question that you and
15 your mom had in questioning about whether the girls had
16 maybe set y'all up?

17 A No. Me and my mother did not talk about that.

18 Q Y'all didn't talk about that at all?

19 A No.

20 Q Okay. Now, just moving on, you said you didn't know
21 Mr. Rice at all. You knew Mr. Foster because you've been
22 -- did you know him from school? Or how did you know him?

23 A I knew him -- it's a little term we use from like
24 around the way, meaning as in I've seen him out a couple
25 places like events like downtown, Fall for Greenville,

1 things of that nature, and we eventually grew to knew each
2 other. But we never ---

3 Q And y'all both had dreads too.

4 A Yes, ma'am. But we never hung out, though.

5 Q Okay. Now, did you notice any other cars coming in
6 and out around when this happened?

7 A At that time of the incident, no, ma'am. Because I
8 was rolling some weed up, so . . .

9 Q And had you had any concerns before with a C.J. or
10 Peso Williams confronting you or getting into it with you?

11 A No, ma'am. I don't know who that is.

12 MS. ROSS: Okay. Beg the Court's indulgence.

13 THE COURT: Certainly.

14 BY MS. ROSS:

15 Q I'm just going to show you this. So you're saying
16 you hadn't heard any Facebook talk or anything with Peso
17 or C.J. Williams.

18 A It's not on my Facebook and not Mr. Cook's Facebook,
19 and I don't know a C.J. Williams personally.

20 MS. ROSS: Okay. At this point, I'd like to be able
21 to play the audio of the interview that occurred the next
22 day. I think it's about 20 minutes.

23 MR. GREGORY: Judge, we would object to that. If
24 it's for impeachment purposes, we would specifically limit
25 it to the impeachable things that she's talking about.

1 THE COURT: All right. I mean, I would agree with
2 that. It needs to be limited to the impeachable things.

3 MS. ROSS: And that's fine. I would just say I kind
4 of went through a lot of what I heard on that, and the
5 answers would be impeachable. They're different from what
6 was ---

7 MR. CHAMBERS: Your Honor, may we approach?

8 THE COURT: Certainly.

9 (WHEREUPON, a bench conference was held off the record.)

10 THE COURT: Ladies and gentlemen, we've come upon a
11 quick legal matter that we need to take up. Well, I don't
12 know how quick it's going to be. I'm just being honest
13 with you. I'm going to ask you to step to your jury
14 deliberation room for a little while, take a break. Do
15 you mind checking and seeing if anybody here would like a
16 snack or anything like that maybe while you're back there?
17 You can speak with him about that, okay?

18 All right. Very good. Thank you.

19 (WHEREUPON, the jury exits the courtroom at 2:44 p.m.)

20 THE COURT: Well, let's see. What's your question?
21 Okay. The witness has a question, and I certainly don't
22 want to answer his question without you all hearing his
23 question. Let's see what it is. Yes, sir.

24 THE WITNESS: To your question, what does this man
25 C.J. or Peso ---

1 THE COURT: Oh, no, no, no. We can't do that. I
2 can't ask -- you can't ask that.

3 Okay. Here's what we're going to do. We're going to
4 take a five-minute break, and then we're going to come
5 back, and then we're going to watch the video of your
6 interview.

7 MR. FRETWELL: It's just audio, Your Honor.

8 THE COURT: Audio. I'm sorry. I'm sorry. I thought
9 it was a video. It's just an audio recording of your
10 interview. So you'll listen to that when we get back.

11 All right. Let's take a break for five minutes.

12 (WHEREUPON, a recess is taken at 2:45 p.m.)

13 THE COURT: Okay. So we're going to listen to that.
14 Does Mr. Fretwell need to be in here for this?

15 MR. GREGORY: I think we're ready to start listening
16 to that, Your Honor.

17 THE COURT: All right. Very good.

18 (WHEREUPON, an audio recording was played in open court.)

19 MS. ROSS: Now, that's all I thought was
20 impeachable ---

21 THE COURT: Okay.

22 MS. ROSS: --- until there was one question about ten
23 minutes later I can go up about his mother being concerned
24 that he was set up. And I believe I asked about that, and
25 he said that wasn't mentioned. But that's not a huge deal

1 to -- you know, I can skip that.

2 THE COURT: Okay.

3 THE WITNESS: Can I ask that?

4 THE COURT: What's that?

5 THE WITNESS: Can I answer that question?

6 THE COURT: She's going to ask you the question.

7 She's going to ask you the questions. All right.

8 MR. CHAMBERS: Your Honor, before we go back on the
9 record, I just would inquire -- ask you to inquire for the
10 record whether the witness was able to hear and understand
11 the tape and needs anything replayed for him or anything
12 like that.

13 THE COURT: All right. Mr. Poole, did you hear the
14 tape?

15 THE WITNESS: I did. That's -- that's all I was
16 trying to answer the question. She was saying about my
17 mother, you know, feeling like we was set up, and my
18 mother was talking to the investigator if we was set up.
19 She was not talking to me.

20 THE COURT: Okay, okay.

21 MS. ROSS: And that's fine. I'm not going to ask you
22 about that again when the jury is back here.

23 THE COURT: Okay. All I need to know though is if
24 you could hear everything on that tape. You felt like you
25 understood it. You don't think that's been changed from

1 when you -- you're shaking your head no.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Okay.

4 THE WITNESS: It sounds exactly the same as the day
5 it happened.

6 THE COURT: Okay, okay. You had no problems. Okay.
7 Perfect.

8 Okay. All right. Are we ready to bring the jury
9 back in? That's shorter than I thought.

10 MR. GREGORY: Yes, Your Honor.

11 THE COURT: So that's good. All right.

12 MS. ROSS: Judge, while they're still out, I think
13 I'm going to ask him again, and I'm sure everything will
14 be fine, but if it's still inconsistent, I think under
15 Rule 613 I should be able to go ahead and play some of
16 this tape, just the parts that are inconsistent. And I
17 marked down the three places I ---

18 THE COURT: All right. Mr. Gregory, there's
19 something you want to say?

20 MR. GREGORY: As long as he denies that he said that.
21 It's got to be a denial.

22 THE COURT: Yeah.

23 MS. ROSS: I know.

24 MR. GREGORY: But other than that, I agree with
25 everything.

1 (WHEREUPON, the jury entered the courtroom at 3:15 p.m.)

2 THE COURT: All right. Ladies and gentlemen, thank
3 you for your patience with us. We're ready to resume.

4 Ms. Ross?

5 MS. ROSS: Thank you, Your Honor.

6 BY MS. ROSS:

7 Q Okay. Mr. Poole, we just listened to this audio of
8 the interview that you gave on the day after you were
9 shot.

10 A Yes, ma'am.

11 Q And did you hear that in the court here just now?

12 A Yes, ma'am.

13 Q Okay. And then just going through that, isn't it
14 true that you had stated that four dudes walked up and one
15 tapped on the window and said, "What's up, y'all"?

16 A Yes, ma'am.

17 When I seen them at the time, four people was with
18 them, but one actually walked off. So when they finally
19 got to the vehicle, it was three.

20 Q All right. And you said a number of times and in two
21 places, kind of three minutes in and six minutes in, that
22 someone came up and said, "What's up, y'all"?

23 A That's the same person.

24 Q And you never said in that interview anything about
25 are you a Woo or anything like that.

1 A I never said anything about that. The person asked
2 me was I Woo Gang, and I answered his question and said
3 "no."

4 Q Okay. But when you were questioned the day after,
5 you said someone came up and knocked and said, "What's up,
6 y'all?"

7 A Yeah. That was the first part.

8 Q Yeah. But you didn't -- at that time, you made no
9 mention of them going ahead and answering are you -- or
10 going ahead and asking as well anything about Woo Gang.
11 There's nothing in that audio about Woo Gang, is there?

12 A I'm not understanding your question.

13 Q Okay. We just listened to an audio that you gave.

14 A Uh-huh.

15 Q Is Woo Gang mentioned at all in that audio?

16 A No.

17 Q Okay. And in that audio, you stated only one person
18 was shooting at us, correct?

19 A Yes, ma'am.

20 Q And also in the audio, you can hear -- you look at --
21 you look at a lineup with Mr. Rice and you didn't identify
22 him at all.

23 A That's correct.

24 MS. ROSS: All right. No further questions.

25 THE COURT: Mr. Chambers?

CROSS EXAMINATION

BY MR. CHAMBERS:

Q Mr. Poole, you indicated today that you saw Marcus Foster when you were there at Boulder Creek Apartments.

A When I first arrived.

Q You said you talked to him, y'all talked about your dreads and then you walked back to the car where the girls were and where Mr. Cook was.

A Yes, sir.

Q After listening to that tape, do you recall saying, when you were asked in the hospital by the police officers, that you did not see Marcus Foster at all on the day of the shooting?

A I recall I think I said I didn't see him at the time because I was focused on the first person that walked to my vehicle with the handgun. I did say in the thing that I was focused on just him because he walked to the window and he presented a firearm. And I was worried about getting shot in the head.

Q But after listening to that tape, they asked you several times about Marcus Foster. Do you recall that from listening to the tape?

A They brought his name up.

Q And do you recall indicating to them that you did not see him at all there that day?

1 A I don't recall saying "at all." I said "at the
2 time." I know that's in there. I just heard it.

3 Q Well, on that tape, you didn't mention anything about
4 talking to him at any point that day, did you?

5 A I said I talked to him. I said when I first pulled
6 up, we talked outside.

7 MR. CHAMBERS: Your Honor, may we approach?

8 THE COURT: Sure.

9 (WHEREUPON, a bench conference was held off the record.)

10 THE COURT: If you'll just be patient with us for
11 just a moment.

12 Ms. Ross, it might be best if you stepped outside
13 with that.

14 MS. ROSS: That's a great idea.

15 (Pause in proceedings.)

16 MR. CHAMBERS: I do have a couple questions, Your
17 Honor, since we're here and on the record and we're
18 waiting.

19 THE COURT: All right.

20 BY MR. CHAMBERS:

21 Q Obviously, you testified on direct and then you had
22 an opportunity to listen to the recording. Do you recall
23 saying when you were in the hospital room that day and on
24 the recording that you were able to listen to to refresh
25 your memory that you talked about making the ID of the

1 person you believed to be the shooter? Do you recall
2 that?

3 A Can you explain some more?

4 Q In other words, they were asking you to identify the
5 person that you saw with a gun. Do you remember that
6 conversation?

7 A Yes, sir.

8 Q Do you remember that when you were making that
9 identification, do you remember uttering the sentence,
10 "Number 2 kind of looks like him"? Do you remember saying
11 that?

12 A Yes, sir.

13 Q All right. And so you said in following saying,
14 "Number 2 kind of looks like him," do you recall saying,
15 "Well, if he had long dreads, more than likely that might
16 be him"?

17 A I said something like that, but not in that order.

18 Q Okay. And then ultimately, you said that you could
19 be 80 percent.

20 A I said I was 80 percent already.

21 Q Okay.

22 A My exact words is I said it's 80 percent right now
23 because his dreads are a little longer. In this picture,
24 they're shorter.

25 Q Okay.

1 MS. ROSS: May I approach?

2 THE COURT: Sure. Let's see if we can get that
3 microphone down. Thank you so much, Mr. Poole.

4 (WHEREUPON, an audio recording was played in open court.)

5 BY MR. CHAMBERS:

6 Q So after listening to that, would you agree with me
7 that you stated that you didn't see Mark out there?

8 A Yeah. Yes, sir. I said that, but I said at the time
9 I didn't see him. I was focused on the person who walked
10 to my window.

11 Q But when you testified on direct, you recalled that
12 you did see him, you recalled that you said that you had a
13 conversation with him before you walked down to the car,
14 right?

15 A Yes. I first said, when I came back to the
16 neighborhood and I walked up the hill, I seen Mr. Foster
17 and we had a conversation. And then I said I walked to
18 the car, and when the gentleman walked up, I did not see
19 him at that time.

20 Q But you would agree with me that you just said you
21 didn't see him out there at all that day. That was just
22 played on the tape. You heard it.

23 A He didn't -- I did not say "at all." We can play it
24 again.

25 Q And you -- but then on testimony today, you recall

1 that you saw him at the car, you saw him at the hood of
2 the car. That was your testimony today.

3 A Yes.

4 MR. CHAMBERS: Okay. That's all the questions I
5 have. Thank you, sir.

6 THE COURT: Mr. Gregory, anything else for this
7 witness?

8 MR. GREGORY: Not from the State, Your Honor.

9 THE COURT: All right. Mr. Poole, you can step down.

10 MR. GREGORY: May it please the Court, Your Honor.
11 The State calls Dustin Kretschmar.

12 THE COURT: Okay.

13 THE CLERK: If you will please approach the Bible,
14 place your left hand on the Bible and raise your right
15 hand.

16 WHEREUPON,

17 DUSTIN KRETSCHMAR

18 After having been duly sworn, testified as follows:

19 THE CLERK: Please be seated. Once you're seated,
20 state your name for the record.

21 THE WITNESS: Dustin Kretschmar.

22 DIRECT EXAMINATION

23 BY MR. GREGORY:

24 Q Dustin, where are you employed currently?

25 A I own a pet sitting business, Connected Pets.

1 Q And how long have you owned that business?

2 A About a year and a half now.

3 Q Prior to owning your own business, what did you do?

4 A I worked for the Greenville County Forensics
5 Division.

6 Q How long did you work there?

7 A About eight years.

8 Q Did you have any other law enforcement experience
9 prior to the Forensics Division?

10 A I did. I was on the road for about two years down in
11 Gainesville, Florida, for the police department there.

12 Q So ten years of law enforcement total.

13 A Yes, sir.

14 Q What were your duties and responsibilities with
15 forensics?

16 A We would respond to crime scenes when deputies
17 requested, and we were there to document and collect
18 evidence we found on scene.

19 Q And what was your position, your last position you
20 had with forensics?

21 A I was an FTO, a field training officer with the
22 Forensics Division.

23 Q And what kind of training did you receive to become a
24 forensic technician?

25 A It was a lot of on-the-job training, and then also I

1 was -- I took a few classes as far as bloodstain pattern
2 analysis, death investigation, forensic photography and
3 that kind of stuff.

4 Q Did you receive any ongoing training?

5 A I did. Again, it was through our department. We did
6 a lot of on-the-job training.

7 Q And did you go through the police academy?

8 A I did. Yes, sir.

9 Q In South Carolina?

10 A In Florida. And then it transferred over. Yes, sir.

11 Q Okay. Were you working at the forensics in
12 April 3, 2017?

13 A Yes, sir.

14 Q Did you have an opportunity to become involved in
15 this case on April 3, 2017?

16 A Yes, sir.

17 Q And how did you become involved in the case?

18 A There was a Ford Crown Vic, a 1998 Ford Crown Vic at
19 our crime scene office that was -- had a search warrant
20 for it, and I was requested to process the vehicle in
21 regards to the search warrant.

22 Q And who requested that you process that vehicle?

23 A Let me refer to my report real quick.

24 Q Will that help refresh your memory?

25 A Yes, sir.

1 (Reviews document) The Investigator Evett.

2 Q And you said the vehicle you were supposed to process
3 was located where?

4 A At our crime scene office in the bay.

5 Q Is that dry storage?

6 A Yes, sir.

7 Q What is dry storage?

8 A It's just inside our vehicle garage bay to keep it
9 out of the weather and elements to try and preserve the
10 vehicle.

11 Q Why is that important?

12 A To preserve the vehicle, any potential evidence that
13 might be on the exterior of the car that could be
14 destroyed or tampered with by weather.

15 Q When you say "process the vehicle," what do you mean?

16 A Photograph the vehicle, collect any evidence that
17 might be on there, physical evidence, and then also look
18 for latent prints that are on or around the vehicle.

19 Q When you were working for forensics for as long as
20 you did, how many cars did you process?

21 A Several thousand.

22 Q Did you have a personal procedure that you would
23 follow in processing the car?

24 A Yes, sir. I would photograph the vehicle before
25 anything was actually done on the car. I start on the

1 outside and then work my way into the inside of the car.

2 Q And why would you do it in that order?

3 A To preserve the evidence. So working on the outside
4 of the car first, I could document what was on the outside
5 of the car and collect anything that might be there before
6 entering the vehicle so not to disturb anything on the
7 outside before going inside.

8 Q And did you wear any special equipment to preserve
9 the evidence?

10 A Yes, sir. We always wear gloves, latex gloves, so we
11 don't put any fingerprints of our own onto the car or
12 transfer any DNA.

13 Q And how often would you change your gloves during the
14 process of processing the car?

15 A Pretty regularly. I don't have a specific number for
16 you.

17 Q But just for preservation of the evidence; is that
18 correct?

19 A Yes, sir.

20 Q I'm going to show you what's been marked as State's
21 Exhibit 94 to 101. If you'll take a look at that, please.

22 A Yes, sir. (Reviews exhibits) Yes, sir.

23 Q You said the first thing that you did was photograph
24 the vehicle; is that correct?

25 A Yes, sir.

1 Q And are those the photographs that you took?

2 A Yes, sir.

3 Q Are they a fair and accurate representation of the
4 vehicle?

5 A Yes, sir.

6 Q Have they been altered in any way?

7 A No, sir.

8 MR. GREGORY: Your Honor, at this time, the State
9 moves Exhibits 94 to 101 into evidence.

10 THE COURT: Any objection?

11 MS. ROSS: None, Your Honor.

12 THE COURT: Mr. Chambers?

13 MR. CHAMBERS: No, Your Honor.

14 THE COURT: All right. They're so admitted.

15 (WHEREUPON, State's Exhibit Numbers 94 through 101 were
16 admitted into evidence.)

17 MR. GREGORY: Permission to publish them to the jury,
18 Your Honor.

19 THE COURT: Certainly.

20 BY MR. GREGORY:

21 Q These pictures are going to come up right behind your
22 head, so you can slide over.

23 What's State's Exhibit Number 94?

24 A This is the vehicle that I processed at our crime
25 scene bay.

1 Q And what year is that vehicle? Were you able to
2 determine?

3 A 1998.

4 Q And did you determine who it was registered to?

5 A Chico Poole.

6 Q The red markings as you see here, what is that?

7 A That is evidence tape that we place on the doors, the
8 hood of the car and the trunk to preserve the vehicle from
9 the scene to our crime scene office. So one of our
10 evidence technicians will be on scene. When the vehicle
11 is towed, they'll place that evidence tape on those
12 locations and so we know that nobody has been inside the
13 car in transit. The tape will be intact when it's -- when
14 I get to it at our crime scene office.

15 Q And was it intact when you got to it?

16 A Yes, sir.

17 Q And after photographing the car, what did you do?

18 A After photographing, then I'll process the handles
19 specifically for potential touch DNA. I'll swab those.
20 So I can open the doors to do a -- look inside the vehicle
21 for any potential evidence.

22 Q All right. Did you look inside this vehicle?

23 A Yes, sir.

24 Q All right. What was the condition of the vehicle
25 once you looked inside?

1 A There was a lot of suspected blood kind of covering
2 the entire interior of the vehicle.

3 Q Both front and back?

4 A Yes, sir.

5 Q What else did you notice? Did you notice anything?

6 A There were several projectile holes throughout the
7 vehicle, and other miscellaneous items scattered around
8 the car, and then there was also a cartridge casing on the
9 front driver -- or front passenger's side seat.

10 Q I'm going to show you what's been previously entered
11 as State's Exhibit Number 95. Can you tell the jury what
12 we're looking at here?

13 A That is the rear passenger's side door, the interior
14 armrest.

15 Q And that 36 placard, what is that there for?

16 A We use these placards to delineate which item number
17 -- or which piece of evidence is which that we collect.
18 So Number 36 is Evidence Number 36.

19 Q And when you saw the door in that condition, what did
20 you do?

21 A I opened up the armrest to see what was inside. And
22 there was a metal projectile inside the armrest.

23 Q All right. And did you collect that metal
24 projectile?

25 A Yes, sir.

1 Q And what is State's Exhibit Number 96?

2 A That is the metal projectile from the armrest.

3 Q All right. And it has the same placard there; is
4 that correct?

5 A Yes, sir.

6 Q Did you find any -- well, let me just show you this.
7 Exhibit Number 97, do you recognize that?

8 A Yes, sir.

9 Q What is that?

10 A That is a jacket to a metal -- or to a projectile,
11 and it was found in the rear passenger door as well.

12 Q In that same door where 36 came from; is that
13 correct?

14 A Yes, sir.

15 Q What is State's Exhibit Number 98?

16 A That is another metal projectile. And that, I
17 believe it was from the rear passenger floor -- or I'm
18 sorry. From the front driver's side door.

19 Q Okay. This is Number 99. What are we looking at
20 here?

21 A So that's going to be the rear passenger's side
22 again. And Placard Number 39 is marked next to a metal
23 jacket that was on the floorboard there.

24 Q This is Number 100.

25 A And just to the left, the metal jacket that's on the

1 floor.

2 Q And did you have to dig that out?

3 A This one?

4 Q Yes.

5 A No, sir.

6 That is the same piece of evidence, Number 39.

7 Q Just closer up.

8 A Yes, sir.

9 Q And that was laying loose in the car.

10 A Correct.

11 MR. GREGORY: Beg the Court's indulgence for one
12 second.

13 THE COURT: Certainly.

14 BY MR. GREGORY:

15 Q I'm going to show you what has been previously
16 entered as State's Exhibit 31 and 32. Do you recognize
17 those?

18 A Yes, sir. This is a picture of the interior front
19 passenger's seat, and it's the metal -- it's the
20 projectile casing that was laying on the seat.

21 Q And that was all in your initial -- the photographs
22 were your initial processing of the car; is that correct?

23 A Yes, sir.

24 Q Once you initially processed the car, you
25 photographed the car, what did you do as far as collection

1 of these items? Did you collect them at that time?

2 A Yes, sir.

3 Q And how did you collect them?

4 A So with our gloves on, we'll place it in a bag and
5 seal that bag with a piece of evidence tape with our
6 initial and the date that we collected it. And then we
7 place an evidence label on it, and then it gets
8 transferred over to our Property and Evidence section.

9 Q I'm going to show you what will be marked as State's
10 Exhibit Number 102. If you'll -- do you see your initials
11 on that?

12 A Yes, sir.

13 Q And it's on the outside. Is that the envelope that
14 you put Exhibit Number 102 in?

15 A Yes, sir.

16 Q Has it been altered in any way?

17 A No, sir.

18 Q Has it been opened?

19 A No, sir.

20 Q Will you cut it, just the top of it, and look into
21 it, please.

22 A (Witness complies) The cartridge casing is inside the
23 bag.

24 Q Inside the bag?

25 A Yes.

1 Q And that's the cartridge casing that you collected
2 from Exhibit 31 and 32; is that correct?

3 A Yes, sir.

4 (WHEREUPON, State's Exhibit Number 102 was marked for
5 identification.)

6 BY MR. GREGORY:

7 Q When you had collected that, you put it in the
8 envelope. And then what did you do with it?

9 A Then it goes into our secure storage lockers at our
10 crime scene office. And then once it is completely
11 packaged, it's transferred over to the Property and
12 Evidence section at the Law Enforcement Center.

13 Q Now, when you collected it, where did you put the
14 items after you put them in the envelope?

15 A I'm sorry?

16 Q Did you store the items at any time?

17 A Yes, sir. They would be in our secure lockers that
18 we have at our crime scene office.

19 Q And who has access to that locker?

20 A Myself and my supervisor.

21 Q Is that a secure location as well?

22 A Yes, sir.

23 Q I'm going to show you what is marked as State's
24 Exhibit 128, 129, 130 and 131.

25 ///

1 (WHEREUPON, State's Exhibit Numbers 128 through 131 were
2 marked for identification.)

3 BY MR. GREGORY:

4 Q Do you recognize those?

5 A Yes, sir. This is the same packaging with my
6 initials on the back.

7 Q Has it been altered in any way?

8 A No, sir.

9 Q Are there any other initials on the packaging?

10 A Yes, sir.

11 Q Do you recognize those?

12 A Yes, sir. They're the ---

13 Q Feel free to, yeah, cut open the top. I apologize.
14 Cut off the top of each one and take a look at it, please.

15 A (Witness complies) Yes, sir. These are the metal
16 projectiles and jacket that I collected from the vehicle.

17 Q And they're in substantially the same condition as
18 when you collected them?

19 A Yes, sir.

20 Q You mentioned the other signature on there -- or the
21 other initials on there. Do you know whose initials those
22 are?

23 A I believe it looks like James Armstrong, our firearms
24 examiner.

25 MR. GREGORY: Your Honor, at this time, the State

1 would move Exhibits 31, 32, 128 -- no. I apologize, Your
2 Honor. 102, 128, 129, 130 and 131 into evidence.

3 THE COURT: Any objection, Ms. Ross?

4 MS. ROSS: No, Your Honor.

5 THE COURT: Mr. Chambers?

6 MR. CHAMBERS: No, Your Honor.

7 THE COURT: All right. They're so admitted.

8 (WHEREUPON, State's Exhibit Numbers 102 and 128 through
9 131 were admitted into evidence.)

10 BY MR. GREGORY:

11 Q After collecting those exhibits, what did you do with
12 the vehicle?

13 A After collecting the evidence both from the exterior
14 and interior of the vehicle, then we move on to processing
15 for latent prints. We process on the outside first and
16 then, again, work our way to the inside of the vehicle.

17 Q And you did that in this case?

18 A Yes, sir.

19 Q All right. I'll briefly show you the vehicle again.

20 Now, did you have -- in your years of working there,
21 did you have a procedure that you followed for processing
22 for latent prints?

23 A Yes, sir. Personally, I start on the front driver's
24 side door, work my way around counterclockwise on the
25 exterior of the vehicle, and then open all the doors and

1 do the same on the inside of the vehicle.

2 Q And what do you use to find latent print? How are
3 they found?

4 A So we use a latent print brush and a fine black
5 powder to apply to the surfaces that we're looking for
6 latent prints, and that black powder will adhere to the
7 oils left behind by your finger.

8 Q Now, did you collect anything that possibly looks
9 like a latent print or are you looking for something in
10 particular?

11 A I'll collect something that looks like a fingerprint,
12 but if it has any -- if it's questionable at all in my
13 mind, then I'll still collect it. But I do have some
14 criteria that I try to follow when collecting a
15 fingerprint.

16 Q And when you find a fingerprint, what do you do?

17 A We'll place -- put the powder on it. Once it
18 develops, then place a piece of tape down on the
19 fingerprint. You lift that, place the tape onto a latent
20 print card, fill out the information on the card. You put
21 the card in an envelope. That envelope will go into a
22 lockbox where our Latent Division will come and pick up
23 the cards.

24 Q Take a look at this, please.

25 A (Reviews exhibits.)

1 MR. GREGORY: I beg the Court's indulgence. There's
2 25 individual exhibits up there.

3 THE COURT: Oh, no. That's fine. Certainly.

4 THE WITNESS: Yes, sir.

5 BY MR. GREGORY:

6 Q All right. Do you recognize those?

7 A Yes, sir.

8 Q And what are they?

9 A These are the latent prints that I lifted from the
10 vehicle.

11 Q And how many prints did you lift from the vehicle?

12 A 36, I believe.

13 Q Okay. And the cards that you said you put the latent
14 prints on, did you sign each one of those cards?

15 A Yes, sir.

16 Q That's your handwriting?

17 A Yes, sir.

18 Q Is that a fair and accurate representation of where
19 you pulled the latent from?

20 A Yes, sir.

21 Q And the cards on the reverse have the tape; is that
22 correct?

23 A Yes, sir.

24 Q Have those been altered in any way?

25 A No, sir.

1 MR. GREGORY: Your Honor, at this time, the State
2 would introduce Exhibit 103 to 127 into evidence.

3 THE COURT: Any objection, Ms. Ross?

4 MS. ROSS: No objection.

5 THE COURT: Mr. Chambers?

6 MR. CHAMBERS: No objection, Your Honor.

7 THE COURT: They're so admitted.

8 (WHEREUPON, State's Exhibit Numbers 103 through 127 were
9 admitted into evidence.)

10 MR. GREGORY: Permission to publish them to the jury,
11 Your Honor.

12 THE COURT: Certainly.

13 BY MR. GREGORY:

14 Q Now, you said you collected 36; is that correct?

15 A Yes, sir.

16 Q And that was from the exterior of the vehicle.

17 A Yes, sir.

18 Q It looks like my numbers got out of order, but let's
19 take a look at this card and see if it will come into
20 focus.

21 All right. We're going to talk about it. The cards
22 that you create, can you tell us the information that you
23 have on each one of these cards?

24 A Yes, sir. So there's a diagram where we actually
25 draw a rough sketch of the location of each fingerprint

1 that we lift. It also has the case number, the day that
2 we lift it, the type of incident that we are processing
3 that for, and then we also will not only draw it, but
4 we'll hand write out the location of the fingerprint. It
5 has the vehicle information as well as my name and which
6 number of cards for every latent card.

7 Q I'm going to give you State's Exhibit 103 to 113. I
8 apologize. I cannot put it in the overhead. But will you
9 go through each one and tell me where you lifted those
10 prints off of this card -- car.

11 A The exterior of the rear driver's side door; exterior
12 of the rear driver's side quarter panel; exterior of the
13 rear driver's side quarter panel; exterior of the front
14 driver's side door; exterior of the front driver's side
15 door; rear-view side mirror on the exterior of the front
16 driver's side door; exterior of the front driver's side
17 door; exterior of the front driver's side door; exterior
18 of the front driver's side door; exterior of the front
19 driver's side door; exterior of the front windshield on
20 the driver's side.

21 Q And here's Exhibit 114 through 118. Will you please
22 tell me where you lifted those.

23 A Exterior of the rear driver's side door; exterior of
24 the rear driver's side quarter panel; exterior of the rear
25 driver's side door; exterior of the rear driver's side

1 door; and exterior of the rear passenger door.

2 Q Now, some of those are bigger than the other ones; is
3 that correct?

4 A Yes, sir.

5 Q And why are they bigger?

6 A They'll encompass a large portion of the palm. And
7 it's possible that it also has fingertips correlating with
8 them as well, so it wouldn't fit on a normal size latent
9 print card.

10 Q So it's a palm print.

11 A Yes, sir.

12 Q All right. And then finally, 119 through 127, if
13 you'll please take a look at those.

14 A Exterior of the front driver's side quarter panel;
15 exterior of the front passenger door; exterior of the
16 front passenger door; exterior of the rear passenger door;
17 exterior of the rear passenger door; exterior of the
18 trunk; exterior of the rear driver's side quarter panel;
19 exterior of the rear driver's side quarter panel; and
20 exterior of the rear driver's side quarter panel.

21 Q Now, after dusting for latent prints and collecting
22 those, what did you do?

23 A Once those are collected and put into our -- into the
24 lockbox to be transferred over, then we have the ability
25 to go into the vehicle and manipulate things a little bit

1 better. So at that point, that's when we'll start using
2 trajectory rods, try and find angles of bullets that have
3 been fired and things of that nature.

4 Q Okay. And just briefly, the lockbox that you
5 referred to that you dropped the envelope in is located
6 where?

7 A It's in our crime scene office.

8 Q And is it a secure location?

9 A Yes, sir.

10 Q And once you drop it in, can you get it back out?

11 A We do not have access to it. The Latent Division
12 does have access to it.

13 Q And how often do they come pick it up; do you know?

14 A Once a day.

15 Q So let's talk about the trajectory that you just
16 mentioned.

17 A Yes, sir.

18 Q Now, what part of the car did you look for for
19 trajectory?

20 A There were several projectile holes in the rear
21 passenger's side door on the exterior. However, the
22 grouping of those projectile holes were too close together
23 to get an accurate trajectory on any one specific hole, so
24 I moved to the front driver's side door which did have a
25 projectile hole and a dent on the exterior so I could

1 connect the hole on the interior of the door to the dent
2 on the exterior of the door.

3 Q All right. And what did you use to do that?

4 A We use a metal -- a metal rod just to place through
5 the -- the two points and then also at the end to see
6 where the originating location will be. I use a laser at
7 the end of the rod to see where it would hit.

8 Q And were you able to determine -- the dent on the
9 front driver's side door, where did that originate from?
10 Were you able to tell?

11 A I was not able to tell.

12 Q Okay. 36, were you able to do a trajectory on 36,
13 your number 36? I'll show you again. It's State's
14 Exhibit 95.

15 A If you don't mind, I'm going to reference my report
16 again.

17 Q That's fine if that will refresh your memory.

18 A Yes, sir (reviews document).

19 Q Did that help refresh your memory?

20 A Yes.

21 Q So let's talk about the dent in the front of the
22 car ---

23 A Yes, sir.

24 Q --- just briefly. If you were to trace that back
25 from your initial looking over the car, where would it

1 come from?

2 A I'm sorry. Say it one more time.

3 Q The dent, the dimple in the front ---

4 A Yes, sir.

5 Q --- were you able to determine where that trajectory
6 came from?

7 A No.

8 Q Was it hit in such a way that it looked like a
9 ricochet or anything?

10 A So the trajectory from the front driver's side door,
11 there was -- I was looking to see where it might have come
12 from. So the only holes that were from the passenger's
13 side were the rear passenger door; however, there was a
14 seat in the way. So the angle that the trajectory, when
15 the door is closed, would not have originated from there.
16 And because the windows were intact, I wasn't able to
17 determine if -- the actual original location where that
18 bullet was fired from.

19 Q Okay. If the door closed, right?

20 A Yes.

21 Q Would your analysis change if the driver's door was
22 open?

23 A Yes, sir. The -- I still wouldn't be able to
24 determine the original location, but that would vary, the
25 angle of where that projectile would have come from.

1 Q Hitting the driver's door, correct?

2 A Yes, sir.

3 Q Based on whether it's closed or whether it's open.

4 A Yes, sir.

5 Q Would your analysis change if it was -- the gun was
6 fired inside the vehicle?

7 A Yes, sir. Again, I wouldn't be able to determine
8 where exactly the gun was fired because of various factors
9 and where a person could have held their arm or the gun
10 would have been. Things might have ricocheted off of
11 different items within the vehicle. But being fired
12 within the vehicle is possible, but I wouldn't know where
13 specifically that gun would have been fired.

14 Q And would your analysis change if the rear passenger
15 door was open?

16 A Yes, sir.

17 Q Now, the items you have as 38 -- with the placards
18 38 and 39, were you able to determine a trajectory from
19 those and link those projectiles to an actual hole in the
20 car?

21 A For which ones? I'm sorry.

22 Q 38 and 39.

23 A (Reviews document) No, sir.

24 Q Because of what reason?

25 A Because of the grouping of the bullet -- of the holes

1 within the rear passenger door, I was unable to determine
2 exactly which originating location that would have been
3 from.

4 MR. GREGORY: Okay. Judge, just to clarify, in case
5 I did not do it, I would like to move in Exhibit 103 to
6 127. I can't remember if I tendered those into evidence
7 or not. I believe I did.

8 THE COURT: I think you did. But if not ---

9 MS. ROSS: I don't object.

10 MR. CHAMBERS: No objection, Your Honor.

11 THE COURT: All right. They're admitted or
12 readmitted.

13 (WHEREUPON, State's Exhibit Numbers 103 through 127 were
14 previously admitted into evidence.)

15 MR. GREGORY: Please answer any questions the defense
16 has for you.

17 THE COURT: All right. Ms. Ross?

18 CROSS EXAMINATION

19 BY MS. ROSS:

20 Q So when you processed the car for fingerprints ---

21 A Yes, ma'am.

22 Q --- did you do door handles, the actual handle?

23 A No, ma'am.

24 So the process is that I will photograph and then
25 examine the vehicle for any potential physical evidence.

1 So in that process, I'll swab the door handles for
2 potential DNA. And because you're swabbing the door
3 handles for DNA, that would destroy any fingerprints that
4 potentially could be on the door handles.

5 Q Okay. So the process ---

6 A The physical process of swabbing would -- negated the
7 point of processing for fingerprints.

8 Q And what was the result of those DNA tests; do you
9 know?

10 A I don't know.

11 Q And some of the finger cards, you know, it will be a
12 palm and fingers ---

13 A Yes, ma'am.

14 Q --- could that indicate one print, sort of like a
15 palm and fingers in one area?

16 A Yes, ma'am.

17 Q Okay. Were there any prints taken from inside the
18 car?

19 A No, ma'am.

20 Q And why not?

21 A Several factors. One big one would have been the
22 amount of blood within the vehicle, so that would have
23 covered a lot of surfaces that could potentially have had
24 fingerprints. But unless there's a print in the blood, we
25 wouldn't be able to process for fingerprints on top of

1 that.

2 Q Okay. And then was there an unfired cartridge found
3 in the vehicle?

4 A Yes, ma'am.

5 Q Were fingerprints attempted to ---

6 A Oh, I'm sorry. An unfired cartridge?

7 Q Yes. Do you recall?

8 A I don't recall.

9 MS. ROSS: Okay. Well, it doesn't matter.

10 Thank you. I've got no further questions.

11 THE COURT: Mr. Chambers?

12 CROSS EXAMINATION

13 BY MR. CHAMBERS:

14 Q Through this process, you're looking for visible
15 fingerprints. After you spray on whatever it is that you
16 spray, certain fingerprints will show up and then you're
17 able to lift those and put them on the card for further
18 inspection by a latent print expert, correct?

19 A Yes, sir.

20 Q But this process is not guaranteed to be able to
21 determine everyone who may have come into contact with
22 that car or touched that car, correct?

23 A I'm not sure I understand your question.

24 Q Well, in other words, I could touch this lectern
25 right here ---

1 A Yes, sir.

2 Q --- and, in fact, I can see my prints. And you can
3 come along after and spray, and you would be able to lift
4 those prints and put them on the card, correct?

5 A Yes, sir.

6 Q But it's also possible that I or somebody else could
7 touch this same surface, and then when you come along
8 later, not have a print there that you could lift,
9 correct?

10 A There's a potential for -- yes, sir. Yes.

11 Q So in other words, you're looking for prints you can
12 find, but it's certainly not indicative of everybody who
13 may have made contact with that car.

14 A No, sir.

15 MR. CHAMBERS: Okay. Thank you.

16 THE COURT: Any other questions for this witness?

17 MR. GREGORY: Just briefly, Your Honor.

18 THE COURT: Sure.

19 REDIRECT EXAMINATION

20 BY MR. GREGORY:

21 Q Ms. Ross asked you about finding a print inside the
22 car. Would you please refer to your report and see if you
23 did find a print from the inside of the car. Not
24 necessarily on the car, but inside the car.

25 A (Reviews document.)

1 Q And just to narrow your focus, possibly from an
2 object inside the car.

3 A Yes, sir. There was a cell phone that was located in
4 the car that I collected and processed at a later date on
5 the 9th, and that did have positive results on the cell
6 phone.

7 Q But that was the only thing you found inside the car.

8 A Yes, sir.

9 MR. GREGORY: I have no further questions, Your
10 Honor.

11 THE COURT: Ms. Ross, anything else?

12 MS. ROSS: No. Nothing further.

13 THE COURT: Mr. Chambers, anything else for this
14 witness?

15 MR. CHAMBERS: No, Your Honor.

16 THE COURT: Sir, you can step down. Thank you.

17 MR. GREGORY: Your Honor, we ask he be excused from
18 subpoena.

19 THE COURT: Any objection to that?

20 MS. ROSS: No, Your Honor.

21 MR. CHAMBERS: No, Your Honor.

22 THE COURT: Thank you.

23 MR. GREGORY: May it please the Court. The State
24 calls Tyler Bucholtz.

25 THE CLERK: Please approach the Bible, place your

1 left hand on the Bible and raise your right hand.

2 WHEREUPON,

3 TYLER BUCHOLTZ

4 After having been duly sworn, testified as follows:

5 THE CLERK: Please be seated, and once you're seated,
6 state your name for the record.

7 THE WITNESS: Tyler Bucholtz.

8 DIRECT EXAMINATION

9 BY MR. GREGORY:

10 Q Tyler, where are you employed?

11 A Greenville County Department of Public Safety in the
12 Forensic Division.

13 Q In what capacity are you employed there?

14 A I'm a latent print examiner.

15 Q And what is a latent print examiner?

16 A I accept impression evidence from crime scenes, so
17 they can be footwear or fingerprints or palm prints. And
18 I analyze them, conduct examinations and then issue
19 reports based on my findings.

20 Q And are those your duties?

21 A Yes.

22 Q Do you have any other duties?

23 A I'm also a crime scene technician. So I did two and
24 a half years in the Crime Scene Unit responding to the
25 scenes, processing and documenting them.

1 Q So you have ten and a half years of experience in law
2 enforcement all together?

3 A In forensics, and then three and a half years in
4 probation and parole.

5 Q Did you receive any training for your position?

6 A Yes. My first year in the latent print section was
7 an apprentice-style training where everything I did, all
8 the comparisons I made, conclusions I made, they were all
9 reviewed by another competent examiner. And everything --
10 everything I did, he reviewed, and everything he did, I
11 looked at. That was apprentice-style training for a year.
12 I've also got over 476 hours of crime scene processing and
13 latent print examination training, formal classroom
14 training.

15 Q Do you receive any other ongoing training?

16 A I do participate in proficiency testing as well as we
17 keep up with the Journal of Forensic Identification and
18 other publications that come out, ongoing training.

19 Q Do you hold any certificates for latent print
20 examining?

21 A Yes. I'm a certified latent print examiner through
22 the International Association for Identification and have
23 been since 2015.

24 Q Is that certification, is it current?

25 A Yes.

1 Q And how many latent prints have you been asked to
2 examine?

3 A In this case?

4 Q No. In your career.

5 A I've conducted over -- I'm trying to remember the
6 exact number. Can I look at a paper I've got it written
7 down on?

8 Q You have a paper where you have your total ---

9 A Some -- some statistics on it, yeah, if that's okay.

10 Q If that will refresh your memory.

11 A If that's okay.

12 MS. ROSS: I stipulate to his expertise in this area.

13 MR. CHAMBERS: I would too, Your Honor.

14 THE COURT: All right.

15 MR. GREGORY: Your Honor, at this time, the State
16 would put forth Mr. Bucholtz as an expert in the field of
17 fingerprint examination and identification.

18 THE COURT: And ladies and gentlemen, I've explained
19 the expert witness to you previously. This expert is
20 qualified in the area of fingerprint identification
21 and ---

22 MR. GREGORY: Examination and identification.

23 THE COURT: --- examination and identification. I'm
24 so sorry. And he'll be able to give his opinion in those
25 areas. You can use that opinion, of course, any way you

1 see fit. Thank you.

2 BY MR. GREGORY:

3 Q Tyler, what is a latent print?

4 A A latent print is also referred to as an unknown
5 print because it's a fingerprint left behind on a scene
6 that we don't know the source of it. "Latent" also means
7 hidden. So that's a fingerprint that's put on a surface
8 that we can't see with the naked eye until it's processed
9 with either a chemical or a fingerprint powder.

10 Q How do people leave fingerprints?

11 A Your hands are sort of like a rubber stamp, and if
12 you look at them, you can see the lines on your hands, on
13 your palms and on your fingers. Those are also present on
14 the soles of your feet. But those are referred to as
15 friction ridges. And they work kind of like a rubber
16 stamp. And the ink for that stamp would be the oils that
17 you get on your hands from touching parts of your body as
18 well as the sweat and perspiration that comes out of the
19 pores on your fingers. So when you touch a surface, you
20 leave behind either that perspiration or that oil in the
21 same pattern as those lines on your fingers.

22 Q And does every person leave a fingerprint behind if
23 they touch something?

24 A Not every person all the time.

25 Q How fragile are fingerprints?

1 A They're very fragile. So because they're made of
2 perspiration or oils, they can be rubbed off very easily,
3 wiped off. They can dry out in the sun and evaporate. It
4 just really depends on the environment.

5 Q Okay. Can rain destroy fingerprints?

6 A It's possible.

7 Q What about cleaning supplies? Does that destroy
8 fingerprints?

9 A Yes. Anything you would wipe on or rub off or touch
10 over you can destroy a fingerprint with.

11 Q Can you briefly say how latent prints are recovered?

12 A So on a typical surface, which would be a nonporous,
13 hard, smooth surface, usually our crime scene technicians
14 will use fingerprint powder, simply a brush and
15 fingerprint powder and dust the surface and the
16 fingerprint's made visible. Once it's visible, they'll
17 put tape on it and lift the fingerprint from the surface
18 and then place it on a card. And then they document on
19 the front of the card where the fingerprint came from,
20 what the case number is, and all the -- all the relevant
21 information.

22 Q Are there any types of surfaces that are better than
23 others to collect fingerprints from?

24 A Yes. As I said, hard, nonporous smooth surfaces are
25 the best, such as glass or metal. We can also get them on

1 things like paper, but we have to use a chemical process
2 for that. But most of the time, the best surface would be
3 a glass or metal or something that's equivalent.

4 Q How are prints -- fingerprints used to identify a
5 person?

6 A Well, fingerprints are -- there's too main factors:
7 they're unique and they're persistent. So no one has ever
8 been -- no two people have ever been found to have the
9 same fingerprints, and fingerprints are permanent
10 throughout life. You may -- or persistent. You may get a
11 scar on your finger, but that also persists throughout the
12 rest of your life until, say, you get another scar over
13 it. So from the time you're born until the time you die,
14 your fingerprints don't change.

15 Q Can two people have identical fingerprints?

16 A No.

17 Q Even identical twins?

18 A No.

19 Q How are fingerprints compared? How do you compare
20 fingerprints for identification purposes?

21 A When I receive an envelope from the Crime Scene Unit,
22 we open them, look at the cards, and like I said, there'd
23 be a tape lift on the back of the card.

24 So the first thing we do is look at it and determine
25 whether it's a finger or a palm, whether we can see a

1 pattern type such as a loop, an arch or a whirl and then
2 go from there. And then there's really three levels of
3 detail that we're looking at. So the first is the pattern
4 type: loop, arch and whirl. And that can be -- anybody
5 could have any one of those three pattern types.

6 And the second level of detail is ridge endings and
7 bifurcations. So those lines on your fingers, they stop
8 and they divide in different sequences for different
9 people, and that's what makes the fingerprints unique.
10 And every fingerprint on your ten fingers is different
11 from each other.

12 So we look at that and see if there's -- first we
13 examine it for quality to make sure there's enough there
14 that's not distorted or smudged. Because if it's a
15 smudge, then there's nothing we can do with it. We have
16 to be able to see those lines, those ridge endings, the
17 bifurcations. And then there has to be enough quantity,
18 like a large enough area that's clear enough for us to
19 identify or compare.

20 So once we look at -- sorry. Once we look at those
21 latents, then we compare them to the known fingerprints
22 and see if the features in the latent print are present in
23 the known fingerprints.

24 Q Did you have known fingerprints for this case?

25 A Yes.

1 Q And what exactly is a known fingerprint?

2 A A known fingerprint is a set of fingerprints, all ten
3 fingers that are taken in a controlled environment where
4 the source of the fingerprints is recorded. So your name,
5 date of birth, Social Security number, all your
6 identifying information is taken down at the time the
7 fingerprints are rolled so we know whose fingerprints
8 those are.

9 Q And whose known fingerprints did you have to this
10 case?

11 A I had six different sets that I can pull up for you.

12 Q And you're looking at a file that you created?

13 A Yes.

14 Q Will that help you refresh your memory?

15 A Yes.

16 I compared Shyheem Hassan Rice, Jaikario Khalil
17 Poole, Marcus Antonio Foster, Anthony Kwame Mays, Kennedi
18 Raven Boyd, and Katrina Lynn Shipley.

19 Q Where did you receive the prints that you were -- to
20 compare or to look at?

21 A The latent print?

22 Q The latent prints, yes. I apologize.

23 A Officer Dustin Kretschmar submitted two envelopes and
24 Officer Blake Wolfe submitted one envelope.

25 Q All right. And where did you receive those

1 envelopes?

2 A Those were picked up -- I picked up two of the
3 envelopes at our crime scene office. Those are kept in a
4 locked box over at the crime scene office, and only the
5 latent print examiners have a key to that box. So we'll
6 respond over there in the morning and pick up all the
7 latent prints from the previous day or from the weekend.
8 And two of these envelopes I picked up and brought over to
9 our office, and one of them was picked up by my
10 supervisor, Bill Cromer. And he's also a latent print
11 examiner with -- one of them with a key to that box.

12 Q And while you're working on it in your office, where
13 are they kept?

14 A They're kept at my desk while I'm working on it. And
15 there's three locked doors to get in the building and to
16 my desk by the time you get there. And then once I'm done
17 with it, it goes through the process of -- it goes to a
18 supervisor for peer review, and then it's kept in a locked
19 file cabinet.

20 Q I'm going to show you what's been previously entered
21 as State's Exhibit 80, 81 and 82. If you'll take a look
22 at those, please.

23 A (Reviews exhibits.)

24 Q Do you recognize those?

25 A Yes.

1 Q And did you -- are those latent prints that you
2 received?

3 A Yes.

4 Q And who did receive those from?

5 A These are from Officer Blake Wolfe.

6 Q And where were they lifted?

7 A These are from a 2010 Chevy Malibu.

8 Q And did you look at them, examine them for, I guess,
9 knowns?

10 A Yes. I compared all three of them.

11 Q And did you get any results from that?

12 A Yes. All -- all three were identified.

13 Q And whose fingerprints are those?

14 A The Number 7 finger, the Number 4 finger, and the
15 Number 4 finger of Katrina Lynn Shipley.

16 Q So all three were from Katrina Shipley.

17 A Yes.

18 Q Now, when you are numbering your fingers, how did you
19 number your fingers?

20 A The right thumb is Number 1, and then 2, 3, 4, 5. So
21 the four would be the right ring finger. And then 6 is
22 the left thumb, 7 is left index, 8, 9 and 10. So two --
23 two to the Number 4 right ring finger, and one to the
24 Number 7 left index finger.

25 Q Okay. I'm going to show you what's been previously

1 entered as State's Exhibits 103 to 127.

2 A (Reviews exhibits.)

3 Q Did you have an opportunity to look at those?

4 A Yes.

5 Q And did you perform an examination on those?

6 A Yes.

7 Q And were those -- what you have in front of you are
8 25 latent cards. Is that all that you received in that
9 package?

10 A There were 36 in the envelope.

11 Q All right. So let's talk about the remaining 11.
12 What were the remaining 11?

13 A Let's see. Are they -- they're not still in here.
14 There you go.

15 Q Would it help you to ---

16 A Look at them real quick, yeah.

17 Q Did you mark on them what your results were?

18 A I did.

19 Q Okay.

20 A So let's see. So you want the results?

21 Q Yeah. Well, so those -- you compared those to a
22 known print; is that correct?

23 A The ones that are comparable, yes.

24 Q Okay.

25 A There's six of them that are not comparable, in other

1 words, they're smudged, there's not enough of that
2 clarity, there's too much distortion or not enough
3 quality. So for one reason or another, they weren't able
4 to be compared.

5 Q So out of 36, you had six that were not comparable.
6 What about the rest of those?

7 A Correct. Four of them are just not identified. So
8 they've been run -- they've been run through the AFIS
9 database and compared to all these people and have not
10 been identified to anyone.

11 Q So it's a good print. You just don't have an
12 identification on it.

13 A Correct.

14 Q Okay. And what was the last one?

15 A This remaining one is inconclusive, meaning there's
16 not enough -- there -- there are features there present;
17 however, there's not enough for me to identify a person
18 and say conclusively that it is this person. But there's
19 also not enough there for me to exclude them. So there
20 are similarities in the features of this palm print that I
21 couldn't eliminate this one person, but I also would not
22 identify that person. So it's inconclusive. There's no
23 -- no conclusion based on that.

24 Q Okay. So let's look at your -- the exhibits you have
25 in front of you, 103 to 127. And if you can take them in

1 order, let's talk about what your results were. Did you
2 compare those to any known prints?

3 A Yes, I did. I'm going to have to put them in order,
4 though, because they're all completely out of order.

5 Q I apologize. They -- they probably are.

6 A If you'll give me one second.

7 Q Let me ask you a question. Maybe we can speed up the
8 process a little bit.

9 A Okay.

10 Q Did you create anything to help you with this amount
11 of evidence?

12 A Reports. I do have my results recorded in a report.

13 Q Reports, but did you create anything else? Did you
14 create a PowerPoint for this?

15 A I did create a PowerPoint.

16 Q All right. And would that help you -- would it help
17 you to understand and explain to the jury what it is?

18 A Yes.

19 MR. GREGORY: It's demonstrative, Your Honor, that
20 we're just using. It's not into evidence.

21 THE COURT: Okay.

22 MR. GREGORY: This is just a demonstrative, and we
23 did provide it to defense.

24 THE COURT: Very good.

25 MR. GREGORY: Let me see if I can get . . .

1 MR. FRETWELL: Your Honor, while they're looking at
2 that, may we approach?

3 THE COURT: Sure.

4 (WHEREUPON, a bench conference was held off the record.)

5 BY MR. GREGORY:

6 Q Okay. You created this; is that correct?

7 A Yes.

8 Q Now, how are we going to use this to explain what you
9 found and where you found it?

10 A On this I marked the body panels where the latent
11 prints came from along with the person who was identified
12 and the latent number. So every one of these cards is
13 numbered at the bottom 1 through 36. So I put a line to
14 the panel of the body that that person was identified on
15 and the latent number corresponding with it.

16 Q Okay. And you ran these against the knowns that
17 you've already mentioned?

18 A Yes.

19 Q All right. What are we looking at here?

20 A So this is demonstrating that Latents -- Latents
21 Number 1, 3, 4, 10, 11, 21, 22, 23 and 36 were identified
22 as having been made by Shyheem Hassan Rice. And those are
23 the body panels that all of those different latents came
24 from. So, for instance, Number 1 is from the exterior of
25 the rear driver's side door. So you're aligned to that.

1 There's also latents in here from the front driver's side
2 door and from the rear driver's side quarter panel.

3 Q So this just gives you an indication of the -- if
4 we're to divide this side of the car into four segments,
5 this gives you a point just to that one-fourth of the car,
6 correct?

7 A Just in general, yeah, that body panel. On the
8 actual latent, the technician who lifted it draws a
9 diagram of the door, for instance, and puts an X where
10 they lifted the actual latent from. And this is the tape
11 on the back so you can see what I'm talking about.

12 Q Okay.

13 A So on this one, I identified Mr. Poole on Latent
14 Lifts Number 9, 17, 32 and 33 from the driver's side front
15 mirror, the side mirror, the driver's side rear door, the
16 driver's side rear quarter panel and the trunk.

17 Q Okay.

18 A And then Latents Number 8, 12, 15, 16, 21 and 25 were
19 identified as being made by Mr. Foster, Marcus Antonio
20 Foster, on the front driver's side fender, the front
21 driver's side windshield, the front driver's door, and the
22 rear driver's side quarter panel.

23 Q Okay.

24 A And then Latent Lift Number 7 was identified as being
25 made by Anthony Kwame Mays on the driver's side front

1 door.

2 Q And this is just the passenger's side; is that
3 correct?

4 A Yes.

5 Latents 30 and 31 were identified as being made by --
6 I believe that said Anthony Kwame Mays on the passenger's
7 side rear door.

8 And then Latent 24 and 28 were made by a Mr. Poole on
9 the passenger's side rear door and front door.

10 And Latent 29 was identified as being made by Katrina
11 Boyd, I believe. I -- let me look at it. Kennedi Raven
12 Boyd was on the passenger's side front door.

13 Q The vehicle we saw in there, is that the actual car
14 or is that just a graphic you pulled off?

15 A No. That's just a demonstration of a vehicle that's
16 similar in shape and color.

17 Q And you don't mean to say that's the same year car;
18 is that correct?

19 A It's similar, yeah. I'm not even sure what year the
20 actual vehicle was.

21 Q I'm going to show you what's been marked as State's
22 Exhibit 132A and 132B. Do you recognize these?

23 A Yes.

24 Q You created this?

25 A Yes.

1 Q Is it a fair and accurate representation?

2 A Yes.

3 Q And has it been altered in any way?

4 A No.

5 MR. GREGORY: Your Honor, at this time, the State
6 would introduce State's Exhibit 132A and 132B into
7 evidence.

8 THE COURT: Ms. Ross?

9 MS. ROSS: No objection.

10 THE COURT: Mr. Chambers?

11 MR. CHAMBERS: No objection, Your Honor.

12 THE COURT: All right. They are so admitted as A and
13 B.

14 (WHEREUPON, State's Exhibit Number 132A and 132B were
15 admitted into evidence.)

16 BY MR. GREGORY:

17 Q What is 132B? Can you see that?

18 A This is the passenger's side of the vehicle.

19 Q And 132A?

20 A And those are the identifications made on the
21 driver's side of the vehicle.

22 And I will say each one of these cards that
23 corresponds with those numbers also has the actual finger
24 number or palm, left or right palm, not just their name.

25 Q So the way you counted your fingers, that's on there

1 too, is what you're saying.

2 A Correct, correct.

3 Q When you found a print on this car, does that mean
4 that person touched the car?

5 A Yes.

6 Q If you did not find their print, does that mean they
7 did not touch the car?

8 A No.

9 MR. GREGORY: Please answer any questions the defense
10 has for you.

11 THE COURT: Ms. Ross?

12 MS. ROSS: Thank you.

13 CROSS EXAMINATION

14 BY MS. ROSS:

15 Q Now, with the prints, you are doing a comparison, but
16 you did also run it through AFIS, the sort of print
17 database as well?

18 A That's correct.

19 Q Okay. Now, when you get just the card with the
20 print, you can't tell when that was made ---

21 A Correct.

22 Q --- unless there's one superseding the other one.

23 A Right. Sometimes you can tell the sequence if one
24 was made before the other, but as far scientifically
25 putting a timeline on when fingerprints were left behind,

1 there's -- there's no way to do that.

2 Q So you can't tell which ones were -- got on there
3 first and what's the second.

4 A Not in -- not in this case, no. Because they're not
5 over -- most of them are not overlapping prints from
6 different people.

7 Q And you can see from the card some of the prints are
8 actually palm and then fingers as well.

9 A Correct, yes.

10 MS. ROSS: All right. I've got no further
11 questions.

12 THE COURT: Mr. Chambers?

13 CROSS EXAMINATION

14 BY MR. CHAMBERS:

15 Q I believe you indicated that there were four
16 unidentified prints.

17 A Correct.

18 Q And they were unidentified because either you weren't
19 provided with prints for direct comparison or they were
20 not found in the AFIS data system that you searched,
21 correct?

22 A Correct. I compared all of the people that I matched
23 to all of those prints also and did not identify any of
24 them.

25 Q Where on the vehicle were those located; do you

1 know?

2 A I can tell you. One was on the exterior of the rear
3 driver's side door; exterior of the rear driver's side
4 door; the exterior of the rear driver's side quarter
5 panel; and exterior of the hood on the passenger's side.

6 MR. CHAMBERS: Okay. Thank you very much. That's
7 all the questions I have.

8 THE COURT: Okay. Any other questions for this
9 witness?

10 MR. GREGORY: I have no further questions for this
11 witness. We'd ask he be excused.

12 THE COURT: Any objection?

13 MS. ROSS: No.

14 THE COURT: All right. Thanks for being here.

15 MR. GREGORY: May it please the Court. The State
16 calls James Armstrong.

17 THE CLERK: Mr. Armstrong, if you'll please step
18 forward to the Bible, place your left hand on the Bible
19 and raise your right.

20 WHEREUPON,

21 JAMES ARMSTRONG

22 After having been duly sworn, testified as follows:

23 THE CLERK: Thank you. Please have a seat, and once
24 you're seated, state your name for the record.

25 THE WITNESS: James William Armstrong.

DIRECT EXAMINATION

BY MR. GREGORY:

Q Mr. Armstrong, where are you employed?

A I'm employed with the Greenville County Department of Public Safety Forensics Division crime laboratory.

Q In what capacity? What's your title there?

A I'm the principal criminalist where I'm actually in charge of the crime lab. I also have a dual responsibility in the lab as a forensic drug chemist and a firearm examiner.

Q How long have you held that position?

A I've been in this position a little over a year.

Q How long have you been in law enforcement all together?

A I've been in the crime lab for about 23 1/2 years. I've been in law enforcement a little over 25 1/2 a half.

Q Did you receive any training to come in your position?

A Yes, sir.

Q What kind of training did you receive?

A To be in the firearm identification, I have ---

MS. ROSS: We'll stipulate to his expertise.

MR. CHAMBERS: We'll stipulate, Your Honor.

THE COURT: All right.

MR. GREGORY: Your Honor, we would ask that he be

1 qualified as an expert in firearms and tool mark
2 examination.

3 THE COURT: All right. Ladies and gentlemen, he'll
4 be so qualified to give his opinion in that area. You,
5 again, can use that opinion in any way you see fit.

6 Yes, sir.

7 MR. GREGORY: May it please the Court.

8 THE COURT: Yes.

9 BY MR. GREGORY:

10 Q Mr. Armstrong, were you asked to analyze anything in
11 this case?

12 A Yes, sir, I was.

13 Q What were you asked to analyze?

14 A I was asked to examine some fired cartridge casings
15 and fired bullet specimens.

16 Q And where did you receive those from?

17 A From the Property and Evidence room, which is in the
18 basement of the Law Enforcement Center.

19 Q And where did you take them?

20 A Once I completed my analysis, I took them back to
21 Property and Evidence so they could store it.

22 Q How do you do the examination of these items?

23 A The fired cartridge casings and the fired bullet
24 specimen I do what I call a side-by-side comparison with
25 the use of a comparison microscope where you put one item

1 on one side and one on the other side and look at each
2 item to do the comparison. So you're kind of like putting
3 a puzzle together.

4 Q All right. I'm going to show you what has been
5 marked and previously entered as State's Exhibit 55
6 through 60. If you'll take a look at these, please.

7 A (Reviews exhibits) Yes, sir.

8 Q Do you recognize those?

9 A Yes, sir, I do.

10 Q How do you recognize them?

11 A One, they have the item number and my initials are on
12 the outside of the container, and on the inside of the
13 mouth of the fired cartridge case, it also has the item
14 number and my initial engraved inside.

15 Q And you said you picked those up from Property and
16 Evidence?

17 A Yes, sir, I did.

18 Q And were you requested to do the testing on that?

19 A Yes, sir, I was.

20 Q Who requested that?

21 A The first request was Randy Evett.

22 Q And what are Exhibits 55 through 60?

23 A These are -- State's Exhibit 57 is NJD-6, which is a
24 fired cartridge case; NJD-7 is State's Exhibit Number 58,
25 which is a fired cartridge case; Exhibit 56, my NJD-5, a

1 fired cartridge case; and there's State's Exhibit
2 Number 60 was NJD-9, which was a fired cartridge case;
3 State's Exhibit 55 was my item number NJD-4, which is a
4 fired cartridge case; and State's Exhibit 59, my NJD-8,
5 which is a fired cartridge case.

6 Q And were you able to determine what caliber it is?

7 A They are a 40 Smith and Wesson.

8 Q Now, the headstamp, what is a headstamp of a shell
9 casing?

10 A The headstamp is in the rear portion of the cartridge
11 where the primer is set, and the headstamp is just an
12 identifying feature like the manufacturer's name or logo
13 and sometimes the caliber.

14 Q Did all those have the exact same stamping on them?

15 A No, sir.

16 Q What were the stampings on NJD-4 and NJD-5? That
17 would be Exhibit 55 and 56. Are you able to see that?
18 You might need to refer to your report if you need to.

19 A NJD-5, which is State's Exhibit 56, there's a
20 Federal, which has the nickel coding.

21 And you said NJD-6?

22 Q NJD-4, which is Exhibit 55. 55 and 56.

23 A NJD-4 is also manufactured by Federal.

24 Q Okay. Now, the remaining 57, 58, 59 and 60, what are
25 they headstamped?

1 A State's Exhibit Number 60 has a Winchester. Refer to
2 my notes. All the others are actually from -- have the
3 headstamp of Winchester.

4 Q Is it possible to fire both of those rounds, the
5 Federal 40 and the Winchester 40, out of the same gun?

6 A Yes, sir.

7 Q It's just the manufacturer; is that correct?

8 A Yes, sir.

9 Q In front of you is also DK-29, which has been entered
10 as Exhibit 102. If you'll take a look at that one,
11 please.

12 A (Reviews exhibit) Yes.

13 Q And what is that?

14 A This is a fired cartridge case with a headstamp of
15 Winchester.

16 Q And did you perform any analysis on these items?

17 A Yes, sir, I did.

18 Q What analysis did you perform?

19 A I did a side-by-side comparison to see if they were
20 fired in the same firearm, and I was able to determine
21 that my Item Numbers NJD-4, NJD-5, NJD-6, NJD-7, NJD-8,
22 NJD-9 and DK-29 were fired in the same firearm.

23 Q And that was based on the testing that you did and
24 the markings on the casings; is that correct?

25 A That's correct.

1 Q All right. Now I'm going to show you what's up there
2 marked as 128, Exhibit 128, 129, 130 and 131.

3 A (Reviews exhibits) State's Exhibit 128 is Item DK-36,
4 which is a 40/10 millimeter fired bullet specimen; State's
5 Exhibit 29 was Item DK-37, and it is a fired bullet
6 jacket; State's Exhibit Number 130 is DK-39, is a fired
7 bullet specimen, caliber 40/10 millimeter; and State's
8 Exhibit 131 is Item Number DK-38, and it is a caliber
9 40/10 millimeter fired bullet specimen.

10 Q Were you asked to conduct an analysis on those items?

11 A Yes, sir, I was.

12 Q What kind of analysis did you conduct?

13 A I did another comparison side-by-side of the
14 imperfection or the striations that were transferred
15 from the firearm to the fired bullet specimens into the
16 jacket to determine if they were fired from the same
17 firearm.

18 Q And did you make any conclusions about that?

19 A Yes, sir, I did. And they were fired from the same
20 firearm.

21 Q At a later time, were you asked to examine something
22 else?

23 A Yes, sir, I was.

24 Q I want to show you what's been entered as State's
25 Exhibit Number 74.

1 A (Reviews exhibit) Yes, sir.

2 Q Do you recognize that?

3 A Yes, sir, I do.

4 Q And what is that?

5 A State's Exhibit 74 is a fired bullet specimen, Item
6 Number DW-12.

7 Q And what were you asked to compare that to?

8 A I was asked to compare that to the Item DK-36, 37, 38
9 and 39 fired bullet specimens that had previously been
10 examined.

11 Q And you performed the analysis. What was your
12 results of that?

13 A That it was fired in the same firearm.

14 Q So all of the projectiles were fired in the same
15 firearm, and all the shell casings were fired from the
16 same firearm.

17 A Correct.

18 Q Are you able to make any comparison between the
19 projectiles and the shell casings?

20 A No, sir.

21 MR. GREGORY: Please answer any questions the defense
22 has for you.

23 THE COURT: Any questions?

24 MS. ROSS: I have no questions.

25 THE COURT: Mr. Chambers, any questions?

CROSS EXAMINATION

BY MR. CHAMBERS:

Q Just to make sure I'm clear, based on your testing, every fired cartridge and projectile that you tested were fired from the same firearm.

A All the shell casings were fired from the same firearm, and then the bullet specimens themselves were fired from one firearm.

Q Okay. You can't say ---

A I can't say they were the same firearm, but they were one firearm for projectiles, one firearm for cartridge casing.

Q There's nothing to indicate from your testimony that there was more than one firearm used, correct?

A Correct.

MR. CHAMBERS: Thank you.

THE COURT: Anything else?

MR. GREGORY: Nothing further, Your Honor.

THE COURT: Sir, you can step down. Thank you.

Well, ladies and gentlemen, you have been most patient with us. We're going to break for the evening. If you'll be back in your jury deliberation room tomorrow morning at 9:30, we'll start back at 9:30 tomorrow morning. Thank you so much.

(WHEREUPON, the jury exits the courtroom at 4:42 p.m.)

1 THE COURT: Good morning, ladies and gentlemen. I'm
2 sorry to keep you waiting. We had a few legal matters to
3 take up, just sort of streamlining this case even further.
4 So we're ready to proceed.

5 Mr. Gregory?

6 MR. GREGORY: May it please the Court, Your Honor.

7 THE COURT: Yes.

8 MR. GREGORY: The State calls Katrina Shipley.

9 THE CLERK: Ms. Shipley, will you please come over to
10 the Bible, place your left hand on the Bible and raise
11 your right hand.

12 WHEREUPON,

13 KATRINA SHIPLEY

14 After having been duly sworn, testified as follows:

15 THE CLERK: Please be seated, and once you're seated,
16 state your name for the record.

17 THE WITNESS: Katrina Shipley.

18 DIRECT EXAMINATION

19 BY MR. GREGORY:

20 Q Ms. Shipley, how old are you?

21 A 28.

22 Q And you live in the Greenville area?

23 A Yes, sir.

24 Q How long have you lived in the Greenville area?

25 A My whole life.

1 Q Did you go to high school?

2 A Yes, sir.

3 Q Where did you go to high school?

4 A Berea.

5 Q How far did you go to Berea High School?

6 A 11th grade.

7 Q Do you have a GED currently?

8 A Working on it.

9 Q Do you have any children?

10 A Three.

11 Q Three children.

12 Are you currently employed?

13 A Yes, sir.

14 Q Where do you work?

15 A Family Dollar.

16 Q And what do you do there?

17 A I'm assistant manager.

18 Q How long have you held that position?

19 A Almost six months.

20 Q Have you worked previously before Family Dollar?

21 A Yes, sir.

22 Q What did you do?

23 A A CNA.

24 Q What is a CNA?

25 A Certified nursing assistant.

1 Q And how long did you hold that position?

2 A Four years.

3 Q Where were you a CNA?

4 A At Patewood Rehabilitation.

5 Q And where is that located?

6 A Congaree Road.

7 Q Is that near -- between Congaree and Pelham?

8 A Yes, sir.

9 Q Okay. Do you recognize the defendant Anthony Mays?

10 A Yes, sir.

11 Q And how do you recognize him?

12 A He was my boyfriend for almost three years.

13 Q Almost three years. When did that relationship
14 start; do you remember?

15 A No. I don't remember dates or times.

16 Q Let me take you back to 2017. Were you guys in a
17 relationship at that time?

18 A Yes, sir.

19 Q What kind of relationship was it?

20 A Off-again, on-again.

21 Q And when you say "off-again, on-again," what do you
22 mean?

23 A Like we would be okay one week, the next week we
24 wouldn't be.

25 Q Okay. On April 2, 2017, where were you working?

1 A Patewood Rehabilitation, and also I had another job.
2 It was at a call center as well.

3 Q So what you just previously told us about where you
4 were working.

5 A Uh-huh.

6 Q Do you remember April 2, 2017?

7 A Yes.

8 Q What were you doing that Sunday?

9 A I was at my aunt's house for the most part of the
10 morning. She was going to give me food for my children.

11 Q Okay. And where does your aunt live?

12 A Easley.

13 Q And did you stay down there the whole day?

14 A Just about until about 1:30, 2:00. Then I headed
15 back to Greenville.

16 Q So you left Easley at 1:30, 2:00. How long did it
17 take you to get back to Greenville?

18 A About 30 minutes, 40.

19 Q And once you got back to Greenville, where did you
20 go?

21 A Home.

22 Q Where was your home located at that time?

23 A Halton Road.

24 Q Where is Halton Road, exactly? Is there -- what's
25 the nearest major road to your ---

1 A Laurens Road is close. Haywood Road is close as
2 well. It's kind of in between.

3 Q And is that an apartment complex?

4 A Yes, sir.

5 Q All right. How long did you live there?

6 A Short lived. A month, I would say.

7 Q Okay. And once you got home, did you have any
8 contact with Mr. Mays?

9 A Yes, I did. I called him and asked him what he was
10 doing. And he told me to come pick him up, so I did that.

11 Q Hold on a second. About what time did you call him;
12 do you know?

13 A About between 3:00 and 4:00. 3:30, 4:00.

14 Q All right. And when you called him the first time,
15 did you get him on the phone immediately?

16 A I don't believe I did. I believe he called me back.

17 Q Okay. And you said he asked you to come pick him up?

18 A Uh-huh.

19 Q Where did he ask you to pick him up?

20 A Piney Mountain Park.

21 Q Do you know about where that's located?

22 A It's off of Poinsett Highway. It's close to the
23 Spinx in Cherrydale. Just kind of right around the curve.

24 Q Okay. All right. Let me show you what's been marked
25 as State's Exhibit Number 133. Are you familiar with this

1 area? Can you see that okay?

2 A Uh-huh.

3 Q All right. Are you familiar with this area?

4 A Yes.

5 Q Is this a fair and accurate representation?

6 A Yes.

7 MR. GREGORY: Okay. Your Honor, at this time, the
8 State would introduce State's Exhibit Number 133 into
9 evidence.

10 THE COURT: Any objection, Ms. Ross?

11 MS. ROSS: No, Your Honor.

12 THE COURT: Mr. Chambers?

13 MR. CHAMBERS: No, Your Honor.

14 THE COURT: So admitted.

15 (WHEREUPON, State's Exhibit Number 133 was admitted into
16 evidence.)

17 MR. GREGORY: Permission to publish it to the jury,
18 Your Honor.

19 BY MR. GREGORY:

20 Q I'm going to ask you to step down, so I want you to
21 point something out on this map.

22 Now, would you orient the jury with this map, please.
23 What are we looking at?

24 A So this is the park right here, because this will be
25 the entrance. So I kind of went behind the park, and

1 there's a -- I don't really see it on here. The close-off
2 may be here, because this road leads back to here
3 (indicating throughout).

4 Q Okay. So the Cypress Street ---

5 A Around here (indicating), yeah.

6 Q All right. Now, is this the area you went to pick up
7 Mr. Mays?

8 A (Nods head affirmatively.)

9 Q All right. Where exactly did you pick him up? Can
10 you tell on that map where you picked him up?

11 A I can't really tell. I want to say it's around here
12 (indicating) ---

13 Q Okay.

14 A --- here (indicating).

15 Q Okay. Who was with Mr. Mays when you picked him up?

16 A No one. He was alone.

17 Q He was alone.

18 Does he know somebody that lives in this area?

19 A Yes. His wife, Chile [phonetic].

20 Q Chile. Do you know Chile's full name?

21 A No, sir.

22 Q You didn't see Chile there with him that day?

23 A Hu-uh.

24 Q All right. Did he tell you he was with Chili or
25 anything?

1 A I believe he was at a cookout here ---

2 Q At a cookout?

3 A --- that he was coming from.

4 Q At the park?

5 A Uh-huh.

6 Q One more thing. You mentioned a Spinx station
7 earlier. Do you see the Spinx station?

8 A Yeah (indicating).

9 Q Okay. Thank you.

10 Do you know about roughly what time you picked up
11 Mr. Mays in that area?

12 A It would have to be after 4:00. Maybe 4:30-ish.

13 Q Okay. And after you picked him up, what did you do?

14 A We went back to my house. We stopped at Spinx, and
15 Mr. Mays got a beer and we went home.

16 Q Okay. Let's back up a little bit. When you left the
17 area, did you notice anything?

18 A I know the Spinx had roped off tape. I asked
19 Mr. Mays what happened, and he told me he didn't know.

20 Q Okay. And what was the route that you -- well, you
21 just said you stopped at a Spinx to pick up something for
22 Mr. ---

23 A Oh, sorry.

24 Q That's all right. Was it that Spinx?

25 A No.

1 Q It was a different Spinx, correct?

2 A Yeah.

3 Q Okay. What was the route that you took to get back
4 home?

5 A I would have came out and passed Spinx again. So I
6 came out to the right and I went to the rail light, took a
7 left and I passed Zaxby's and CiCi's like going through.
8 There's a church on up. And I took a left to get on
9 Laurens Road and went all the way down.

10 Q Now, is that you took a left on Stone, then Stone
11 turns into Laurens Road?

12 A Yeah.

13 Q All right. And you went down. How far did you go
14 down?

15 A All the way to Burlington. And then I cut off on
16 that road. And there's a Spinx too, and there's also a
17 side road that goes to my house.

18 Q Is that the Spinx that you stopped at?

19 A Yes.

20 Q When you left your house to go pick up Mr. Mays, did
21 you have your children with you?

22 A I believe I did, yes, sir.

23 Q Did you have all three of them with you?

24 A I can't recall if I had all three, but I know I
25 definitely had my youngest with me.

1 Q Did you stop anywhere on your way from your apartment
2 to pick up Mr. Mays; do you remember?

3 A Not that I remember.

4 Q Okay. I'm going to show you what's been previously
5 marked as State's Exhibit 134. Do you recognize this?

6 A Yeah. Kind of, yeah.

7 Q Kind of?

8 A It's messy, but yeah, to me.

9 Q Is it a fair and accurate -- are you familiar with
10 this area?

11 A Yeah. Definitely the Cherrydale area, yeah.

12 Q Okay. Is this a fair and accurate representation?

13 A Yeah. I would say.

14 MR. GREGORY: Okay. Your Honor, at this time, the
15 State would introduce State's Exhibit Number 134 into
16 evidence.

17 THE COURT: Any objection, Ms. Ross?

18 MS. ROSS: No, Your Honor.

19 THE COURT: Mr. Chambers?

20 MR. CHAMBERS: No objection, Your Honor.

21 THE COURT: So admitted.

22 (WHEREUPON, State's Exhibit Number 134 was admitted into
23 evidence.)

24 BY MR. GREGORY:

25 Q I'm going to ask you to step down one more time.

1 We're going to talk about this now real quick.

2 And I know this is a little difficult to see, but see
3 if you can orient yourself with this map.

4 A I don't believe I can do that.

5 Q Okay. Now, you mentioned the taking the left on
6 Zaxby's in the Cherrydale area. Are you familiar with the
7 Cherrydale area?

8 A Yeah.

9 Q Okay. Are you able to show your route basically from
10 -- too far away?

11 A Yeah. No, I can't.

12 Q That's fine. There's a lot on there. I understand.
13 Okay. Thank you.

14 A Sorry.

15 Q All right. Once you got home on April the 2nd, what
16 did you do? What did you and Mr. Mays do?

17 A Began to prepare dinner.

18 Q All right. And what car were you driving at the
19 time?

20 A My Honda. A green Honda Accord.

21 Q Was there any conversation about where Mr. Mays's car
22 was that day?

23 A Yes. I asked him where his car was, and he told me
24 it was at his brother's house.

25 Q And who's his brother?

1 A Fur [phonetic].

2 Q Do you know his full name?

3 A Ancel Mays.

4 Q The next day, April 3, 2017, what did you do that
5 day?

6 A The next day?

7 Q Yes, ma'am.

8 A We woke up. I took my children to school. And I had
9 breakfast. And it was a normal day.

10 Q Was Mr. Mays with you that morning when you woke up?

11 A Yes, he was.

12 Q All right. Was he there with you the whole day?

13 A Yes.

14 Q And did he receive a phone call any time during that
15 time?

16 A Not that day. He did previously before.

17 Q Okay. When was that phone call?

18 A It was the day before.

19 Q Okay.

20 A He got a phone call, and he just ---

21 Q Don't tell me what the person said. Was it a male
22 voice or a female voice? Could you hear it?

23 A I believe it was a female.

24 Q All right. And what did he say on that phone call?

25 A "I didn't have anything to do with it. Keep my name

1 out of it."

2 Q Okay. So Monday after you took your kids to school,
3 what did you do?

4 A Like I said, we woke up, had breakfast. A normal
5 day. And later that afternoon, there was something with
6 the weather, so I had to get my children early from
7 school. So I did that. Mr. Mays asked me could he go see
8 his mother, and I, of course, said yes. When I got back
9 from picking my kids up from the school bus stop, Mr. Mays
10 was coming out and I came in. We kind of just switched.
11 He got in the car and left, and I went in.

12 Q He got in your car?

13 A Uh-huh.

14 Q And that was the Honda?

15 A Yes.

16 Q Okay. And did you see him the remainder of that day?

17 A No.

18 Q Did you go to work that day?

19 A No, I did not.

20 Q All right. Why did you not go to work that day?

21 A I can't really recall why I didn't. But I was in
22 between those two jobs, so it might have just been an
23 overlap.

24 Q Okay. Did you attempt to get your car back?

25 A Yes, I did. I text Mr. Mays throughout the day. He

1 never responded.

2 Q And that was throughout April the 3rd day?

3 A Yes.

4 Q Did you have a car at all to use?

5 A No. Not that day. Oh, I went and got Mr. Mays's
6 car. After a certain time he wouldn't respond back, I had
7 Mr. Mays's keys, so I went and received his car and I had
8 his car.

9 Q When you say you had his keys, how did you get his
10 keys?

11 A They were on my TV stand from the previous day.
12 Mr. Mays just empties his pockets and puts the stuff in
13 that.

14 Q And where did you go to retrieve his car?

15 A His brother's father's house.

16 Q And what is his name? Do you know his name?

17 A Ancel Mays, his brother, I went to his father's
18 house. I don't know his father's name.

19 Q Okay. You don't know his brother's father's name.
20 Okay.

21 A Hu-uh.

22 Q And who took you over there? How'd you get there?

23 A My best friend.

24 Q How long did you keep Mr. Mays's car for?

25 A Probably a couple hours. Not long.

1 Q And what happened then?

2 A His family wanted the car back and said they was
3 going to report it stolen if I didn't give it back.

4 Q Did you take it back to them or did they come and get
5 it?

6 A Immediately.

7 Q And then what did you do?

8 A I went back home after I took the car.

9 Q Now, the next day, what happened?

10 A His mother called and gave me the car back.

11 Q And how did you get the car back at that time?

12 A I went over there. My best friend gave me a ride
13 back over there to pick up the car.

14 Q All right. And how long did you have the car for?

15 A Probably I want to say half a day, and then the
16 police retrieved it. I'm not really sure on the timeline
17 of how long I had his car after his mother gave it back.

18 Q That's fine. Do you recognize Shyheem Rice?

19 A Yes. Yes, I do.

20 Q All right. What was -- how do you know him?

21 A I just know him as an acquaintance of Kwame.

22 Q So you've seen him around before?

23 A Uh-huh.

24 Q What about Marcus Foster? Do you know Marcus Foster?

25 A Yeah.

1 Q And how do you know him?

2 A I've seen him around as well.

3 Q Hanging out with?

4 A Mr. Mays.

5 Q Okay. Anyone else?

6 A Not really.

7 MR. GREGORY: Okay. Please answer any questions the
8 defense has for you.

9 THE COURT: Ms. Ross?

10 MS. ROSS: I don't have any questions.

11 THE COURT: All right. Mr. Chambers?

12 MR. CHAMBERS: Your Honor, I don't have any questions
13 for Ms. Shipley.

14 THE COURT: All right. Ma'am, you can step down.

15 THE WITNESS: All right. Thank you.

16 THE COURT: Thank you.

17 MR. GREGORY: Your Honor, may she be excused from her
18 subpoena?

19 THE COURT: Any objection to that?

20 MS. ROSS: No, Your Honor.

21 THE COURT: All right then. Thank you for being
22 here, ma'am.

23 MR. FRETWELL: May it please the Court, Your Honor.

24 THE COURT: Yes, sir.

25 MR. FRETWELL: The State calls Randy Evett.

1 THE CLERK: Mr. Evett, please place your left hand on
2 the Bible and raise your right hand.

3 WHEREUPON,

4 RANDALL EVETT

5 After having been duly sworn, testified as follows:

6 THE CLERK: Thank you. Please be seated, and once
7 you're seated, state your name for the record.

8 THE WITNESS: My name is Randall Evett.

9 MR. FRETWELL: May it please the Court, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. FRETWELL:

12 Q Good morning, Mr. Evett.

13 A Good morning, sir.

14 Q Mr. Evett, how are you currently employed?

15 A Now I work for the Greenville County School District.

16 Q And how long have you worked for the Greenville
17 County School District and in what capacity?

18 A A little over two years. I now handle the background
19 investigations on the parent volunteers in all school
20 district buildings.

21 Q And where did you work prior to working at Greenville
22 County School District?

23 A I worked for the Greenville County Sheriff's Office
24 from 2012 till my -- I left there in 2017.

25 Q And when you worked at the sheriff's office, to what

1 units were you assigned?

2 A I did a little bit of patrol time, I worked in the
3 court system, I worked in investigations as a crimes
4 investigator, I worked in violent crimes as an armed
5 robbery investigator and ended up my time as a homicide
6 investigator.

7 Q Okay. So when you left in 2017, you were working in
8 your capacity as a homicide investigator; is that correct?

9 A Yes, sir. Yes, sir.

10 Q And you had prior law enforcement experience before
11 you got to the sheriff's office; is that ---

12 A Yes, sir. Just a little bit.

13 Q Okay. Just so I know for sure, though, but in the
14 April time of 2017, were you functioning as a homicide
15 investigator?

16 A I was.

17 Q All right. So let's talk a little bit about that
18 other experience. Before you joined the sheriff's office,
19 what position did you hold?

20 A I started back in the dark ages, I guess, as a ---

21 Q Just go right immediately where did you come from
22 when you came to the sheriff's office?

23 A When I came to the sheriff's office, I came from the
24 -- I was semi-retired for a couple months, but I came from
25 the Greenville Technical College.

1 Q Where you held what position?

2 A I was an instructor for about three and a half years,
3 and I had a position as the police chief for a couple
4 months.

5 Q Okay. And then before you went to the Greenville
6 Tech, where did you work the most of your career as a law
7 enforcement officer?

8 A I spent around 27 years with the Greenville Police
9 Department.

10 Q And what rank did you obtain before you retired?

11 A I was a lieutenant when I retired in 2008.

12 Q Okay. Let's talk a little bit about your education.
13 Where did you go to school?

14 A Parker High School. I have a PHD, sir.

15 Q Okay. You get a diploma from Parker?

16 A Yes, sir. Oh, yes, sir.

17 Q And then where did you attend -- did you attend any
18 college?

19 A I started back in '79. Didn't last very long. So I
20 dropped out and went to work and became a police officer.
21 I later went back around the year 2000 and started an
22 education at Greenville Tech. Did my time there and got
23 an associate's degree. Finished that and went to Lander.
24 Got a four-year degree in sociology with an emphasis on
25 criminal justice. And then just to complete, I went ahead

1 and applied at Clemson and acquired a master's degree in
2 public administration.

3 Q And finally, about your family, are you married?

4 A Yes, sir.

5 Q And how long have you been married?

6 A A little over 38 years.

7 Q And you have kids and grandkids; is that correct?

8 A Two grown children and five grandchildren now, sir.

9 Q And where have you lived your entire life?

10 A Greenville County.

11 Q Let me take you back to April 2, 2017. Were you
12 working that particular day?

13 A I was not supposed to be, no, sir.

14 Q Tell the jury about how you became involved in the
15 homicide that occurred in Boulder Creek.

16 A I was -- I was -- we're on call, basically. As
17 investigators, we're on call a week at a time. And that
18 was not actually my call week. But Sunday afternoon after
19 church I had supper -- or had lunch and came and settled
20 down, and I got a phone call from my lieutenant, advised
21 me that there had been a shooting over at Boulder Creek
22 and I would need to respond to assist with that
23 investigation.

24 Q And who was originally on call that day?

25 A Investigator Campbell was originally on call.

1 Q So why didn't he handle this investigation?

2 A He was busy with another investigation that happened
3 a couple nights before that was consuming most of his
4 time. So to be fair and thorough, the lieutenant wanted
5 me to take the investigation.

6 Q And when you work an investigation as the lead, how
7 are the other members of the unit involved in that
8 investigation?

9 A Well, it's a team effort, as Investigator Kicklighter
10 says. Everybody has responsibilities from collecting
11 evidence, interviewing witnesses, doing search warrants.
12 It's a -- pretty much a team effort as far as what we do
13 and how we do it, sir.

14 Q Okay. And you said you received that call about the
15 homicide. About what time did you receive that call?

16 A It was probably about 1:30. Between 1:30 and 2:00.
17 Might have been closer to 2:00.

18 Q All right. Do you want to check your report just to
19 make sure?

20 A Yeah. Let me make sure.

21 Q Okay.

22 A I know it was after ---

23 Q That's all right.

24 A Yeah. It says 2:30 p.m.

25 Q Okay. All right. So you received that call about

1 2:30. And then where did you respond?

2 A I was advised to go directly to the Spinx at 2901
3 North Pleasantburg.

4 Q Okay. And when you arrived at the Spinx, what was
5 the condition of the area from a law enforcement
6 perspective?

7 A When I got there, I saw the crime scene tape that was
8 up. The scene was secured. There were multiple deputies
9 on the scene. Investigator Campbell was on the scene, and
10 I believe there was a supervisor, and even the forensics
11 folks were beginning their process.

12 Q Okay. And what did you discover from your time there
13 at the Spinx location?

14 A From Investigator Campbell, I discovered that there
15 were -- we had two gunshot victims, one deceased and one
16 still alive. That was the crux of information. I saw the
17 white Crown Vic sitting in a position, as was discussed
18 earlier, and I saw the victim lying on the ground covered.

19 Q And then the second individual who was wounded, where
20 was he by the time that you arrived?

21 A By the time I got there, he already had been
22 transported to the hospital to be treated for his
23 injuries.

24 Q Okay. And did you participate in the coordination of
25 the crime scene and the forensics officers?

1 A I did.

2 Q Okay. And then where did you go once you left? Or
3 did you leave the Spinx area at that point?

4 A We were there a little while and, again, processing,
5 trying to line people up, witnesses, even looking at video
6 from the Spinx that we talked about earlier. And then I
7 believe I actually talked to the victim's mother,
8 Ms. Cook, myself and one of the coroner's office folks.
9 And then once we rapped up our investigation, all we could
10 do there, then I responded to Boulder Creek.

11 Q Okay. And then once you arrived at Boulder Creek,
12 what did you do?

13 A Again, the scene was secure there. You can see the
14 tape up. And I'm a visual person, so I wanted to see what
15 I was going to have to be investigating towards that. I
16 believe they call it spatial. And I wanted to see what
17 was going on. So I saw that. From that we started
18 gathering witnesses.

19 So Investigator Picone and myself found out there was
20 a witness, Ms. Berger, who lived in that 22-C apartment.
21 So we -- he and I both went to that apartment to try to
22 talk to her to see about interviewing her.

23 Q Okay. And before we get to that point, let me back
24 you up just a little bit. What was your understanding at
25 that point as to why there were these two locations?

1 A The shooting initiated in Boulder Creek. And from
2 that, the victims, Mr. Poole and Mr. Cook, Mr. Poole had
3 actually -- what I would describe as a rover camper trying
4 to get Mr. Cook out of there over to the Spinx. So that's
5 where they ended up at. They began at Boulder Creek. But
6 the scene was there and it was also at Spinx when they
7 ended up there.

8 Q So did you also review the Spinx surveillance video?

9 A I did.

10 Q Okay. Was there anything that was on the video that
11 was helpful for your investigation as to the suspects in
12 this particular case?

13 A Well, the video, again, showed a car pulling into the
14 Spinx station. And you can see everything was pretty
15 clear as far as what Mr. Poole said. The door --
16 passenger's side door was open. Mr. Cook was still
17 partially -- not completely, but foot hanging out the
18 door. You can see that happening. You can see the folks
19 that were following him, trying to render aid, three or
20 four cars. And they were still at the Spinx when I
21 initially responded. So we got ahold of him and actually
22 had them go to the Law Enforcement Center to be
23 interviewed and get statements from them.

24 Q Okay. And that was part of that team approach where
25 the other investigators were participating as well?

1 A Yes, sir.

2 Q Okay. And then were you able to, through the
3 deputies and the DMV records, identify both the decedent
4 and the individual who was on the way to the hospital?

5 A Yes, we did.

6 Q And you determined them to be, as you state,
7 Mr. Cook. What's his first name?

8 A Azaveon Cook.

9 Q And Mr. Poole?

10 A Jaikario Poole, yes, sir.

11 Q And what relationship did Mr. Poole have to the white
12 Crown Vic that was there?

13 A I believe that was his father's car.

14 Q Okay.

15 A The white Crown Vic.

16 Q Now, going back to what you were saying a second ago
17 about being at Boulder Creek and being there and with
18 reference to Ms. Berger, Jacqueline -- Jackie Berger ---

19 A Jacqueline Berger.

20 Q --- tell the jury what you and Investigator Picone
21 did.

22 A So David and I walked into Apartment 22-C. And, of
23 course, we explained who we are and what we're there for.
24 And we had information that she was a witness or there
25 when the incident occurred, so we definitely wanted to

1 talk to her. She agreed kind of reluctantly to come to
2 the Law Enforcement Center to be interviewed. So we had
3 her transported by uniform deputy to the LEC.

4 Q And also on scene, did you observe the shell casings
5 in the area of that 22 court?

6 A Yes, sir. Observed the forensics guys doing their
7 job and saw the shell casings, everything going there. So
8 I got a good grasp of what was at the scene.

9 Q Okay. Did you also -- were you also aware of
10 surveillance video that was there at the Boulder Creek
11 Apartments?

12 A For Boulder Creek. Yes, sir, I was.

13 Q Did you review that surveillance video?

14 A I did some time later, yes.

15 Q Okay. And then you indicated the forensics officers
16 were on the scene and you've heard testimony from Officer
17 Downing. Were you there when he was performing his
18 investigation along with Forensic Tech Hemple?

19 A Yes, sir.

20 Q Okay. And then after -- did you do anything else at
21 the Boulder Creek site?

22 A No. Other than that, we were just -- again, we were
23 trying to interview witnesses and trying to find out some
24 duration as far as the shooter, who our suspect or
25 suspects were.

1 Q And did you -- where did you go at that point?

2 A After I finished at Boulder Creek, we wrapped up the
3 crime scene processing. I responded to the Law
4 Enforcement Center because we had at least five or six
5 different folks to interview at that point.

6 Q And let's talk about that. Who did you start off
7 interviewing?

8 A I interviewed Kennedy Boyd. And, again, because the
9 sheriff's office has two interview rooms, the city PD,
10 which I had a good relation with them coming from there, I
11 asked to use their interview room. So I interviewed
12 Ms. Boyd over in the city -- Greenville City Police
13 Department interview room.

14 Q Okay. And what did Ms. Boyd tell you about what had
15 happened that particular afternoon?

16 A Basically, again, she explained the story that, you
17 know, she had been reached out -- Mr. Poole had contacted
18 her about hanging out, and she asked him the same thing.
19 And then she confirmed that she talked with Marcus Foster
20 to make sure it was okay. And then they came over. They
21 were hanging out in the car. And she listed Ms. Berger
22 the same position as she was in the front seat, Jaikario
23 Poole was in the front seat, Azaveon Cook was in the back
24 and then Ms. Berger was in the back basically hanging out
25 and having a good time.

1 Q Okay. And did she tell you about this text that
2 we've seen that she received from Marcus Foster after the
3 shooting?

4 A She did.

5 Q Okay. What relationship did she tell you Ms. Berger
6 had with Mr. Foster?

7 A That they were boyfriend and girlfriend, pretty much.

8 Q Okay. And then from your interviews with Ms. Boyd
9 and from the other interviews from Ms. Berger, were you
10 able to identify at least two suspects in this case?

11 A We were, yes, sir.

12 Q And who were they?

13 A Anthony Mays known as -- nickname is Cheese, and then
14 Shyheem Rice, whose nickname, at that point, was Doo-Doo,
15 what we knew him as.

16 Q Well, let's back up a little bit. I know that --
17 what about Mr. Foster? Does Mr. Foster's name come up
18 with your conversations with Ms. Boyd and Ms. Berger?

19 A Yes, he did. And then I think subsequently he came
20 in for an interview.

21 Q Okay. So at that point, you knew about Mr. Mays and
22 Mr. Foster; is that correct?

23 A Yes.

24 Q Okay. Any of the other witnesses that were sent to
25 the Law Enforcement Center for interviews that were from

1 the Spinx, did any of them see the actual shooting? Were
2 they in a position to tell anything about any kind of
3 suspect description?

4 A Let me refer to our report.

5 Q Absolutely.

6 A The folks -- I talked to two or three different
7 people. We interviewed three or four different people.
8 All those folks basically did not witness the shooting,
9 but they saw the car that was Mr. Poole's. They thought
10 it was someone else that they knew that cut hair in the
11 community and was concerned about it. So they decided to
12 follow behind the white Crown Vic to drive to the Spinx.
13 So I'm trying to get to where I interviewed those, get
14 their names.

15 It looks like Deleon Cortez Ballenger, Lakisha
16 Harris, Lakisha Harris -- (unintelligible) Lakisha Harris,
17 and then Jamaica Raw Shawn Lane [phonetic], that's a name,
18 not a street, were three folks that we interviewed. I
19 think that was all that was there. So -- and those were
20 the folks that were directly behind Mr. Poole as he left
21 Boulder Creek to go to the Spinx station.

22 Q Okay. And were you aware of another individual at
23 the Spinx that had actually attempted to perform some kind
24 of medical procedure or CPR on the decedent in this case?

25 A Yes. There was a lady there that, you know, had some

1 medical experience or nursing experience that tried to
2 help Mr. Cook with CPR.

3 Q And she was one of the ones that had followed the
4 vehicle over from the Boulder Creek area?

5 A Yes, sir.

6 Q Okay. Later that afternoon, did you become aware
7 that Mr. Foster, Mark Foster, had come in and wanted to
8 talk to investigators?

9 A I did.

10 Q Okay. And were you involved in the initial part of
11 his interview?

12 A No, sir.

13 Q Okay. Do you know if Investigator Kicklighter was
14 involved in that?

15 A He was. He was doing that. Again, the team effort.

16 Q Okay. And from that conversation, in addition to
17 himself and to Mr. Mays, was another individual identified
18 as a suspect in this case?

19 A Yes, sir.

20 Q And who was that?

21 A That was Shyheem Rice.

22 Q Okay. And were you aware as to whether Mr. Foster
23 was in a position to clearly identify Mr. Mays and
24 Mr. Rice?

25 A According to the interview, he was. He was there

1 with both guys and knew both guys well.

2 Q And then at that time, and I think Ms. Ross has asked
3 about this previously, was Mr. Foster asked for a cell
4 phone?

5 A Yes, he was.

6 Q And do you know if one was eventually produced to law
7 enforcement?

8 A I believe his mother turned over his cell phone to
9 me.

10 Q And in what condition was that cell phone?

11 A It was damaged, yes, sir.

12 Q Okay. Could you access it? Did you send it over and
13 see if they could access it over at the little lab there
14 where they look at computers and phones?

15 A Yes, sir, I did.

16 Q Okay. Were they able to access it at that time?

17 A No, sir.

18 Q Okay. Let me take you to April 3rd. On April 3rd,
19 did you attend the autopsy of Azaveon Cook?

20 A I did.

21 Q Okay. And where did that take place, and who was the
22 medical examiner?

23 A Dr. Ward was there. And it's actually at 701 Grove
24 Road on the back side of the hospital, the hospital
25 system.

1 Q Okay. And did he determine a cause of death?

2 A He did.

3 Q And what was that?

4 A That was a gunshot wound to the chest.

5 Q And did he determine that to be an accident or a
6 homicide?

7 A A homicide.

8 Q And who from the forensics department was there?

9 A Wolfe, Matt Wolfe was there processing the scene of
10 the body.

11 Q Okay. Matt Wolfe is a deputy. Do you mean Blake
12 Wolfe?

13 A I'm sorry. Blake Wolfe. Yeah, yeah.

14 Q Okay. All right. But the individual that testified
15 earlier in the week that worked for forensics.

16 A Yes, sir.

17 Q Okay. All right. So then at some point that day,
18 did you go to the hospital system? I mean, I don't know.
19 You may have gone there straight from the autopsy. But
20 did you go to speak to the victim -- the surviving victim
21 in this case, Jaikario Poole?

22 A Yes. Investigator Picone and myself went to the
23 hospital system or hospital room to interview Mr. Poole.

24 Q Was anybody else from Mr. Poole's family present when
25 you were there?

1 A I know his mom was there and I want to say his
2 stepfather, but I can't -- I know there's another person.
3 But definitely his mother, because I talked with her too.

4 Q All right. What was Mr. Poole's condition when you
5 got there?

6 A Again, he was in a hospital bed confined to a bed,
7 but he was alert, talking lucid to me. I could understand
8 him, he could understand me. And we made sure of that,
9 that he was conscious of what was going on.

10 Q And what did he tell you about the events of earlier
11 that -- I guess that previous day?

12 A He related, again, that he and Azaveon Cook went over
13 to -- he wanted to hang out with Ms. Kennedy Boyd and then
14 end up in the car, in a white Crown Vic, having a little
15 fun, smoke a little weed and hanging out.

16 Q Okay. And then did he tell you what happened once
17 they were in there for some period of time?

18 A He did. Again, the three guys, four guys approached
19 the car. And from that he saw one guy with a gun, and he
20 described the gun to me. And then ---

21 Q Let me stop you there. How did he describe it?

22 A He described the guy as kind of heavier set. And, of
23 course, Mr. Poole is pretty thin. The way he is in court
24 is about what he was that day, so I don't think he
25 substantially lost weight. But he's not a big fellow. So

1 he described him as being a little thicker and having
2 short dreads.

3 Q Okay. And did he say anything about facial hair; do
4 you recall?

5 A A little bit of facial hair.

6 Q Okay. And where did he say that individual with the
7 gun, where did he come to the car?

8 A He came to the driver's side window initially and
9 tapped on the window. And that's when Mr. Poole saw the
10 gun, I believe.

11 Q Okay. And at some point, did he say that he tried to
12 start the car and drive off?

13 A He did.

14 Q Okay. And then what did he say happened at that
15 point?

16 A And then the male with the gun went around to the
17 passenger's side and began shooting.

18 Q Okay. And then what happened with him and with his
19 friend Mr. Cook?

20 A Mr. Poole relayed that Mr. Cook somehow got out of
21 the car after being shot and ran down the hill. Mr. Poole
22 got the car started and drove down the hill, stopped at
23 the bottom of the hill right beside a tree and tried to
24 get Mr. Cook back in the car, I guess, to render aid and
25 get him out of there. I'm satisfied he was pretty --

1 pretty fearful of his life at that point.

2 Q And was that account consistent with what you had
3 viewed on the videotape from Boulder Creek Apartments?

4 A Yes, sir. Yes, sir.

5 Q And then where did Mr. Poole say he went after that?

6 A Again, the effort to get Mr. Cook in the car, you
7 know, took a little bit of time. I'm guessing like a
8 minute or two because he was trying to get in, couldn't
9 get him in. At some point, he drove off even with
10 Mr. Cook partially hanging outside the car, not -- just
11 his feet, basically. Drove off and drove up Tulip Street,
12 which is heading to 291. And then he went to the Spinx
13 station, which you saw the video there. In between, there
14 was nothing between, really. But it kind of confirmed his
15 story as far as what happened once he got there to the
16 scene, to the Spinx station.

17 Q Did Mr. Poole indicate to you that he got a good look
18 at the person with the gun who eventually shot into the
19 car?

20 A He did.

21 Q Okay. Did he tell you about how far away he was from
22 him when he was sitting in the car?

23 A He was as close as I'm to the court reporter there
24 taking stenography. So he was pretty close.

25 Q Okay. And did he say he had any difficulty seeing

1 out of his windows?

2 A No, sir.

3 Q Okay. And that day, approximately 1:45 in the
4 afternoon, was it raining or was it bright and sunny
5 outside?

6 A It was a perfectly sunny day.

7 Q Did you -- based on the description that was given to
8 you, did you put together a photo lineup to give to the
9 victim Mr. Poole to see whether he can pick the shooter
10 out of that lineup?

11 A I did.

12 Q Did he say that he believed he could?

13 A Yes, sir.

14 Q Okay. And you already indicated that you and
15 Investigator Picone were there, and then also the victim's
16 mother; is that correct?

17 A Yes.

18 Q Okay. And do you recall how many photos were shown
19 to the victim?

20 A It's a standard six-person photo lineup that we show
21 folks, and people likeness there so as not to, you know,
22 confuse him or single any one of these guys out.

23 Q At the same time, are the photos of similar
24 description?

25 A Yes.

1 Q Okay. And were the photos displayed one at a time or
2 just all at once on one sheet of paper?

3 A All six at one time on one sheet.

4 MR. FRETWELL: Okay. Let me get what's been marked
5 as State's Exhibit 92, if I can find it.

6 Beg the Court's indulgence for just a moment while I
7 find these.

8 THE COURT: Certainly.

9 BY MR. FRETWELL:

10 Q I'm going to show you 92 and 93. I want you to look
11 at first Number 92 and then Number 93.

12 A (Reviews exhibits) Okay.

13 Q Is this the photo lineup that you showed Mr. Poole in
14 the hospital?

15 A It is.

16 Q And what, if anything, did you tell Mr. Poole about
17 the photos when you provided them to him?

18 A Okay. The standard thing that I tell him is that
19 look at these pictures. The person that was involved in
20 this may or may not be in those photos. But take your
21 time and look at them closely and see who's in there, see
22 if you recognize anybody.

23 Q Did anyone, you, Investigator Picone, suggest which
24 photo the victim should select?

25 A No.

1 Q Did he -- and he'd already told you, correct, that he
2 got a good look at the robber; is that right?

3 A He had, yes, sir.

4 Q Robber. The shooter.

5 Was he able to identify the man from the photos that
6 he was shown there on State's Exhibit 92?

7 A Yes, sir.

8 Q Okay. And how sure did he indicate he was with his
9 selection?

10 A I believe Investigator Picone asked him, and he said
11 80 percent sure.

12 Q Okay. And do you recall a statement that he said if
13 his dreads were just a little bit longer, that's him?

14 A Yes, sir.

15 Q Okay. Which photograph did he select?

16 A Number 2.

17 Q Okay. And how did he indicate which photo he
18 selected?

19 A He circled it and initialed -- put his initials by
20 the photograph.

21 Q All right. Is 92 in the same condition as when he
22 examined it?

23 A Yes, sir.

24 Q Has it been altered in any way?

25 A No, sir.

1 Q Did Mr. Poole select a photo of anyone else from any
2 other lineup and indicate that that was the person he's
3 seen with the gun and who eventually shot into the car?

4 A He did not.

5 Q Okay. Once he identified the shooter, then what did
6 you have him complete?

7 A Well, the other part is an affidavit of photographic
8 identification just to confirm that he picked it out. I
9 completed the top portion of it and wrote his name in
10 there, information in there, and then he actually wrote a
11 little narrative, short narrative in there.

12 Q Okay. Are 92 and 93 in the same condition as they
13 were when you completed them with him?

14 A Yes, sir.

15 MR. FRETWELL: Your Honor, at this time, I would
16 move 92 and 93 into evidence, if it's not already in
17 evidence.

18 THE COURT: Any objection, Ms. Ross?

19 MS. ROSS: No, Your Honor.

20 THE COURT: Mr. Chambers?

21 MR. CHAMBERS: Just subject to my prior objection.

22 THE COURT: All right. Also noted, and they're
23 admitted.

24 (WHEREUPON, State's Exhibit Numbers 92 and 93 were
25 previously admitted into evidence.)

1 BY MR. FRETWELL:

2 Q And based on your knowledge of who was in this
3 lineup, is the person that the victim identified in the
4 courtroom today?

5 A He is.

6 Q Can you identify him by clothing description for the
7 jury and for the record?

8 A It's the gentleman sitting at the defense table with
9 a white shirt on and a dark-colored tie.

10 MR. FRETWELL: Okay. Your Honor, let the record
11 reflect he's identified Defendant Mays.

12 THE COURT: It so reflects.

13 BY MR. FRETWELL:

14 Q All right. When you reviewed that surveillance video
15 on scene, obviously, that was a pretty quick review. Did
16 you get a chance later on to review that surveillance
17 video from Boulder Creek at a little bit more detail?

18 A I did.

19 Q Okay. And did you note a vehicle with a license
20 plate that was identifiable on the video that came into
21 that area, the 22 court, at approximately 1:40?

22 A I did.

23 Q Okay. And what was that vehicle and what was that
24 license plate?

25 A The victim's car or the suspect car?

1 Q Well, I'm asking about -- okay. That's fair. Did
2 you see a car with a license plate of NCS 263?

3 A Yes, sir.

4 Q Okay. And to what vehicle did that belong?

5 A That's the Anthony Mays vehicle.

6 Q And what kind of vehicle is that?

7 A It's a Chevy Malibu dark in color -- grayish dark in
8 color.

9 Q And did it enter the camera view and then into the
10 22 court at approximately 1:40 p.m.?

11 A Yes, sir, it did.

12 Q Okay. On the videos themselves, are you able to see
13 the actual shooting itself?

14 A No. It's not clear. It's up the hill so the view's
15 not good. It's kind of obscured from the distance and the
16 angle and all.

17 Q Okay. And then at approximately 1:45 p.m., on those
18 videos, do you then see somebody running down the hill?

19 A You can see what turned out later to be Mr. Cook
20 running down the hill just as Mr. Poole said.

21 Q Okay. And then the rest of the description of what
22 Mr. Poole told you about driving down the hill, you could
23 see all of that on the video?

24 A Exactly how he told me.

25 Q And do you note that that same Malibu that pulled

1 into the court leaves and at what time relative to when --
2 what else is going on?

3 A It does. It actually drives around the white car, I
4 think, the victim's car. Drives around the white car,
5 drives around the back side of the office and goes out on
6 the opposite direction going toward Furman Hall Road.

7 Q Okay. Let me show you -- this is going to be very
8 brief so you can stay right there. But let me show you a
9 picture of the office.

10 MR. FRETWELL: This is, for the record, Your Honor,
11 State's Exhibit 3.

12 BY MR. FRETWELL:

13 Q On this picture of the office, if you can see this
14 and all the members of the jury can see, can you identify
15 the 22 court?

16 A It's right in here (indicating). Right in here
17 (indicating).

18 Q And when you say he drove across and behind the
19 office, can you show us the path?

20 A Yeah. So here's (indicating) where the incident
21 occurred. The Chevy Malibu drove across, drove around the
22 victim's vehicle and drove around the back side and went
23 out this (indicating) way.

24 Q Went this (indicating) way?

25 A Yes, sir. Went out this (indicating) way toward

1 Furman Hall Road. This (indicating) way goes to 291 up
2 towards the Spinx station.

3 Q And the victim's vehicle was already pulled over to
4 the other side going toward Tulip; is that correct?

5 A Yeah. Right in this (indicating) area right in here.

6 Q Okay. So was there any blockage that would prevent
7 somebody from turning left here (indicating) and going
8 that same direction?

9 A No, sir.

10 Q Okay. Now, you also -- I'm sorry. Once you were
11 able to identify that Chevy Malibu, did you put what they
12 call a BOLO out for that particular vehicle?

13 A We did.

14 Q Okay. And, in fact, as Deputy Derosa testified
15 earlier in the week, was that -- actually, let me back up
16 for a minute. The BOLO was specifically on the Chevy
17 Malibu; is that correct?

18 A Yes, sir.

19 Q Okay. Great. I'm getting ahead of myself.

20 In that video, do you also see another white Crown
21 Victoria ---

22 A Yes, sir.

23 Q --- coming into and out of the same court that we've
24 just been talking about, the 22 court?

25 A Yes, sir.

1 Q Okay. And do you see that -- sometime after the
2 Malibu leaves, do you see that other Crown Victoria leave?

3 A Yes, sir.

4 Q Okay. After reviewing that video, did you obtain
5 arrest warrants for Anthony Mays?

6 A I think I retrieved -- after I talked to Mr. Poole,
7 interviewed Mr. Poole, the next day I obtained warrants
8 for Mr. Mays.

9 Q Okay. And then as I was jumping to already the
10 following day, which would be on Monday, that afternoon at
11 approximately 2:45, did you learn that the members of the
12 SWAT team had stopped Mr. Mays and had placed him under
13 arrest on your warrant?

14 A I had. At that point, I was actually on call. It
15 was my on-call session. So I was told it was another
16 incident that afternoon, so I got word that they were
17 arresting -- Mr. Mays was arrested.

18 Q And was Mr. Mays arrested in his Chevy Malibu or in a
19 different vehicle?

20 A No. He was arrested in Ms. Shipley's green Honda
21 over on White Horse Road.

22 Q And you understood that he was interviewed by
23 Investigator Kicklighter?

24 A Yes, sir.

25 Q And what, if anything, did he say with respect to

1 what kind of car he drives and where he was at the time of
2 the shooting?

3 A He denied being in the location and denied driving a
4 gray Malibu.

5 Q Okay. And who did he say that investigators -- and
6 you're the lead investigator -- could contact to find out
7 where he was at the time of the shooting?

8 A Contact Ms. Shipley, Katrina Shipley.

9 Q Is that the lady who just testified?

10 A Yes, sir. His girlfriend at the time.

11 Q And you then secured search warrants for, I guess,
12 several vehicles; is that correct?

13 A Yes, sir.

14 Q Including the Honda in which the defendant was
15 arrested?

16 A Yes, sir.

17 Q And do you know, was anybody else in that vehicle
18 when Mr. Mays was arrested?

19 A I believe Mr. Rice was with him.

20 Q Okay. And then based on the execution of search
21 warrants on the Honda and, I guess, this other Crown
22 Victoria, the one that was -- came in and left the
23 opposite direction, was anything of value to the
24 investigation learned from the execution of the search
25 warrants?

1 A No, sir.

2 Q Okay. Now let's talk briefly about Mr. Poole's Crown
3 Victoria.

4 A Okay.

5 Q Okay. By the time that you had talked to Mr. Poole
6 and talked to Mr. Foster, did you know the results of the
7 latent examinations for the prints that were collected
8 from that vehicle?

9 A No, sir.

10 Q Okay. And after having talked to those individuals
11 and been given these names, did you later come to
12 understand that there were latent prints that were
13 identified of these individuals that were being discussed
14 by these witnesses?

15 A I did.

16 Q Okay. And I think the forensics investigator said
17 something about swiping the handles of the vehicle for
18 DNA.

19 A Yes, sir.

20 Q Once you had the latent prints, did you ask for the
21 handle DNA to be processed?

22 A I did not.

23 Q Why?

24 A Because at that point, I had fingerprints of my
25 suspects on the victim's vehicle. I thought that was good

1 enough to put them at the scene and involved in the
2 incident.

3 Q Okay. And how quickly can you get results on
4 latents?

5 A Latents, usually within two or three days. DNA, much
6 different. Much longer period of time you have to wait
7 for that.

8 Q And then let me ask you about -- let's skip down to
9 April the 7th. You secured a search warrant. By that
10 point, you had located Mr. Mays's Malibu; is that correct?

11 A Yes, sir.

12 Q Were you actually there when the Malibu was
13 recovered?

14 A I actually found it.

15 Q Okay. Tell us about it.

16 A So we -- we had information. I think they developed
17 where she worked at, where Ms. Shipley worked at as she
18 listed. So we tried to find the vehicle. And then
19 another investigator and I went over, I believe it was
20 like a Thursday evening, went over and driving around the
21 complex, and I found the Malibu actually on the back side
22 kind of head out, if you will. And, of course, it was --
23 it was secured there.

24 Q Okay. And did you get a search warrant for that
25 particular vehicle?

1 A I did. I had it towed and secured by forensics and
2 then got a search warrant, and went inside and talked with
3 Ms. Shipley, who was working at that time.

4 Q Okay. And she was later taken to the Law -- she
5 later arrived at the Law Enforcement Center and was
6 interviewed; is that correct?

7 A Yes.

8 Q Okay. Other than the fact that Ms. Shipley was in
9 possession of a vehicle registered to Mr. Mays, was
10 anything of value to the investigation learned from the
11 execution from this search warrant?

12 A No, sir.

13 Q When the Malibu was dusted for fingerprints, whose
14 fingerprints were located on that Malibu?

15 A I believe the only thing that I was advised was
16 Ms. Shipley's fingerprints on the Malibu.

17 Q And how many? Do you remember that there were three
18 of them?

19 A I think that's correct.

20 Q Okay. What would you expect to find on a Malibu
21 driven by and registered to an individual?

22 A I would expect to find his prints at least on there.

23 Q Okay. Let me ask you about the -- another
24 conversation with Marcus Foster that took place on April
25 the 7th of 2017. Were you present and part of that

1 conversation?

2 A I was.

3 Q Okay. And very briefly, can you tell us any new
4 information that you learned from that particular
5 conversation?

6 A Again, based on his interview I had with him, that
7 was -- that led me to believe that Shyheem Rice was more
8 involved in the incident itself.

9 Q Okay. And then you received, I guess, on that day
10 after that interview some information about the latents
11 from Mr. Poole's vehicle; is that correct?

12 A Yes, sir.

13 Q Okay. Did you obtain any additional arrest warrants
14 on that particular day?

15 A I did.

16 Q For whom?

17 A For Marcus Foster on 4/7, I believe it was, and then
18 Shyheem Rice on 4/7 also.

19 Q Okay. And then let me take you to the 10th. Did you
20 attempt to execute search warrants for phones that were
21 recovered when Mr. Mays and Mr. Foster were found in the
22 green Honda?

23 A Yes, sir, we did.

24 Q Okay. And were you contacted by Ms. Shipley with
25 respect to that Honda that you were holding?

1 A Yeah. It seems she had no means of transportation,
2 so -- and she needed to get some items out of the car for
3 her children.

4 Q Okay. And did you also obtain a search warrant the
5 following day for Mr. Foster's phone?

6 A I did.

7 Q Anything of value to the investigation learned from
8 execution of any of these search warrants at that point?

9 A No, sir.

10 Q Okay. Were you later able -- or, I guess, after you
11 left, was the Greenville County Sheriff's Office
12 eventually able to access Mr. Foster's phone?

13 A Yes, sir.

14 Q Okay. And do you know the process they had to go
15 through to get that information?

16 A I don't know the process. I know the forensics guys,
17 the phone forensics guys are pretty good at accessing the
18 information in there.

19 Q Okay. And does that technology develop over time?

20 A Yes, sir.

21 Q Do you know whether or not -- have you reviewed any
22 of that information from that phone?

23 A I did.

24 Q And do you know whether or not any phone calls were
25 made from Mr. Foster to Mr. Mays the day of this shooting?

1 A There were two phone calls made to -- from
2 Mr. Foster's phone to Mr. Mays's phone and two -- two
3 phone calls returned from Mr. Mays's phone actually to
4 Mr. Foster's phone.

5 Q Now, because of the way that this report is
6 generated, are you able to identify an exact time for
7 that?

8 A No. It's -- it's -- the date's good, but the time's
9 based on, I guess, whatever that identifies the standard
10 time.

11 Q That Greenwich time that's in England or something?

12 A Yes, sir.

13 Q All right. Let me ask you about Ms. Shipley. On the
14 11th, did Ms. Shipley arrive at the Law Enforcement Center
15 for an interview?

16 A She did.

17 Q And what, if anything -- were you present for that
18 interview?

19 A Yes, sir.

20 Q And what, if anything, did you learn from that
21 interview?

22 A She came with her attorney, and then, again, the same
23 story, basically that she was with Mr. Mays that day, that
24 Sunday afternoon, and that they spent the evening at her
25 house. And then the next day, after she went to school,

1 basically she -- Mr. Mays took her car and she had no
2 means of transportation so she went to get his Malibu.

3 Q Okay. Let me back you up a little bit. Did she say
4 what car she was driving that day?

5 A She drives -- she was driving the green Honda, yes.

6 Q Okay. And did she tell you when eventually Mr. Mays
7 became in possession of that Honda?

8 A Yes, sir.

9 Q When was that?

10 A Monday.

11 Q Okay. The following day?

12 A Yes, sir. The 3rd.

13 Q All right. And did you ask her about timelines with
14 respect to the shooting itself and whether Mr. Mays would
15 have been with her at that time?

16 A She confirmed by the same time as she confirmed on
17 the stand today. It was about 4:00 in the afternoon,
18 something like that.

19 Q Did you eventually release the Honda to Ms. Shipley?

20 A I did.

21 Q Okay. And then Mr. Rice, was he arrested on April
22 the 18th?

23 A Yes, he was.

24 Q And did you interview Mr. Rice at that time?

25 A I did.

1 Q Where did that interview take place?

2 A At the Law Enforcement Center in the interview room.

3 Q So this interview with Mr. Rice was recorded?

4 A Yes, sir.

5 Q What did you do when you arrived at the interview?

6 A Again, introduced myself to Mr. Rice. And then we go
7 over the Miranda warnings, making sure he understands that
8 and -- before I ask him any questions.

9 Q And in this particular case, was he in handcuffs when
10 he came in?

11 A I think he was, but I unhandcuffed him, I believe.
12 It's customary to give them some freedom because they've
13 got to maybe sign some documents and stuff like that.

14 Q Okay. And did you talk to Mr. Rice about his level
15 of education and whether he can read and write?

16 A We did.

17 Q And why did you do that?

18 A Again, I want to make sure that when I'm talking to
19 someone, hearing someone, that they can understand what
20 I'm saying and they understand the gravity of the
21 situation so there's no doubt about what's going on in
22 their mind.

23 Q And do you recall what level of education Mr. Rice
24 indicated he had either completed or attempted?

25 A I believe he said the 10th or 11th grade.

1 Q Okay. And do you try to test the person's ability to
2 read?

3 A Yeah. I like for them to read to demonstrate, again,
4 that they can read. So I asked him to read the top line
5 out to me so I know they can read and understand what
6 they're reading.

7 Q If I can find it, let me show you what's been marked
8 as State's Exhibit 135.

9 A Yes, sir.

10 Q Is that the form that you went over with Mr. Rice?

11 A That's correct.

12 Q And tell us the line that you went over. Was that
13 the first right? You have them read the first right up
14 there?

15 A Yes, sir. Basically, I asked him to read that top
16 line that says, "Before we ask you any questions, you must
17 understand your rights."

18 Q Did he have any difficulty reading it?

19 A No, sir.

20 Q Okay. Is that form signed by you?

21 A Yes, sir.

22 Q Is it signed by him?

23 A Yes, sir.

24 Q Has it been materially altered in any way?

25 A No, sir.

MR. FRETWELL: All right. Your Honor, at this time, I'd move State's 135 into evidence and ask to publish it to the jury.

THE COURT: Any objection, Ms. Ross?

MS. ROSS: No, Your Honor.

THE COURT: Mr. Chambers?

MR. CHAMBERS: No objection.

THE COURT: All right. It's so admitted. And certainly, feel free to publish.

(WHEREUPON, State's Exhibit Number 135 was admitted into evidence.)

BY MR. FRETWELL:

Q I'm going to give you this pointer. It's a little temperamental.

THE COURT: I've got another pointer here if that one's not working.

MR. FRETWELL: And, Judge, I am completely mindful of how much time I have been taking. I don't know if it's ---

THE COURT: I think we're fine.

MR. FRETWELL: Okay.

BY MR. FRETWELL:

Q All right. I keep wanting to call you lieutenant because I think that's who you were when I first met you.

A Yes, sir.

1 Q Mr. Evett, will you please tell the members of the
2 jury -- and I can adjust this if you need me to -- how you
3 go over this form or how you went over this form with
4 Mr. Rice on that particular day.

5 A Again, it's pretty self-explanatory. I, you know,
6 put the general information at the top, the case number,
7 the time and date. Again, this (indicating) is the line I
8 ask him to read out loud so I can understand and make sure
9 he can understand me and the situation. So he did that.
10 And, of course, you see his initials by that that he did
11 that. And then I ask him to read the rest of that to
12 himself and initial by it if he read and understood what
13 he was reading. And he went right down the line and did
14 that.

15 Q Okay. And do you have them complete the personal
16 information at the end or at the beginning?

17 A It depends.

18 Q Do you recall what you did with Mr. Rice?

19 A I think I actually asked him to do that at the
20 beginning. But I'm not sure. It could have been at the
21 end.

22 Q Okay. Well, let's just take it where we have right
23 now. Obviously, you signed this form and Mr. Rice signed
24 this form; is that correct?

25 A Yeah. That's Mr. Rice's signature right there

1 (indicating), and then you see him, he printed his name.
2 That's his writing there.

3 Q As you went over these rights with Mr. Rice, did he
4 seem to have any difficulty understanding you or the
5 right?

6 A No, sir. I asked him -- as a matter of fact, I asked
7 him about his state of mind that day as far as he'd been
8 drinking or smoking. And he said no, that he just had
9 woken up.

10 Q Okay. And that's what I was going to ask you. Did
11 he appear intoxicated or under the influence of any drugs
12 or anything that would give you some concern about his
13 ability to understand his rights?

14 A No, sir. He looked just a little disheveled like he
15 just got out of bed.

16 Q Okay. And you told us that that's the question that
17 he asked you about his rights. Did he ask you any other
18 questions about his rights?

19 A No, sir. He understood his rights.

20 Q I guess that's a question you ask him. Did he ask
21 you any questions about his rights?

22 A No, sir.

23 Q Okay. Did he do or say anything that would make you
24 believe he didn't fully understand the rights as you
25 explained them to him?

1 A No, sir.

2 Q And has -- let me have you then go over -- each of
3 these rights that are on this form, which is in evidence,
4 you went over with him; is that correct?

5 A Yes, sir.

6 Q Tell us how you went over the waiver of rights.

7 A Okay. At the bottom it says, "I have read this
8 statement of my rights and I understand what my rights
9 are. I am willing to make a statement, answer any
10 questions. I do not want a lawyer at this time. I
11 understand and know what I'm doing. No promises or
12 threats have been made to me." I make sure he understands
13 that, you know, we're not coercing him, forcing him to
14 make a statement. He can stop at any time. And then I
15 think I advised him that this was being recorded too for
16 future reference.

17 Q Did he appear to understand the waiver?

18 A He did.

19 Q Did he ask you any other -- any other questions about
20 the waiver portion?

21 A No, sir.

22 Q Do or say anything to make you believe he didn't
23 understand what you were talking about?

24 A No, sir.

25 Q And, obviously, he initialed next to that waiver; is

1 that correct?

2 A Yes, sir. Right there (indicating).

3 Q All right. And did Mr. Rice -- let's see. Did he
4 fill out this bottom portion, or is that your handwriting?

5 A That -- it looks like his handwriting. Yes. That's
6 all his handwriting.

7 Q And that's the 11th grade that he indicated to you
8 his education?

9 A Yes, sir. Right there. He marked 11th grade
10 education.

11 Q Okay. At any point in this process, did Mr. Rice ask
12 for a lawyer?

13 A No, sir.

14 Q Did he ever invoke his right to remain silent?

15 A No, sir.

16 Q Okay. And you indicated that, although he was
17 initially restrained, was he restrained in handcuffs at
18 the time that you were talking to him and he was
19 completing this form?

20 A No, sir. He was unrestrained.

21 Q Did you or anyone promise him anything in exchange
22 for making a statement?

23 A No, sir.

24 Q Did you or anyone coerce or threaten -- as you've
25 just indicated in that waiver portion, did you coerce or

1 threaten him into making a statement?

2 A No, sir.

3 Q To the best of your knowledge, was his statement,
4 Mr. Rice's statement, given freely and voluntarily?

5 A Yes, sir.

6 Q Okay. Let me show you what's been marked as State's
7 Exhibit 136, see if you recognize that.

8 A I do.

9 Q Okay. And what is that particular disk? What does
10 it contain?

11 A It's an interview with Shyheem Rice, and it has my
12 initials on the left-hand side, which means I knew about
13 it.

14 Q Okay. And you've reviewed that recording?

15 A I have.

16 Q All right. And that was his statement that he gave
17 on 4/18 of 2017; is that correct?

18 A It is.

19 Q And other than redaction in accordance with
20 evidentiary rules, has the recording been materially
21 altered in any way?

22 A No, sir.

23 Q Other than redaction in accordance with evidentiary
24 rules, is the recording in substantially the same
25 condition as it was when you reviewed it following your

1 interview with Mr. Rice?

2 A It is.

3 MR. FRETWELL: Your Honor, at this time, we would
4 move State's 136 into evidence and ask that it be
5 published to the jury.

6 THE COURT: Any objection, Ms. Ross?

7 MS. ROSS: I would object, to renew my prior
8 objection to that.

9 THE COURT: So noted and overruled.

10 Anything, Mr. Chambers?

11 MR. CHAMBERS: No objection, Your Honor.

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

13 (WHEREUPON, State's Exhibit Number 136 was admitted into
14 evidence.)

15 BY MR. FRETWELL:

16 Q While she gets set, I'm going to ask you a couple
17 more questions.

18 Did Mr. Rice confirm to you where he was living at
19 the time?

20 A Yes. He did, as we put on the form there.

21 Q Okay. And that was in the Boulder Creek Apartments;
22 is that correct?

23 A Yes, sir.

24 Q Okay. And when you asked him where he was at the
25 time of the shooting, do you recall his response?

1 A I believe he said he don't remember.

2 MR. FRETWELL: Okay. All right. We're ready here.

3 (WHEREUPON, State's Exhibit Number 136, a video, was
4 played in open court.)

5 MR. FRETWELL: Mr. Evett, please answer any questions
6 defense counsel may have.

7 MS. ROSS: May we have a brief break at this time?

8 THE COURT: Sure. All right. Ladies and gentlemen,
9 I'm going to ask you to step to your jury deliberation
10 room for just a moment for our morning break.

11 (WHEREUPON, the jury exits the courtroom at 11:03 a.m.)

12 THE COURT: Let's be in recess for ten minutes.

13 (WHEREUPON, a recess is taken at 11:03 a.m.)

14 MR. FRETWELL: Judge, just while the jury is out, we
15 anticipate our next witness will be the witness from the
16 Department of Corrections, so I just wanted to let you
17 know that.

18 THE COURT: Okay. All right.

19 MR. CHAMBERS: Is that also your last witness?

20 MR. FRETWELL: No.

21 MR. CHAMBERS: Oh, okay. Well, you indicated that
22 you only had a certain number. That's the reason I asked.

23 MR. FRETWELL: We've only called two. I told you at
24 least four.

25 THE COURT: All right. I guess we can go ahead and

1 -- I was trying to think what we can do. All the folks
2 except the ladies on the back row and law enforcement,
3 folks over here, are y'all some relation to either to the
4 victim -- to one of the two victims? Are you all -- okay.

5 Ma'am, I know that your Ms. Mays's [sic] mother. I
6 can tell that.

7 And, ma'am, sitting right here, tell me who you are.

8 UNIDENTIFIED: His aunt.

9 THE COURT: Aunt. Yeah. Okay. Absolutely. Okay.

10 Sir in the black T-shirt, do you mind just telling me
11 what relation you are to these folks here?

12 UNIDENTIFIED: Childhood friend.

13 THE COURT: Just a friend. At this point, I'm going
14 to close the door to the courtroom. Well, dang. I just
15 missed it. Okay. Sir, nobody's in trouble. I'm just
16 asking for general information. Nobody's in trouble.

17 Sir in the white sweatshirt, could you just tell me
18 what your relation is to the defendants, if you don't
19 mind?

20 UNIDENTIFIED: That's my older cousin, and that's one
21 of my closest friends.

22 THE COURT: Okay. So you're related to him.

23 And tell me, sir, in the burgundy.

24 UNIDENTIFIED: The same. Well, he's not my people,
25 but that's my closest friend too.

1 THE COURT: Okay. So you say he is related to you or
2 not your people?

3 UNIDENTIFIED: No, ma'am. This is my aunt right
4 here.

5 THE COURT: Okay, okay. All right. In just a moment
6 we're going to have a witness testify, and I'm going to
7 ask the man in the burgundy and the man in the black to
8 step out of the courtroom. You haven't done anything
9 wrong. You haven't done anything wrong. I'm going to let
10 just family members stay and media and law enforcement.
11 Just y'all haven't done anything wrong, and I want to
12 stress that. But just to step out for that witness, and
13 that's it, and then you can come right back in, all right?

14 All right. Fair enough?

15 MR. FRETWELL: Yes, ma'am.

16 THE COURT: Okay, okay. All right. Let's bring the
17 jury back in.

18 MR. FRETWELL: Your Honor, just very briefly before
19 they come in. I know you're going to seal that door.
20 There is one attorney that may want to come in.

21 THE COURT: Oh, yes.

22 MR. FRETWELL: That he would be permitted, that one
23 attorney would be permitted to come in.

24 THE COURT: I'm going to ask you to seal the door at
25 this point from here on out, and that if Mr. O'Leary

1 comes, then we'll allow him to be in.

2 MR. FRETWELL: Yes, ma'am.

3 THE COURT: And this is for no reason other than just
4 to make the witness feel, I assume, more comfortable.
5 That's it. All right.

6 Do you need to leave?

7 UNIDENTIFIED: I will at that time.

8 THE COURT: Tell me your name.

9 UNIDENTIFIED: Lauren.

10 THE COURT: Okay. I just wanted to know because we
11 put it on the record.

12 Well, ma'am, I tell you what. At any point that you
13 need to leave, you get up and leave, okay?

14 UNIDENTIFIED: It's just going to be just at that
15 point.

16 THE COURT: I understand. Anytime you need to get up
17 and leave, you do it, okay?

18 (WHEREUPON, the jury entered the courtroom at 11:24 a.m.)

19 THE COURT: Ms. Ross?

20 MS. ROSS: Thank you, Your Honor. May it please the
21 Court, ladies and gentlemen.

22 CROSS EXAMINATION

23 BY MS. ROSS:

24 Q Okay. Investigator -- or Mr. Evett, you originally
25 interviewed Marcus Foster April 2nd, is that correct,

1 2017?

2 A I didn't interview him personally, but he was
3 interviewed, yes, ma'am.

4 Q As the lead investigator, are you aware of the
5 content of those interviews?

6 A Yes.

7 Q And they were video recorded as well?

8 A Yes.

9 Q Okay. Now, at that time, Mr. Foster was immediately
10 implicating Doo-Doo, somebody he was calling Doo-Doo; is
11 that correct?

12 A Yes.

13 Q And these interviews went for hours, and he continued
14 to implicate Doo-Doo, right?

15 A Yes.

16 Q And when he was asked about his phone, it came to his
17 attention at some point that Ms. Boyd had received a text
18 from Mr. Foster; is that correct?

19 A Yes.

20 Q And when he was asked about his phone, he responded
21 that his phone was broken; is that correct?

22 A Mr. Foster?

23 Q Mr. Foster.

24 A Yes.

25 Q And when you received it, it was, in fact, broken.

1 A Yes.

2 Q Now, the entirety of -- Mr. Foster again was
3 interviewed, I believe you said, April 7th?

4 A That sounds -- yes.

5 Q Does that sound correct?

6 A Yes.

7 Q Now, at that point, Mr. Rice had not been charged.

8 A No.

9 Q And then during that interview, Mr. Foster continues
10 to insist that Mr. Rice started this fight, brought on
11 this altercation and somehow got Mays to this scene?

12 A Yes.

13 Q And at no point does he mention that he called
14 Mr. Mays to buy marijuana or anything like that.

15 A I don't think so.

16 Q He said nothing about the fact that he was actually
17 the one that got Mays to the scene of that crime,
18 Mr. Foster.

19 A I believe you're right, yeah.

20 Q And he was asked -- he's being grilled and questioned
21 quite a bit at this point about what happened; isn't that
22 correct?

23 A Yes.

24 Q He's being asked a lot of questions.

25 A Yes.

1 Q And at no time does he tell the story he told here
2 Tuesday and says, "Oh, yeah, Mr. Mays was my marijuana
3 dealer and I called him over to bring a bag of marijuana."

4 A He did leave out some details, yes.

5 Q And that was the detail that he left out.

6 A Yes.

7 Q And the entire time he was saying Doo-Doo brought
8 Mays there. It was all Doo-Doo.

9 A Yes.

10 Q And also during that questioning, he said he'd do
11 anything to get out of these charges.

12 A I believe he said something about concern for the
13 charges, yes.

14 Q Now, during that day, did he say anything about
15 having been at church and praying during this time?

16 A Again, I believe he did and that his concern was with
17 his mom, yes.

18 Q Would it surprise you if the video recordings of the
19 interview didn't say anything about him going to church
20 and praying with his grandfather and mom?

21 A I don't recall it saying that.

22 Q Okay. And then -- and he did come in a few hours
23 after the shooting. This wasn't just -- he didn't come
24 immediately.

25 A Yes. He came in of his own volition, yes, ma'am.

1 Q Okay. But it was a little later.

2 A Yes.

3 Q And at that time, did he mention or did his mother
4 mention that Mr. Rice had left the scene with him?

5 A No.

6 Q So -- and, in fact, he implicated that Mr. Rice had
7 left the scene with Mr. Mays; isn't that true?

8 A I believe so.

9 Q And the video showed that that was not the case.

10 A That's correct.

11 Q And so it showed that he was lying and he conformed
12 his story after he was confronted with the video.

13 A Yeah. Until he left out those details.

14 Q And that's -- the same is true with his phone which
15 he tried to break and erase. He conformed his story after
16 phone calls between him and Mays were revealed by forensic
17 investigation.

18 A Okay. If you say so.

19 Q Right. Okay. He didn't tell you right after the
20 incident, oh, by the way, I was the one who called
21 Mr. Mays over to the scene.

22 A That's correct.

23 Q And when he testified today, he said he actually did
24 call.

25 A Yes.

1 Q And I'm sorry. That was Tuesday when he testified.

2 A Yes.

3 Q Now, and it was after that second interview and that
4 you got the fingerprints of Mr. Rice that Mr. Rice was
5 actually charged with this crime.

6 A Yes. That was kind of the confirmation I needed.

7 Q And then he was arrested and interviewed later, I
8 believe, on April 18th, and that was the video we saw here
9 today.

10 A Yes.

11 Q Now, in fact, he was also -- Mr. Rice was also
12 questioned and interviewed on April 3rd; is that correct?

13 A Yes. When Mr. Mays was arrested, yes.

14 Q Okay. Now, going back to ---

15 A Not by me, but he was interviewed.

16 Q Okay. Was it Investigator Picone who interviewed him
17 at that time?

18 A I believe so.

19 Q Okay. And it was also -- I'm going to try to keep
20 straight but I'm going to jump around. It was also
21 Investigator Picone who interviewed some witnesses at the
22 Spinx right after the incident.

23 A Oh, yeah. I was there with him for that.

24 Q You were there with him?

25 A Yes.

1 Q Do you recall the interview of Jessica Woods?

2 A I don't remember that, no. I remember him
3 interviewing someone with a handheld recorder, yes.

4 Q Okay. Was there a white lady that he interviewed?

5 A I believe there was.

6 Q Who had given -- who had been kind of assisting with
7 compressions and stuff with Mr. Cook, the deceased?

8 A That's correct.

9 Q Does that sound familiar?

10 A Yes.

11 Q Now, as a result of talking with her, y'all were
12 looking for two men, weren't you?

13 A From talking to this lady?

14 Q Uh-huh.

15 A Not that I recall, that she didn't direct us toward
16 two men.

17 Q Did she relay information that Mr. Poole had told her
18 as an excited utterance right after, right at the scene?

19 A She didn't relay it to me, no, sir -- no ma'am.

20 Q So she would have relayed that to Investigator Picone
21 who took the recording?

22 A Yes. If it was at all, it was to him.

23 Q All right. Now, and none of that was talking about
24 three -- you don't recall anything about three men from
25 her, do you?

1 A No.

2 Q Going back to that day, I want to take you to the
3 interview with Ms. Kennedy Boyd.

4 A Okay.

5 Q Were you present for that interview?

6 A I was.

7 Q Okay. Now, just going through that interview, she
8 initially states that she's talking about Jackie's
9 boyfriend had a backpack, and he had a gun in it. Do you
10 recall her saying something about Marcus Foster having a
11 backpack with a gun in it?

12 A I believe there was some mention of a backpack.

13 Q Did she say anything about a BB gun? He said he
14 carries a BB gun. She thought it was a real gun, didn't
15 she?

16 A I think she did.

17 Q Okay. And then she talked more about Marcus Foster
18 saying you can't even look at him wrong. He's a player.
19 Do you recall that?

20 A I believe she called him a player, so yeah. I
21 believe you're correct.

22 Q And she talked about how he was possessive, and
23 that's why she asked him if it was okay if Poole came
24 over?

25 A Yes.

1 Q And she said she saw two men, Mark and a dark skin
2 kind of chunky guy come to the car; do you recall her
3 saying that?

4 A Something to that effect, yeah.

5 Q Now, then she said she didn't see a fight.

6 A That's correct.

7 Q And at the end of the interview, she says she saw
8 Mark's friend come tap on the driver's side window, and
9 Mark was at the rear door, and then they left. Do you
10 recall her ---

11 A That she left, you mean?

12 Q Then she left.

13 A Yes. That's her ---

14 Q So according to her testimony, she wasn't even there
15 when the shooting occurred.

16 A That's correct.

17 Q And that's not the testimony that Mr. Poole relayed
18 here yesterday, that Jackie and ---

19 MR. FRETWELL: Your Honor, at this point, I'm going
20 to object to pitting the witnesses.

21 THE COURT: Sustained.

22 MS. ROSS: I'll move on.

23 BY MS. ROSS:

24 Q But she said she had left by that point.

25 A Yes.

1 Q Now, she, in no way, implicated my client, Mr. Rice,
2 did she?

3 A As the shooter?

4 Q Right.

5 A No, she didn't.

6 Q Or Ms. Boyd implicated him at all that day. Ms. Boyd
7 didn't implicate Mr. Rice at all that day.

8 A No.

9 Q And neither did Ms. Berger, correct?

10 A I didn't interview Ms. Berger, so I have to defer to
11 that interview that Investigator Kicklighter did.

12 Q Okay. But after those interviews, you did not have
13 any -- the interviews with the girls, you had no reason to
14 -- any evidence against Mr. Rice after those interviews.

15 A Not conclusively, no.

16 Q It was all coming from Marcus Foster.

17 A Yes.

18 Q Now, at the time you're talking to Marcus Foster, you
19 weren't aware that he had gunshot residue on his hands,
20 were you?

21 A No.

22 Q Just going about, I want to talk a little bit about
23 the surveillance video. There was a surveillance video
24 done at Boulder Creek, right?

25 A That's correct.

1 Q And was there one of Building 21? I mean, was there
2 a camera that didn't have a surveillance video attached to
3 it?

4 A Say that again, please.

5 Q Well, during your investigation, there were cameras
6 around Boulder Creek, quite a few that there was no video
7 imagery presented right of that immediate area.

8 A Oh, of 22, you mean?

9 Q Yeah.

10 A Yes.

11 Q And are you aware of there being a camera there but
12 there was just no footage that was captured from that
13 camera? It was broken or something.

14 A I'm not aware of that. I'm not aware of that. We
15 retrieved all the video we could get from the system.

16 Q Okay. Now, when you look, there's a compilation of
17 the surveillance video at the scene. When you look at
18 that compilation, you do see right after the shooting two
19 cars pass around and leave that area very quickly,
20 correct?

21 A Yes.

22 Q And both are speeding away.

23 A Yes.

24 Q And one is the Chevy Malibu, and then there's
25 another, a second white Crown Vic car, right?

1 A Yes.

2 Q And you took that into evidence but didn't find any
3 forensic evidence from that second car.

4 A That's correct.

5 Q Did you question the owners of that car or
6 investigate who they were or whether they -- what they had
7 to say about this incident?

8 A I did. They refused to talk.

9 Q They refused to talk. And they weren't charged with
10 anything.

11 A No.

12 Q Now, you interviewed Mr. Poole the next day after the
13 shooting, correct?

14 A Yes.

15 Q And that was at the hospital.

16 A Yes, ma'am.

17 Q And that's where he was shown the lineup that's in
18 evidence today.

19 A That's correct.

20 Q Now, there was another lineup that was shown to him
21 as well, and that was this one, correct?

22 A Yes, ma'am. Not with the names on it, but one like
23 that.

24 Q And was he able to identify anyone from this lineup?

25 A He was not.

1 Q And Shyheem Rice is in this lineup, right?

2 A Yes, yes.

3 Q And that's not in evidence today, but that was shown
4 to Mr. Poole.

5 A Yes.

6 Q So Mr. Poole, the living victim in this case, was not
7 able to pick out Mr. Rice as being at the scene.

8 A That's correct.

9 MS. ROSS: Thank you. Nothing further.

10 THE COURT: Mr. Chambers?

11 CROSS EXAMINATION

12 BY MR. CHAMBERS:

13 Q Investigator Evett, I think that you said that the
14 very next day, April the 3rd is when you went to the
15 hospital. And that's when you had your interview with
16 Jaikario Poole, correct?

17 A That's correct. Yes, sir.

18 Q Is that the only interview you had with Jaikario
19 Poole?

20 A That's the only one I did, yes, sir.

21 Q And you audio-taped that interview; is that correct?

22 A I did.

23 Q And so you're familiar with the contents of it; is
24 that correct?

25 A Yes.

1 Q And you were also here yesterday when he testified;
2 is that correct?

3 A I was.

4 Q When you were at the hospital and you were talking to
5 him about what happened, do you recall that Jaikario Poole
6 told you that he knew Marcus Foster, had known him in the
7 past, but that he wasn't even present at the scene that
8 day when this shooting occurred? Do you recall that?

9 A I recall that. And I think he explained that
10 yesterday.

11 Q But he didn't explain that to you when you were at
12 the hospital, correct? He simply said to you, if I recall
13 correctly, that he never saw him out there at all that
14 day; isn't that true?

15 A I believe that he did talk about the -- or Mr. Foster
16 talked about the conversation about the dreads the same,
17 that commonality they had.

18 Q And he also indicated when you talked to him at the
19 hospital that there was no fight, no altercation of any
20 kind; is that correct?

21 A That's correct.

22 Q And he indicated to you at the hospital that four
23 dudes walked up to the car; is that correct?

24 A Yes, sir.

25 Q All right. So I'm correct about all that. And then,

1 of course, when he testified on direct yesterday, he had
2 changed his story about some of that, correct?

3 A Well, he said it was three instead of four. That's
4 correct.

5 Q And then I think later on cross-examination, he said,
6 well, there were -- when I asked him about it, he said
7 there were four, but then one of the dudes walked away.
8 Is that what you recall as well?

9 A Yes, sir. I agree.

10 Q Now, in doing the ID -- and, again, I'm going to go
11 back to the tape of your interview, and I asked him about
12 this yesterday and you said you were here for it. Do you
13 recall that when you showed him the lineup, that he said,
14 "Number 2 kind of looks like him"? Do you recall that
15 statement?

16 A That's correct.

17 Q And then he went on to say after that, "If he has any
18 long dreads, more than likely, might be him." Do you
19 remember him saying ---

20 A If he said what now? Say it again.

21 Q Do you remember that he also said after that that if
22 he had longer dreads, more than likely might be him? Do
23 recall that?

24 A Yes, yes.

25 Q So he said those words as I just stated them to you.

1 A He -- he said he would be more sure. He was
2 80 percent sure, but he'd be more sure if the dreads were
3 longer as they were the day of the shooting.

4 Q And ultimately, you sort of said, "Well, put a
5 percentage on it," and he came up with 80 percent.

6 A That's correct.

7 Q And he also -- again, he indicated that there was no
8 altercation or anything of that sort; is that right?

9 A That's correct.

10 Q And do you have your supplemental report with you?

11 A Yes, sir.

12 Q I would ask you to turn to page 6 of 9 in your
13 report.

14 A Okay. (Witness complies) Okay.

15 Q First of all, when you prepare a supplemental report
16 like this, what's the reason for doing that?

17 A Again, a lot of it's to document for future reference
18 for situation like this for court. So document the
19 information that we received as best we can, and, again,
20 two and a half years later, to help refresh memory.

21 Q So it's to help with the investigation that's
22 ongoing, but it's also to help for when you come into
23 court to testify; is that right?

24 A That's right.

25 Q And it's for your use.

1 A That's correct.

2 Q I'm looking at your report. And you can read along
3 down there with me. Did you say that in talking to you,
4 he said that three males approached the vehicle? Poole
5 stated Cook began fighting with Rice at first and then
6 Foster joined in the fight and then said Poole -- and the
7 fight of a heavier male came to the driver's side of the
8 vehicle. Is that in your supplemental?

9 A It is.

10 Q And you're indicating by putting that there that
11 Mr. Cook indicated to you that there was a fight ongoing,
12 and that Cook had begun fighting with Rice and then he
13 joined in.

14 A That's correct.

15 Q Is that what you have written there?

16 A Yes, sir.

17 Q But as we just discussed a couple minutes ago, that's
18 not what he told you when you were at the hospital.

19 A Not exactly, no.

20 Q So that's clearly a mistake on your part.

21 A And, again, I could have been complaint -- the
22 information from Foster too about the fight.

23 Q Exactly. You put in there information that you got
24 from Marcus Foster. That's probably where that came from,
25 correct?

1 A Could have been.

2 Q And this is Marcus Foster who showed up at the Law
3 Enforcement Center just a few hours after this happened,
4 right?

5 A Yes, sir.

6 Q Now, Ms. Ross asked you, he didn't mention anything
7 about having a phone conversation or anything with
8 Mr. Mays where he asked him to come over and deliver some
9 marijuana. He didn't tell you about that.

10 A He didn't.

11 Q But when you checked his phone, you were able to
12 verify, I believe, as you told the solicitor that it did
13 show that there had been a couple of phone calls back and
14 forth from Mr. Foster's phone to Mr. Mays's phone,
15 correct?

16 A That's correct.

17 Q So that would, in fact, corroborate the fact that he
18 could have called him to come over for the purpose of
19 delivering some marijuana that day.

20 A You know, it was on the conversation. But yes, he
21 could have.

22 Q I understand that. But it would certainly be
23 consistent with him having called to say, "Hey, I need
24 some weed. Can you bring some over here?"

25 A Yes, sir.

1 Q And you also indicated when Ms. Ross asked you that
2 Ms. Boyd did, in fact, say to you, in addition to the fact
3 that Mr. Foster was jealous and controlling and that she
4 was somewhat scared of him, that she had seen him with a
5 weapon and that weapon was in his backpack, correct?

6 A Say that one more time for me.

7 Q I believe you indicated when Ms. Ross asked you is
8 that Ms. Boyd indicated to you that she had seen Marcus
9 Foster with a gun, and that he kept that gun in his
10 backpack.

11 A With that backpack, yes.

12 Q But when you talked to Foster, did you ask him about
13 this gun that Ms. Boyd had indicated that he had?

14 A I didn't interview him that first time, so I can't --
15 I don't know if they did or not. I interviewed him
16 subsequently, what, three or four days later.

17 Q You're the lead investigator. Would it have been
18 important to you to follow up on that and say we've had a
19 shooting here? Two people shot, one dead, one seriously
20 injured. One of the people on scene is said to have had a
21 gun and it's the guy that showed up on your doorstep to
22 talk about what happened. Did anybody ask him about this
23 weapon?

24 A I didn't, because at that point, I had -- my victim
25 had picked out your client as the shooter.

1 Q So it was no concern at all to you that Mr. Foster,
2 who was out there, might have had a weapon. You weren't
3 concerned about that at all.

4 A I had no proof of that. I had witness testimony from
5 the victim of your client shooting him.

6 Q But you also had evidence that Marcus Foster might
7 have had a motive in that his girlfriend was in the car
8 with Ms. Cook [sic], and you knew him to be a possessive
9 and controlling person who was known to have a gun. And
10 that did not concern you.

11 A None of the people we interviewed put a gun in Marcus
12 Foster's hand at any point that day of the shooting,
13 either one of the victims.

14 Q And -- but as the lead investigator, maybe you even
15 ordered it, but I'm sure you're aware that Marcus Foster
16 was checked for gunshot residue, correct?

17 A That's correct.

18 Q And you're aware that that came back positive for
19 particles of gunshot residue that were on the palm of his
20 hand and the back of his hand, his right hand.

21 A That's correct.

22 Q Which would indicate a very strong probability that
23 he fired a gun sometime prior to that having taken place.

24 A Again, as the SLED agent explained, that, or could
25 have been around when the gun was fired. So, I mean ---

1 Q Well, she checked that car, and there was no
2 particles on the steering wheel; is that correct?

3 A No, sir. On the victim's car?

4 Q Yeah. She said that when she dusted the steering
5 wheel, that there were no particles on the steering wheel.
6 Do you recall that?

7 A I recall that. I don't know how that would put a gun
8 in Mr. Foster's hand.

9 Q Well, it would show, though, that there's somebody in
10 close proximity, and there's nothing -- when they dust
11 there, there's nothing there, but then yet there's
12 multiple particles on his shooting hand, his right hand.

13 A Again, he was next -- there when the shooting
14 happened. He admitted putting himself there.

15 Q Well, he also was outside the car, though. It would
16 be much less likely, unless you were holding the pistol,
17 firing the pistol, to have any kind of particles on your
18 hand, would you?

19 A Oh, no. As a range instructor, I've seen it -- I
20 mean, they're at least five or ten feet away from where
21 the gun's fired, so it's not limited to just the immediate
22 area around the gun.

23 Q And she also indicated, since you're talking about
24 what she said, that these are very fragile and that they
25 dissipate very quickly, correct?

1 A That's correct.

2 Q Which would also give rise to the fact that perhaps
3 the person who carried away the murder weapon in their
4 hand would have continued to have contact with it, and
5 therefore, when you tested them several hours later, those
6 particles would still be there.

7 A There's no evidence that Marcus Foster carried a gun
8 away, though.

9 Q But there is evidence from a witness that you talked
10 to that he had a gun. There is evidence that, after you
11 test him for gunshot residue, that it came back positive
12 for multiple particles of gunshot residue on his hand.
13 And you're sitting here telling me, if I'm correct, that
14 that doesn't matter to you.

15 A I didn't say it didn't matter. I said your client is
16 the only one that was identified as the shooter of the
17 victim.

18 Q Identified by Marcus Foster, and 80 percent ID by
19 Jaikario Poole.

20 A Yes, sir.

21 Q Those are your identifications.

22 A Yes, sir.

23 Q And yet we know for sure that the hand with which he
24 would fire a weapon tested positive for gunshot residue.

25 A You're right.

1 Q And we also know from the shell casings, and you're
2 the lead investigator so I imagine you can corroborate
3 this, that the only weapon fired was a .40 caliber,
4 correct?

5 A That's correct.

6 Q Because all the shell casings that you found were
7 .40 caliber shell casings.

8 A That's correct.

9 Q And a .40 caliber weapon would be very much what
10 these officers carry; is that correct?

11 A Yes, sir. Close.

12 Q And those are pistols that operate -- the reason you
13 have shell casings is when you fire it, not only would you
14 have gunshot residue going out the barrel of the gun, but
15 as the chamber opens up to eject the cartridge, gunpowder
16 residue would come out of that as well, correct?

17 A Yes, sir. Yes, sir.

18 Q Which would certainly give rise to gunshot residue on
19 the palm of the hand and gunshot residue on the back of
20 the hand, correct?

21 A Yes.

22 MR. CHAMBERS: That's all the questions I have for
23 you. Thank you.

24 THE COURT: Mr. Fretwell?

25 MR. FRETWELL: Briefly, Your Honor.

1 THE COURT: Certainly.

2 REDIRECT EXAMINATION

3 BY MR. FRETWELL:

4 Q Let me start with some of the questions that Ms. Ross
5 asked you, Mr. Evett.

6 Now, you're certainly familiar with State's
7 Exhibit 8, a photograph that a lot of people have made
8 reference to, Ms. Ross included. Let's just do it this
9 way. This picture with the two people running ---

10 A Yes.

11 Q --- you've seen that. You saw that on the video and
12 you're familiar with that particular photo; is that
13 correct?

14 A Yes, sir.

15 Q Okay. And you had information about two people
16 running; is that correct?

17 A That's correct.

18 Q From that day.

19 Okay. And then also, you listened to the 9-1-1
20 calls, and there was information on the 9-1-1 calls about
21 two people running. And the lady even said, "I see them
22 with a gun"; is that correct?

23 A Yes, sir.

24 Q Okay. So you had information that day that was
25 talking about two people; is that correct?

1 A That's correct.

2 Q All right. So then let me also ask you about
3 Ms. Boyd's interview, okay? And with respect to that
4 backpack and the fact that he usually has a gun in that
5 backpack, did Ms. Boyd ever tell you she saw a gun that
6 day in Mr. Foster's possession or in his backpack?

7 A I don't believe so.

8 Q Okay. And then when she was describing the
9 individuals that came up to the car, she knew Mark; is
10 that correct?

11 A That's correct.

12 Q And she said she described the heavy guy.

13 A Right.

14 Q Did she give you any further description of the third
15 guy? Was she able to pick that person out as Ms. Ross has
16 asked you?

17 A No.

18 Q Okay. But the two people she mentioned in
19 description was the heavy person and the person she knew
20 to be Mark Foster.

21 A That's correct.

22 Q Okay. All right. And then also, Mr. Chambers asked
23 you about this conversation with Mr. Poole at the hospital
24 where he's talking about the dreads and all of that. Do
25 you remember him making the statement if his dreads were

1 just a little bit longer, that's him?

2 A Yes.

3 Q Okay. The steering wheel Mr. Chambers is talking
4 about, is that the steering wheel from the victim's
5 vehicle or is that the steering wheel that Mr. Wolfe
6 testified to was in the Chevy Malibu?

7 A I think he was talking about the victim's vehicle.

8 Q Okay. Were you here for Mr. Wolfe's testimony?

9 A Yes.

10 Q Do you recall him testifying about processing the
11 Chevy Malibu?

12 A Yes.

13 Q Did you hear him testify about collecting GSR
14 splotches from the steering wheel?

15 A No, sir. He did not collect any.

16 MR. FRETWELL: All right. Okay. No other questions,
17 Judge.

18 THE COURT: Ms. Ross?

19 MS. ROSS: Briefly.

20 RECROSS EXAMINATION

21 BY MS. ROSS:

22 Q Did you watch all those surveillance videos or a good
23 many of them?

24 A A good many of them, yes, ma'am.

25 Q Wouldn't you agree there were people all over the

1 place in these videos? There were a lot of people out at
2 Boulder.

3 A Yes.

4 Q And I'm just going to show you two stills just right
5 after. Do you recognize the two women who are running
6 there?

7 A I believe that's Kennedy Boyd and Ms. Berger.

8 Q And isn't there another guy running in the
9 background?

10 A Yes.

11 Q And that's a different shot from the two guys running
12 that Mr. Fretwell just showed.

13 A Yeah. He's running towards the shooting scene versus
14 away from the shooting scene.

15 Q Right. But, obviously, there are a lot more than
16 just two guys running away -- running around that shooting
17 scene.

18 A I imagine when the shooting started, there was a lot
19 of people moving on.

20 MS. ROSS: Thank you.

21 THE COURT: Mr. Chambers?

22 MR. CHAMBERS: Just talking about the video ---

23 MS. ROSS: May I ask one more thing?

24 THE COURT: Sure.

25 MS. ROSS: The one question too many.

1 BY MS. ROSS:

2 Q There were a lot of surveillance cameras around
3 there. Do you recall, I don't think it was in the part
4 that you saw, but in Mr. Rice's interview, him saying,
5 "Look at the cameras. They'll show you"?

6 A I don't remember him saying that. But on the
7 interview that we just showed?

8 Q No. There was more interview than that. But do you
9 recall him saying something about look at the videos? Do
10 the videos show this?

11 A He could. I don't remember. He could have said
12 that. I don't remember that or recall that.

13 MS. ROSS: Thank you.

14 RECROSS EXAMINATION

15 BY MR. CHAMBERS:

16 Q Talking about these videos, do you recall that there
17 were 32 cameras out there?

18 A Yes, sir.

19 Q And I believe you all reviewed those, and then you
20 had that sort of chronological tape put together that had
21 a blending of all the tapes, correct?

22 A That's right.

23 Q And it was clear that from the side of the shooting
24 right after the shooting occurred, I guess at some point I
25 guess around the time of the shooting, you got on video

1 Ms. Berger and Ms. Boyd running away from the scene,
2 correct?

3 A That's correct.

4 Q You got Mr. Foster and Mr. Rice running away from the
5 scene down the hill; is that correct?

6 A Or up the hill.

7 Q Or up the hill?

8 A Yes, sir.

9 Q And then you see Mr. Cook run away from the vehicle,
10 correct?

11 A Yes, sir.

12 Q The one person you don't have any video of running
13 away from the scene after this shooting is Mr. Mays; is
14 that correct?

15 A Just his vehicle leaving the scene.

16 Q But you don't ---

17 A You can't see him inside, no.

18 Q You see a Malibu that belonged to him driving away
19 from the scene. But, again, there is no video of him
20 running away from the scene.

21 A That's correct.

22 MR. CHAMBERS: Thank you.

23 THE COURT: Mr. Fretwell?

24 MR. FRETWELL: No questions, Judge.

25 THE COURT: All right, sir. You can step down.

1 Ladies and gentlemen, I'm going to ask you to step to
2 your jury deliberation room very briefly. And I'll call
3 you back in in just a moment.

4 (WHEREUPON, the jury exits the courtroom at 11:55 a.m.)

5 THE COURT: All right. Do y'all have the next
6 witness up here?

7 THE DEPUTY: I can get him up here.

8 THE COURT: Okay. Thank you.

9 Would y'all step outside for me. I sure do
10 appreciate it. Thank you.

11 MR. FRETWELL: While he's being brought up, do you
12 mind if I step down the hallway?

13 THE COURT: Go right ahead.

14 (Pause in proceedings.)

15 THE COURT: And let's go on the record for just a
16 moment.

17 Mr. O'Leary, could I just ask you very briefly, there
18 was some conversation, and since Mr. Gregory is here I can
19 ask this, but there was some conversation yesterday about
20 what the scope of your representation of Mr. Desue is.
21 Mr. Desue has indicated it is for purposes of filing some
22 sort of postconviction relief.

23 MR. O'LEARY: That's correct, Judge. I had -- they
24 asked me to review the trial transcript and the final --
25 basically a PCR type of operation. And that was it. And

1 THE COURT: Okay. All right. Thank you.

2 (WHEREUPON, the jury entered the courtroom at 12:13 p.m.)

3 THE COURT: Yes, sir?

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

5 THE COURT: Yes.

6 DIRECT EXAMINATION

7 BY MR. FRETWELL:

8 Q Mr. Desue, if you could say your name and spell your
9 last name for the court reporter.

10 A Keith Desue, D-E-S-U-E.

11 Q And Mr. Desue, how old are you?

12 A I'm 37.

13 Q And are you currently incarcerated?

14 A Yes, sir.

15 Q And did you meet with Sergeant Hammett, myself and
16 Assistant Solicitor Gregory on August 16th of this year?

17 A Yes, sir.

18 Q And did you provide us with some background at that
19 time?

20 A Yes, sir.

21 Q Where did you tell us that you grew up?

22 A At Boulder Creek.

23 Q Okay. And did you indicate whether you know either
24 of these two gentlemen that are sitting at these tables
25 over here?

1 A Yes, sir.

2 Q Okay. Which? Both? Which one?

3 A Just Anthony Mays.

4 Q Okay. And can you just describe what he's wearing
5 for the jury and for the record, please.

6 A The white shirt with a tie.

7 MR. FRETWELL: Okay. Your Honor, I'd ask that the
8 record reflect he's identified the defendant Mays.

9 THE COURT: All right. It does.

10 BY MR. FRETWELL:

11 Q Did you know him? Were you friends? What was the
12 relationship that you had with him?

13 A It was cool, you know. I knew him growing up. I
14 knew his family.

15 Q Okay. And you are currently serving a 25-year
16 sentence; is that correct?

17 A Correct.

18 Q And the start date of that sentence was back in
19 November of 2011; is that correct?

20 A Correct.

21 Q And you've been incarcerated since that time.

22 A Yes, sir.

23 Q Okay. In June of this year and sometime after
24 Mr. Mays was arrested for murder, were you and Defendant
25 Mays incarcerated together?

1 A Yes, sir.

2 Q Did you receive a message from Mr. Mays shortly after
3 the two of you were incarcerated together?

4 A Yes, sir.

5 Q Okay. And what was that initial message to you?

6 A That he needed to -- he needed help finding the law
7 library.

8 Q So he needed help in the law library. All right.
9 Did he say why he needed help in the law library?

10 A Because he had a case he was trying to win.

11 Q Okay. Did he say anything to you about a mistake
12 being made?

13 A Yeah. He said he killed -- he killed the wrong guy.

14 Q In fact, did you tell us that he said he shot the
15 wrong guy?

16 A Right.

17 Q Okay. And what was he looking for? What did he tell
18 you he was looking for?

19 A He said he was just going to see what was going on.

20 Q No. I'm talking about with respect to the law
21 library.

22 A Oh, he was looking for cases on his -- on his -- on
23 his case that can help him.

24 Q Okay. And what was he looking for ultimately?

25 A He was looking for help.

1 Q Was he looking for a specific charge? a specific time
2 period? Did you say anything about either of that --
3 those things?

4 A I don't recall that.

5 Q Okay. That's fine.

6 Then with respect to -- did he identify anybody by
7 the name of Mark?

8 A Yes, sir.

9 Q How did he refer to Mark?

10 A Little Mark.

11 Q Did he use his last name?

12 A No.

13 Q Did you know who Little Mark was?

14 A Yes, sir.

15 Q How do you know Little Mark?

16 A His father lived beside me.

17 Q Okay. And is his name also Mark?

18 A Yes, sir.

19 Q Okay. So you're familiar with that family.

20 A Yes, sir.

21 Q All right. What did he say about Little Mark?

22 A He said Little Mark called him. He said they had
23 been fighting in the neighborhood.

24 Q Okay. Well, let me back up a little bit. You had
25 two separate conversations with Mr. Mays; is that correct?

1 A Correct.

2 Q Let me refer you to the first conversation, okay,
3 where -- did he give you a lot of detail on the first
4 conversation or was that more on the second conversation?

5 A More on the second.

6 Q Okay. When he was talking to you in the first
7 conversation, did he mention Mr. Mark -- or Mr. -- Little
8 Mark and his brother, Mr. Mays's brother?

9 A Yeah. He said he was going -- his brother's both
10 been talking to him.

11 Q Toward what end?

12 A Into not testifying.

13 Q Okay. The second time you had a conversation within
14 the incarcerated area, where did that take place?

15 A Outside of his room.

16 Q Okay. Did he give you more details of what actually
17 happened on the day of the shooting?

18 A Yes, sir.

19 Q And what did he -- what did he tell you?

20 A You want me to go from the beginning?

21 Q Well, let me ask you this first because I'm -- did he
22 talk about anybody that had died prior to the shooting?

23 A Yes.

24 Q Okay. Who did he talk about? Who is that person,
25 and do you know him?

1 A I know the person. His name -- well, I knew him as
2 Little D.

3 Q Okay. What's his last name?

4 A I don't know his last name.

5 Q Okay. And was he killed?

6 A He was killed.

7 Q Okay. Do you know in what kind of way he was
8 killed?

9 A He was murdered. He was shot.

10 Q Okay. And who was responsible for killing Little D?

11 A A member of the Woo Gang.

12 Q Do you remember specifically what member of that
13 gang?

14 A No, sir.

15 Q Okay. And did he give you that information about the
16 specific member of the Woo Gang? Did Mr. Mays talk to you
17 about a specific member of the Woo Gang?

18 A Yes, sir.

19 Q Okay. What -- you just don't remember the name?

20 A I don't remember the name.

21 Q Okay. I'm sorry.

22 Tell me what Mr. Mays told you about the morning of
23 the shooting. What happened?

24 A He said he was asleep.

25 Q Okay.

1 A And Little Mark called him and said he had been
2 fighting in the neighborhood against a member of the Woo
3 Gang, him and another person, you know. So he said he was
4 going out there to see what was going on.

5 Q Okay. Did he -- did Mr. Mays tell you whether Little
6 Mark told him where this was going on, where he needed to
7 come?

8 A No, sir.

9 Q Okay. And then did Mr. Mays tell you where he was
10 when he got this call from Little Mark?

11 A Yes, sir. He said he was at home.

12 Q Where?

13 A Crestwood.

14 Q Are you familiar with Crestwood, being from
15 Greenville?

16 A Yes, sir.

17 Q Is Crestwood far from Cherrydale or Boulder Creek?

18 A It's not far.

19 Q Okay. All right. So what -- what did Mr. Mays tell
20 you happened when he arrived, or where did he tell you he
21 went?

22 A He went to Boulder Creek.

23 Q Okay. And what did he tell you he either saw or did
24 when he got to Boulder Creek?

25 A He said that when he got there, it was an

1 altercation.

2 Q Okay. Did he tell you who was involved in the
3 altercation?

4 A I think Little Mark. He told me Little Mark was
5 involved in the altercation. I don't know who else.

6 Q Okay. Did he mention any other nicknames to you?

7 A Doo-Doo.

8 Q Okay. Do you know Doo-Doo?

9 A No.

10 Q Do you know who that is?

11 A No.

12 Q Would you be able to identify him?

13 A I don't know who that is.

14 Q Okay. So they're fighting. Then what does Mr. Mays
15 tell you?

16 A He said that he told him to get down, and he -- he
17 shot through the car five times and hit the victim in the
18 chest twice.

19 Q Okay. Did he say what he shot with?

20 A Yeah. He told me it was a .40 Caliber Smith &
21 Wesson.

22 Q Once he fired the weapon, what happened? What did he
23 tell you happened?

24 A He didn't -- he didn't actually say what happened.

25 Q Okay. What about the vehicle itself? Did it stay?

1 Did he leave? Did the vehicle stay? Did he tell you
2 anything about that?

3 A He didn't actually tell me anything about that.

4 Q What about the driver of the vehicle? Did he say
5 anything about the driver of the vehicle?

6 A No. He didn't say anything about the driver.

7 Q What about did he say anything about the individuals
8 in the vehicle and whether they had any kind of gang
9 affiliation?

10 A They said the guys in the vehicle were from the Woo
11 Gang.

12 Q Okay. And did he say whether or not the person or
13 persons in the car were responsible for the death of
14 Little D?

15 A He said that their gang was responsible for the death
16 of Little D.

17 Q Okay. But what about the people in the car?

18 A He said they wasn't responsible for the death of
19 Little D.

20 Q Okay. And is that related to the I shot the wrong
21 guy or I killed the wrong guy?

22 A Yes, sir.

23 Q Okay. And did you ask him if it wasn't the guy, why
24 did he shoot these people?

25 A I did not ask.

1 Q Okay. Did he tell you whether anybody else in the
2 car had a gun or weapon?

3 A No, sir.

4 Q I asked that question poorly. Did Mr. Mays talk
5 about whether anybody else had a gun?

6 A He said no one else had a gun.

7 Q That's what I wanted to make sure of.

8 And did he tell you something about seeing the person
9 who did kill Little D?

10 A Yeah. He said he saw him in the county jail.

11 Q After he was arrested for murder; is that right?

12 A Right.

13 Q Okay. What, if anything, did Mr. Mays tell you
14 happened to the gun?

15 A He said he gave the gun to Doo-Doo to get rid of.

16 Q And he told you what kind of gun it was.

17 A Yes, sir.

18 Q Did he say anything about any of the evidence that
19 had been discovered in this particular case?

20 A He said that there was fingerprints on the car.

21 Q Okay.

22 A And a .38 bullet that had no relation to the case.

23 Q Okay. Did he indicate whether there was anyone else
24 shooting or having a gun other than himself?

25 A No.

1 Q No, he -- no, he didn't indicate that or there was no
2 one else with a gun?

3 A No one else with a gun.

4 Q Or shooting.

5 A Right.

6 Q And what did he say? Did he make any comment about
7 the surveillance video from the -- from the apartments?

8 A I don't remember.

9 Q He talk about whether it was clear or not clear? You
10 don't remember anything about that?

11 A I think it might have been unclear.

12 Q Okay. Did you reach out to the solicitor's office to
13 communicate this information?

14 A Yes, sir.

15 Q And have you been promised anything for your
16 testimony?

17 A No, sir.

18 Q You're represented by an attorney over here,
19 Mr. O'Leary; is that correct?

20 A Correct.

21 Q And do you have any concerns here today about
22 something you refer to as being labeled?

23 A Yes, sir.

24 Q Tell us, what does that mean?

25 A Well, you know, in the Department of Corrections, we

1 testify, I'm basically a snitch, so, you know, my life is
2 in danger.

3 MR. FRETWELL: Hold on just one second.

4 Mr. Desue, answer any questions defense counsel has
5 for you.

6 THE COURT: Ms. Ross?

7 MS. ROSS: I've got no questions.

8 THE COURT: All right. Mr. Chambers?

9 CROSS EXAMINATION

10 BY MR. CHAMBERS:

11 Q Mr. Desue, you indicated that you have a -- that you
12 know Marcus Foster and you know Marcus Foster, Senior,
13 correct?

14 A Correct.

15 Q In fact, you're about the same age as Marcus Foster,
16 Senior, correct?

17 A Incorrect.

18 Q Well, you have a good -- you've had a close
19 relationship with him for most of your life, correct?

20 Mr. Foster?

21 A We've been okay. He was my next-door neighbor.

22 Q Next-door neighbor, knew each other. You stayed in
23 contact with him; have you not?

24 A No.

25 Q And you were aware that Little Mark, as you called

1 him, at one point was charged with this same murder,
2 correct?

3 A I wasn't aware he was charged.

4 Q You are currently serving a 25-year sentence; am I
5 correct about that?

6 A Correct.

7 Q Your max -- the date that you're projected to be
8 released is in, I think, 2036.

9 A Correct.

10 Q And you're now saying that you are afraid to the
11 point that you'd like to be transferred to a different
12 facility, correct?

13 A Correct.

14 Q And you'd like to have some input into what facility
15 you go to, correct?

16 A Correct.

17 Q You wouldn't mind at all if somebody was willing to
18 do you a favor in exchange for the cooperation you're
19 giving the solicitor here today, would you?

20 MR. FRETWELL: Your Honor, I object at that point
21 based on previous -- and we can approach.

22 THE COURT: Please approach.

23 (WHEREUPON, a bench conference was held off the record.)

24 MR. FRETWELL: I withdraw my objection.

25 ///

1 BY MR. CHAMBERS:

2 Q Sometime around the time and I guess shortly after
3 you talked to the solicitor and the folks with the
4 sheriff's office, you were found to be in possession of a
5 cell phone at the Department of Corrections; am I
6 correct?

7 A Correct.

8 Q And a cell phone, you're not allowed to have those in
9 the Department of Corrections, are you?

10 A Correct.

11 Q Because that allows you to communicate with people
12 outside of the Department of Corrections without being
13 monitored or anybody knowing what you're talking about; am
14 I correct in that?

15 A Correct.

16 Q And that's the reason you would want a cell phone in
17 prison is so you can talk to people, you can stay in touch
18 with people, and nobody -- you have no accountability for
19 it, nobody's able to know what you're talking about or who
20 you're talking to you, correct? Am I right about those
21 things?

22 A I don't think you're right about that.

23 Q Oh, so you didn't have it because you wanted to talk
24 to people outside the prison?

25 A No.

1 Q Just decided that you would keep contraband with you
2 for no apparent reason.

3 A I was working on my case.

4 Q Okay. And that allows you -- how does that
5 facilitate your case? It doesn't do anything for your
6 case, does it?

7 A Yes, it does.

8 Q I mean, you have -- you have access to the Internet
9 and the law library and computers and everything you need
10 at the prison, right?

11 A You don't have -- I mean, you have access to the law
12 library, but you can -- you can further educate yourself
13 with your case if you can get on the Internet.

14 Q And you can certainly -- well, you have the Internet
15 there at the prison. You can get on there and look
16 whatever you need to up.

17 A They don't give you up-to-date cases.

18 Q And as far as preparing for your case and being able
19 to talk to your attorney, you can do that through proper
20 channels through the Department of Corrections, right?

21 A You could.

22 Q And the truth of the matter is the reason people in
23 prison have phones and the reason you have a phone was so
24 you could communicate with people outside the prison like
25 Mr. Foster.

1 A I never -- haven't spoke with him since I've been
2 incarcerated.

3 MR. CHAMBERS: That's all the questions I have.

4 MR. FRETWELL: Just one, Your Honor.

5 THE COURT: Yes, sir.

6 REDIRECT EXAMINATION

7 BY MR. FRETWELL:

8 Q Mr. Desue, prior to your testimony today, while the
9 jury was out of the room, didn't the Court tell you that
10 you were going to be transferred to a more secure location
11 whether you testified or not?

12 A Yes, sir.

13 MR. FRETWELL: No other questions, Judge.

14 RECROSS EXAMINATION

15 BY MR. CHAMBERS:

16 Q And was that a request that you made of the Court
17 when you came in here today, that you be transferred?

18 A I asked the Court to help me to keep me safe.

19 Q And did you also ask if you could -- if you could say
20 or have input into where you go?

21 A I asked could I have input on where I will go to be
22 safe.

23 MR. CHAMBERS: Thank you.

24 THE COURT: Anything else?

25 MR. FRETWELL: No questions.

1 THE COURT: All right.

2 MR. FRETWELL: May this witness be excused?

3 THE COURT: Sir, you can step down. And yes, you can
4 be excused.

5 (Cell phone interruption.)

6 THE COURT: That's fine. Mr. O'Leary, I'm going to
7 make you feel better. Mine went off yesterday.

8 All right.

9 MR. FRETWELL: Judge, this is our last witness. The
10 State would call Cam Hunter.

11 THE COURT: Okay. Is everybody doing okay? Okay.

12 THE CLERK: Mr. Hunter, if you will, please come
13 approach the Bible. Please place your left hand on the
14 Bible and raise your right hand.

15 WHEREUPON,

16 MICHAEL CAM HUNTER

17 After having been duly sworn, testified as follows:

18 THE CLERK: Please be seated, and once you're seated,
19 state your name for the record.

20 THE WITNESS: My name is Michael Hunter.

21 DIRECT EXAMINATION

22 BY MR. FRETWELL:

23 Q All right. Detective Hunter, why do you go by Cam?

24 A It's my middle name. Michael is actually a very
25 common name.

1 Q Okay. I just wanted to make sure I got this right.

2 By whom are you employed?

3 A I'm with the City of Greenville Police Department.

4 Q And how long have you worked for the city police
5 department?

6 A Since 2006.

7 Q And I guess we're assuming the city here. What city?

8 A Greenville.

9 Q Okay. And your current assignment, how are you
10 assigned within the Greenville Police Department?

11 A Currently assigned to the Crime Response Team, which
12 is like a street crimes unit as the gang enforcement
13 coordinator. And I also play a dual role with the FBI
14 Upstate Violent Gang Safe Streets Task Force.

15 Q And how long have you been a task force officer with
16 the FBI Upstate Violent Gang Safe Streets Task Force?

17 A Since 2011.

18 Q And are you a certified law enforcement ---

19 MS. ROSS: I just have a quick objection at this
20 time. I'm going through the witness list, and I don't see
21 him. I might have missed it.

22 MR. FRETWELL: She's absolutely right, Your Honor.
23 During voir dire, I added his name because he took Quincy
24 Whitner's place.

25 THE COURT: Oh, that's right.

1 MS. ROSS: Okay.

2 THE COURT: And so I did -- I did question the jury
3 about whether or not they had any connection with him.

4 MS. ROSS: Thank you, Judge.

5 BY MR. FRETWELL:

6 Q Sorry. I lost track of where I was.

7 You're a certified law enforcement officer?

8 A I am.

9 Q You attended and completed the South Carolina
10 Criminal Justice Academy?

11 A I did.

12 Q How many hours of post-academy training have you
13 underwent?

14 A I believe it's somewhere around 1,150 post-academy
15 training.

16 Q That should be undergone. I'm sorry. My English is
17 slipping.

18 And how many hours specifically for gang-related
19 investigation?

20 A I've attended over 450 hours of gang-specific
21 training. I'm also a certified instructor and have
22 written and instructed several gang classes as well.

23 MR. FRETWELL: All right. Your Honor, based on the
24 witness's training and experience, I would ask that he be
25 permitted to provide testimony that's beyond the

1 understanding of an average person relating to the area of
2 gangs in Greenville County.

3 THE COURT: Any objection?

4 MS. ROSS: Yes. I object. I don't think a police
5 officer would have any special expertise or scientific
6 knowledge that would allow him to testify as an expert in
7 this matter.

8 THE COURT: Is he actually going to give opinions?

9 MR. FRETWELL: He's going to give background
10 information on something he's familiar with. So not an
11 opinion necessarily, but just background information on
12 the Woo and ---

13 THE COURT: I think you can ask him. And you
14 certainly established his training. But I don't know of a
15 reason at this point to qualify him as an expert witness.

16 MR. FRETWELL: I just didn't want to get an objection
17 based on the nature of the question if it ---

18 THE COURT: Sure.

19 Mr. Chambers, I didn't have you be heard.

20 MR. CHAMBERS: Well, no. And I would just -- to make
21 sure we have it on the record, I concur. And, you know,
22 also, if you apply all of the applicable tests where
23 expert testimony is concerned, primarily it being somehow
24 making it more understandable to the jury, that would
25 require some sort of specified knowledge. I mean, there's

1 been no predicate laid for that at all in this case.

2 THE COURT: All right. And I do believe you're
3 correct, Mr. Chambers. And so we're just going to allow
4 him -- although he may have specialized knowledge, I don't
5 think it's something that he'll need to be qualified to
6 give an opinion on.

7 MR. FRETWELL: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. FRETWELL: May it please the Court.

10 THE COURT: Yes.

11 BY MR. FRETWELL:

12 Q Detective Hunter, what is Woo?

13 A Woo Gang is a group of young individuals that started
14 appearing around Greenville around 2014. It was a group
15 started by two twin brothers that came out of Greenville
16 High School. They kind of fame themselves to be a rap
17 label, but they -- the group, there are approximately nine
18 members of it and probably another 11 who get together,
19 they commit all kinds of crimes on behalf of the gang.

20 Q All right. And you characterize the Woo as a
21 nontraditional gang.

22 A It is.

23 Q What does that mean?

24 A They have a loose affiliation with the Bloods, which
25 is a traditional gang. When we talk about traditional

1 gangs, that's what we normally think about Bloods, Crips.
2 They have like a national alliance versus something like a
3 nontraditional gang. That would be more like a
4 neighborhood click or something within the community, but
5 it doesn't have the reach of a national-based gang.

6 Q So Woo doesn't have a national affiliation. It's
7 local.

8 A They do not. They do have a loose affiliation with
9 the Bloods, but they themselves do not -- and they can
10 hold a dual membership. You can be a member -- a member
11 of a traditional gang while retaining your membership with
12 Woo.

13 Q Okay. So let me ask about an individual by the name
14 of D'unta "Little D" Barber. Are you familiar with him?

15 A A little bit.

16 Q Okay. What do you know about Mr. Barber? Is he
17 living or is he deceased?

18 A He is deceased. I believe -- I believe it was 2015
19 he was the victim of a manslaughter case.

20 Q Okay. And why are there issues -- are there any
21 issues between Woo and anybody associated with Little D
22 Barber?

23 A Yes. There was an actual conviction for the person
24 who actually killed Little D, and he was a member of Woo
25 Gang.

1 Q And what's his name?

2 A Tarece Cooks. Also goes by Rece or Rece.

3 Q Okay. And Mr. Cooks was in the county jail here in
4 Greenville starting at what time? Or what date? I'm
5 sorry.

6 A I don't recall the exact date, but I remember it was
7 in 2015. I want to say it was June of 2015.

8 Q And did he stay in the detention center until he was
9 -- he left after conviction December of 2018?

10 A Yes. Where he was moved into SCDC or the South
11 Carolina Department of Corrections.

12 Q Did they -- was there a nontraditional gang or group
13 of people that kind of were associated with Little D?

14 A There is a group known as Tough Money Boys, and
15 there's also a group known as City Heights or City Heights
16 Posse, CHP. After Little D's death, we started to see a
17 trend where people in the City Heights community would
18 refer to themselves as D Block, which is the block known
19 where Little D was.

20 Q But that was -- so Mr. Barber was somebody known more
21 than just in one little community; is that correct?

22 A Correct. He was well -- he was known within several.

23 MR. FRETWELL: Okay. Please answer any questions
24 that defense counsel may have.

25 THE COURT: Ms. Ross, any questions for this witness?

1 MS. ROSS: No, Your Honor.

2 THE COURT: Mr. Chambers?

3 CROSS EXAMINATION

4 BY MR. CHAMBERS:

5 Q Basically, on the knowledge that you've been able to
6 gather through whatever sort of research it was you did
7 before you came in here to testify today, were you aware
8 that Marcus Foster lives in City Heights? Do you know who
9 Marcus Foster is?

10 A I just know him through him being called up here.

11 Q And are you aware that he has identified himself as a
12 cousin of this Little D that you're talking about?

13 A No, sir.

14 Q Not aware of that?

15 Aware that Marcus Foster lived over there in the very
16 area that you were just talking about, City Heights?

17 A I'm not familiar with him.

18 Q So you don't have any knowledge regarding Mr. Foster
19 or his kinship with Little D.

20 A No, sir.

21 Q But you don't have any reason to doubt that they are
22 kin to each other; is that correct?

23 A I have no idea.

24 MR. CHAMBERS: Thanks. That's all the questions I
25 have.

1 THE COURT: Any other questions for this witness?

2 MR. FRETWELL: No, ma'am.

3 THE COURT: Sir, you can step down.

4 THE WITNESS: Thank you.

5 MR. FRETWELL: Your Honor, at this time, the State
6 rests.

7 THE COURT: All right. Ladies and gentlemen, we have
8 come to the conclusion of the State's case. I am going to
9 ask you to be back in your jury deliberation room at 2:15.
10 So if you'll be back there at 2:15, we'll begin promptly
11 thereafter. Thank you so much.

12 Please, even though the State has completed their
13 presentation, we're not done. Please don't discuss the
14 case with anyone. Thank you.

15 (WHEREUPON, the jury exits the courtroom at 12:42 p.m.)

16 THE COURT: They're on to the fact that the bailiff
17 tells them to be back 15 minutes earlier than when we're
18 really going to start back. So that's what that
19 discussion was as they were leaving.

20 All right. I imagine we've got some matters to take
21 up.

22 MS. ROSS: Well, we'd move for a directed verdict at
23 this time. This indictment is for murder and attempted
24 murder. Even understanding accomplice liability and the
25 law on that, what has been projected here came from -- any

1 evidence against my client, Mr. Rice, came from a highly
2 flawed witness. Clearly, while Mr. Rice was there, that
3 is not an indication of guilt on its own, and the
4 testimony that we heard today does not bring enough
5 evidence to play beyond a mere suspicion of involvement
6 from what I've heard over the last four days. So I would
7 just move for a directed verdict at this time.

8 THE COURT: All right. And certainly, you know, I
9 appreciate your motion on behalf of your client. And, of
10 course, you know that the standard is very low, any
11 evidence upon which a jury could base a verdict, and thus
12 I'm going to respectfully deny your motion.

13 Mr. Chambers?

14 MR. CHAMBERS: Your Honor, likewise, on behalf of my
15 client, Mr. Mays, we make a motion for a directed verdict
16 as to both indictments.

17 THE COURT: Okay. All right. Very well. And
18 respectfully, that motion is denied as well.

19 All right. Now we're turning to the defense's case,
20 if they choose to do so. Mr. Fretwell ---

21 MR. FRETWELL: Yes, ma'am.

22 THE COURT: --- do you have any convictions that you
23 would use for impeachment purposes against either of the
24 defendants in this case if they were to take the stand?

25 MR. FRETWELL: Yes, ma'am. Against Mr. Mays there

1 are 2019 convictions for possessing marijuana with intent
2 to distribute, possessing heroin with intent to
3 distribute; a conviction from 2014 of assault and battery
4 in the first degree; and in 2012 for giving false
5 information to law enforcement.

6 THE COURT: Okay.

7 MR. FRETWELL: Against Mr. Rice, Your Honor, he has
8 two counts of auto breaking from 2016.

9 THE COURT: Okay. All right. You know, we don't
10 have to make any decisions right now, but if you feel like
11 you've had adequate time, Ms. Ross, to talk to your
12 client, and you feel like he's in a position to make that
13 decision, and, Mr. Chambers, then I don't mind going over
14 that with him now. Or if you'd like to put that off until
15 lunch, I'm ---

16 MS. ROSS: It depends on how hungry you are. I'm
17 fine to go ahead now, but --- okay.

18 MR. CHAMBERS: I would like to wait till after lunch.

19 MS. ROSS: Okay.

20 THE COURT: Then we'll do the same for both. We'll
21 wait until after lunch to make that decision.

22 JURY CHARGE CONFERENCE

23 THE COURT: Now, the jury charge, just to kind of let
24 you know where we stand, the jury charge, depending on
25 what the decision is about anything, it, I believe, is in

1 going to get up and say some things y'all aren't going to
2 like. The defense is going to get up and say some stuff
3 y'all aren't going to like. I don't know if it were my
4 loved one if I could handle it. I don't know. And so
5 that's why I'm just telling you right now, if you feel
6 like you need to get up and leave, then I certainly would.
7 Nobody would blame you. All right. I know it probably
8 would be what I'd have to do.

9 (WHEREUPON, the jury entered the courtroom at 2:13 p.m.)

10 THE COURT: Ms. Ross, it's my understanding that the
11 defense, on behalf of Mr. Rice, rests; is that correct?

12 MS. ROSS: Yes, Your Honor.

13 THE COURT: And Mr. Chambers?

14 MR. CHAMBERS: That's correct, Your Honor. We rest.

15 THE COURT: Mr. Mays rests as well.

16 Ladies and gentlemen, therefore, we are now ready to
17 turn to closing arguments and my charge on the law.

18 All right. Mr. Fretwell?

19 CLOSING ARGUMENTS

20 MR. FRETWELL: May it please the Court, Your Honor.

21 THE COURT: Yes, sir.

22 MR. FRETWELL: Mr. Chambers, Ms. Ross.

23 Ladies and gentlemen of the jury, one thing that has
24 been observed by everyone is how carefully and closely
25 y'all have been paying attention throughout this process.

1 And literally, the wheels of justice could not turn
2 without all of you being here and without all the careful
3 attention that you have paid.

4 We have reached the conclusion of this case. You
5 have seen and heard all of the evidence that you're going
6 to see in this case. In a few minutes, Judge Verdin is
7 going to give you the charge on the law in the case and
8 then this matter will be in your hands. You will retire
9 to deliberate. And the way the system works is that you
10 will return a unanimous verdict.

11 Now, let me tell you just briefly about the judge's
12 charge on the law. The judge will talk about the State's
13 burden of proof. The Court will tell you that the
14 defendants sitting here are presumed innocent, and they
15 are presumed innocent as is every citizen that comes into
16 a court of law unless and until the State establishes by
17 proof beyond a reasonable doubt of the defendants' guilt
18 for the charges.

19 The Court's going to tell you that the defendants are
20 not obligated to put up any evidence, that if they do not
21 testify, that cannot be held against them, and that it is
22 solely the State's burden to prove their guilt beyond a
23 reasonable doubt. And Mr. Chambers told you something in
24 the opening statement. He said that -- he was talking
25 about reasonable doubt, and he said, "I'm sure that the

1 State's going to come up here and tell you that it's not
2 proof beyond every doubt." And that's true, because
3 that's the law. And you'll hear that in the charge from
4 the judge, that there are very few things in this world
5 that can be proven to anyone who do not witness them
6 themselves beyond all doubt. But the legal standard is
7 beyond a reasonable doubt, proof that leaves you firmly
8 convinced of the defendants' guilt. Firmly convinced of
9 the defendants' guilt.

10 A reasonable doubt has been defined as a doubt
11 causing a reasonable person to hesitate to act.
12 Reasonable doubt has also been defined as a doubt to which
13 you can assign a reason.

14 The State's proof of the defendants' guilt in this
15 case comes in the form of evidence, evidence in the form
16 of the exhibits that you've seen up here, up here, and the
17 testimony that has come from this witness stand.

18 Now, as Judge Verdin told you at the beginning of
19 this case and as you know to be true, she is the judge of
20 the law, you all collectively are the judge of the facts.

21 Now, what qualifies you to be judges of the facts?
22 You are constitutionally qualified to be judges of the
23 facts.

24 So where do you draw this experience from? Your life
25 experience. Each one of you is prepared throughout his or

1 her life to make decisions. You make tough decisions
2 every day at your job, raising a family. You make
3 decisions about your children and your coworkers and your
4 neighbors, about credibility, about things that you
5 consider when you determine whether you believe what
6 someone is saying is the truth or if it is not.
7 And you also are open to listening to other things in
8 determining whether somebody was mistaken or somebody got
9 something wrong. These are all tools that each of you
10 possess.

11 Life prepares us to make tough decisions. Think back
12 to a decision to get married, to take a new job, to
13 purchase a home. These are decisions that you have made
14 and that you are qualified to make these decisions.

15 Now, let me take just a moment to tell you what jury
16 service is not. Jury service is not about judging people,
17 it is not about judging defendants. It is about
18 determining the facts, and you do that by listening to the
19 evidence and by evaluating the credibility of that
20 witness, by accepting the law as given by the judge,
21 applying that law to the facts that you the jury come to
22 and rendering a verdict that is supported by the evidence.
23 Jury service is a mechanism set up by our Constitution to
24 enforce laws that are written and established by our
25 elected representatives.

1 Let me give you a couple of keys to jury service.
2 You, of course, are drawing on your life experiences.
3 You, of course, are using your common sense that each one
4 of you has. And importantly, in this particular setting,
5 you are to follow your oath. That oath as you took it and
6 as when you stood and you were all sworn in is to fairly
7 consider the evidence, to apply the law whether you agree
8 with it or not as the judge gives it to the facts as you
9 collectively find them. And there's -- this is something
10 that we say. It's absolutely nothing to do with this
11 particular jury. There's no reason to believe that this
12 is the case of anybody in this jury. But if -- if, for
13 some reason, you feel you cannot comply with your oath,
14 then you should advise the foreperson or the Court, and
15 that's the reason we have alternates.

16 Okay. So let's talk about the job of the jury,
17 determining the facts. What must the State prove? Well,
18 the defendants have been charged with murder and attempted
19 murder. What we're going to do now is we're going to talk
20 about the elements of these two charges. First, attempted
21 murder. Make sure that everybody can see that all the way
22 across.

23 Murder is defined as the unlawful killing of another
24 with malice aforethought either express or implied.
25 There's definitions for express and implied and

1 definitions for malice aforethought, but that is the
2 definition of murder. And, again, when you're listening
3 to what I have to say, thankfully, I do not speak for the
4 law. The judge speaks for the law. So you take the law
5 as the judge gives it to you. These are just tools to
6 break this down a little bit for you to maybe better
7 understand.

8 Malice aforethought, the judge will define malice as
9 hatred, ill will, hostility towards another person. And
10 aforethought, of course, is the idea of that malice
11 existing before the time.

12 Let's talk specifically about the charge of murder.
13 In this particular situation, the charge from the State is
14 that these defendants unlawfully killed another, that
15 being Azaveon Cook. You heard from the testimony of
16 Dr. Ward, who performed the autopsy in this case, that he
17 was, in fact, killed by gunshot wounds and that the manner
18 of his death was homicide with malice aforethought,
19 hatred, ill will or hostility towards another person.

20 This malice is not -- these sometimes get confused.
21 Express or implied are not different kinds of malice.
22 They are different ways of proving malice. Malice is just
23 malice. It's hatred, ill will or hostility towards
24 another person. That can be proven by, let's say, express
25 malice, stated words: I'm going to kill you. Let's get

1 'em. Let's go take care of this situation. Or, I think,
2 as you heard in this particular case: eat 'em. That that
3 malice existed in the minds of the defendant at the time
4 -- before and at the time of the act.

5 And let's look at specifically the existence of
6 malice in this case, the stated malice. You know, the
7 other aspect down here is the idea that preparing
8 beforehand to do an act later accomplished is a kind of
9 express malice, that visual preparation or that a
10 preparation that you can understand that took place in
11 advance. And in this case, we have the idea of express
12 hatred in the sense of shooting, shooting at point-blank
13 range with .40 caliber handguns, at least seven rounds
14 that were collected and continuing to fire as that
15 vehicle pulled off, the idea of malice existing in the
16 mind of the shooter at the time of the action.

17 Now, aforethought, that malice must exist at the time
18 of the action and beforehand. It doesn't have to be a
19 long time beforehand. It's not this concept that you may
20 have heard of this premeditation, you lying in wait for
21 weeks. It just has to be formed before the act, not as a
22 reaction to something, but before the act.

23 And I want you to think about the evidence in this
24 case that suggests what happened before the act. Think
25 about the discussion that Mr. Foster described that

1 happened before Cheese showed up on the scene, the
2 discussion with Mr. Doo-Doo about the people in the car
3 and how they were affiliated, and then the call that you
4 heard from Mr. Desue that Mr. Mays said that he received
5 from Mr. Foster. Yes, from Mr. Foster.

6 And maybe this is a good time to talk about this.
7 The judge is going to charge you about credibility, that
8 you can accept all or none or some, you can reject all or
9 none of something that somebody says. And there are
10 motivations in each person to have them say one thing or
11 the other. If you have any experience with children,
12 they're very quick to tell you what other people did, what
13 other kids did. So a little harder to get the truth about
14 what their involvement was. And so we apply that common
15 sense and that life experience when you look and evaluate
16 the evidence in this particular case.

17 But yes, the call that Foster made for weed that he
18 made to Cheese that brought Cheese over here with a gun,
19 with a loaded gun. And then they walked over to that car
20 and confronted the victims.

21 Also, let's look at the other way to look at the way
22 of proving malice, of course, is implied malice, inferred
23 from the circumstances. A lot of that can be
24 cross-applied. Obviously, preparing beforehand. You
25 can't shoot somebody without first having that gun and

1 having that gun loaded and bringing that gun to the scene.
2 So the idea of these two are sometimes intertwined in the
3 sense that the planning beforehand is what leads to the
4 circumstances of conduct that shows an absolute disregard
5 for human life. And we're going to talk more in depth
6 about this as we go through the particulars of the facts
7 of this case, but the idea of opening a car door, of
8 shooting point-blank into a car with two defenseless
9 people inside, what kind of malice, what kind of meanness
10 does that involve?

11 All right. A little bit different for attempted
12 murder, but very similar. And before you cross-apply
13 everything about malice that I just talked about with
14 respect to murder, but I want to zero in on something
15 that's different with attempted murder, okay?

16 So, obviously, with attempted murder, we're talking
17 about Jaikario Poole, the one who survived. And when you
18 think about -- or when you consider the charge of
19 attempted murder, the State is obligated to prove that the
20 defendant had the intent to kill, not firing up in the air
21 and accidentally shooting someone, but firing with the
22 intent to kill someone. In that process -- and, again,
23 the judge is going to charge you about that requirement of
24 the intent to kill. These factors here and all of this
25 that says inferred is a way that I want to suggest to you

1 you can break this down, that the factors to consider are
2 the character of the act in this particular case.

3 We've talked about some of this already, but what was
4 the character of the act in this case? It was a shooting.
5 It was a point-blank shooting.

6 The character of the instrument used: a .40 caliber
7 handgun. .40 caliber handgun.

8 The manner in which the instrument was used: at
9 point-blank range. Not from far away, not maybe that
10 bullet would hit something, but at point-blank range. And
11 I think you heard from the testimony that both of the
12 victims in this case were shot at least twice.

13 The purpose to be accomplished: What purpose, other
14 than the death of these two individuals, could be
15 accomplished by opening that door and firing at those
16 individuals inside?

17 And then, of course, you can consider the resulting
18 wounds or injuries. And remember Dr. Dach's testimony
19 about the severity of those wounds that Mr. Poole
20 received. Remember when Alex Kay, the paramedic, talked
21 about his condition on the way to the hospital, and as the
22 blood is coming back into the core to compensate for the
23 lack of blood that is pumping and all of that, that that
24 body is starting to shut down, and that body goes into
25 shock, and that there is a real risk of death, and that

1 Dr. Dach said he's lucky to be alive.

2 It can also be -- intent to kill can also be inferred
3 when you consider -- and you determine. Again, this is a
4 fact that you all together determine is true or untrue
5 that the action is willful, that it's voluntary and that
6 the natural tendency of the act, that shooting at that
7 range with that caliber of firearm into that vehicle, the
8 natural tendency of that act was to destroy life. You
9 can't divorce from that the fact that you have two people
10 in that car when those actions are taken.

11 Those are the elements that the State is required to
12 prove for these two charges. And obviously, for the
13 malice element under attempted murder, we just talked
14 about that. With respect to murder, it's the same.

15 But I want to talk just briefly before we get into
16 the facts about the concept of hand of one is the hand of
17 all. And there are several illustrations that are
18 commonly used to demonstrate what this concept is. So
19 listen to the judge when she gives you the law. But
20 basically, the law considers this, that there can be three
21 or four people together or just has to be more than one,
22 two people together. And there's only one gun or there's
23 only one knife. And yet, when the action of those two
24 people is together, it's concerted, they're doing it
25 together and they're combining for that purpose. The one

1 person firing that gun, that hand literally that's pulling
2 that trigger is the hand of all that are involved. Same
3 thing with the knife, that when that knife is used to stab
4 someone else, when there's two or three on one person or
5 several people and that action is performed by one, then
6 that action is imputed to all. The hand of one is the
7 hand of all.

8 The final illustration that I'll use is this. When
9 someone robs a bank and they go into the bank with the
10 mask and the gun and they're in the bank robbing the bank,
11 there's sometimes somebody sitting outside in a car.
12 They're the wheel man sitting there at the car. And under
13 the law, that wheel man that dropped that robber off and
14 drove him away is just as guilty of the actions as the
15 person in the bank as the person that went inside. The
16 hand of one is the hand of all.

17 Now, in this particular case, it's true that it's
18 possible for this jury to come to the verdict that
19 Mr. Mays is guilty and that Mr. Rice is not guilty. But,
20 ladies and gentlemen, that would only be the case if you
21 found that Mr. Rice was merely present. But the evidence
22 in this case suggests that all three -- all three, Mays,
23 Rice, Foster, went to that car knowing what Mays was
24 carrying out and what he intended to do and were part and
25 parcel of the conflict that led to Zay's death and to

1 Jay's nearly fatal injuries.

2 I want to talk to you about transferred intent. This
3 is the last legal thing that I want to talk to you about
4 before we get into the facts themselves. But the idea of
5 transferred intent is this. If someone with malice and
6 with a weapon goes to somebody and shoots at them to kill
7 them but they don't hit them, they hit the person next to
8 them and kill that person, I didn't intend to kill that
9 person so there's no intent to kill, I'm free. That's not
10 true. The intent to kill that first person, the primary
11 target, transfers to anybody else that was shot that was
12 in the vicinity or that you might even determine might be
13 an accident.

14 And if, in this case -- although the evidence seems
15 to clearly indicate that the people in the car were Woo
16 and that Mr. Mays was going over there to confront and
17 determine whether he believed they were Woo and whether
18 his compadres believed that they were Woo, and if that
19 were the case, he was going to walk around to the other
20 side and fire into that car at point-blank range. The
21 evidence clearly suggests he intended to kill both of
22 them. But if, for some reason, you believe the only focus
23 of his fire was Zay Cook in the backseat, then because
24 Mr. Poole was struck, if he had the intent to kill
25 Mr. Cook, then it transfers to Mr. Poole, okay?

1 All right. Now, let's look at April 2, 2017. Let's
2 look at the evidence. I'm going to go through this as
3 quickly as I possibly can and point it out.

4 First of all, you have Mr. Poole contacting the girl
5 that he was interested in, Kennedy Boyd, and wanting to
6 hang out with her. How do we know that? Mr. Poole
7 testified to that, Ms. Boyd testified to that, Ms. Berger
8 testified to that, Mr. Foster testified to that.

9 Kennedi checks with Foster to clear Poole to come
10 over. You know that because that's what Ms. Boyd told
11 you. She told you from that stand. Do you remember that
12 she used the term she didn't want drama? Remember her
13 using that term? She didn't want drama.

14 Now, I want you to pay attention to something that
15 she said in Mr. Chambers's cross-examination. You
16 remember when Mr. Chambers was asking her about this
17 tension between supposedly Mark and Jackie, and her
18 response was she wasn't concerned about the drama between
19 Mark and Jackie. Do you remember that? I want you to
20 think about that. And if you need to, at any time when
21 you're deliberating, you can have testimony replayed and
22 listen to that part and listen to the response that she
23 gives to Mr. Chambers when he tries to push on her the
24 idea that there was some kind of concern because of
25 jealousy and all of this, that that's why she checked with

1 Mr. Foster. Maybe there was another reason. Maybe there
2 was a different reason why she would be concerned that
3 there might be drama when she brought her friend Jay into
4 this area where these other guys had grown up their whole
5 lives.

6 Ms. Berger testified to the fact that she was there
7 when Mr. Poole -- or when Kennedi checked with Mr. Foster
8 about Mr. Poole. And, of course, Mark Foster testified to
9 that as well.

10 Then what happens? Jay shows up with his, you know,
11 friend, his sometimes roommate Azaveon Cook. Foster knows
12 Jay but he doesn't expect Cook. So Foster and Doo-Doo
13 Rice believe Cook and possibly Jay are Woo and responsible
14 for the death of their friend Little D. Why? Why would
15 they feel that way? What would possibly cause them to
16 believe that the guys in the car were Woo and that they
17 were responsible for the death of their friend Little D?

18 Do you remember when I asked Mark Foster about the
19 guy that was eventually convicted for the death of Little
20 D? Play it again. His name is Tarece Cooks. You heard
21 that from Cam Hunter. But he said Cook. Mr. Foster said
22 Cook. And here you have Jay Poole, you're expecting Jay
23 Poole to show up. And who does he bring with him? Zay
24 Cook. Didn't expect Mr. Cook. Cook, Cook. How do I know
25 Cook?

1 And from there there's the discussion that Mr. Foster
2 describes with Doo-Doo about them Woo, them Woo. We've
3 got to get Cheese over here. So now Mr. Foster is calling
4 Cheese to come over. He comes over. And as he told
5 Mr. Desue, I went over there because they believed that
6 they were -- they were -- that the people in the car were
7 Woo and that they were responsible for the death of
8 Little D.

9 Now, it's interesting to note on that same point do
10 you remember that Mr. Desue told you that in his
11 conversation with Mr. Mays, that a couple of things, first
12 of all, he shot the wrong guy and that he later came in
13 contact with the person who actually killed Little D. And
14 where was that? In the county jail. And certainly, the
15 information from Detective Hunter indicated that, at that
16 time, when Mr. Mays was arrested, Mr. Cooks was in jail
17 waiting for his eventual trial and conviction for the
18 death of Little D Barber.

19 Now, whether Zay Cook looked like someone who was
20 associated with Woo or if it was as simple and stupid as
21 the mixup I just described, they heard the name Cook and
22 thought, wait, is that the person? Is that the person?
23 Let's get somebody over here that would know. And he
24 didn't because remember, he told Mr. Desue, "I shot the
25 wrong guy."

1 Once Cheese arrives, he, Doo-Doo and Foster discuss
2 the guys in the Crown Victoria, the belief that they're
3 associated with this Woo Gang. You heard that from Foster.
4 You heard that from Mr. Desue based on his conversation
5 with Mr. Mays. And all three approach Poole's Crown
6 Victoria. Cheese knocks on the driver's window accusing
7 Cook and possibly Jay of being Woo. You remember Foster
8 testifying to that fact, and Ms. Boyd testified to that
9 fact, and Ms. Berger testified to that fact. You have at
10 least two if not three of the people who survived who were
11 in that car when this conflict began who all testified to
12 the same thing, that the knock was on the window, "Is you
13 Woo? Are you Woo? Y'all are Woo. Get out."

14 "We're not. We're not. We're not."

15 "Eat 'em."

16 Walks around to the other side, opens that door and
17 starts firing inside.

18 And this is the second time I've said that. I'm sure
19 you guys are thinking but Jay Poole said his doors were
20 locked. So how do we know that what Mark Foster said is
21 true about the driver door being open, about the rear
22 passenger's side door being open? How do we know that's
23 true? How do we know the doors weren't locked, the
24 windows were all up and he just fired into the car? Well,
25 the easiest way to know that that's not true is because

1 there was a spent shell casing in the front seat. And you
2 can't get a shell casing through that window if the
3 windows are up and the doors are locked and the doors are
4 shut.

5 What is the other thing that you know? Do you
6 remember the testimony of Dustin Kretschmar, the forensic
7 examiner who talked about all the rods and passing this
8 way and that and we couldn't determine where these bullets
9 went because all of the shots were clumped together? But
10 there was one, there was one he talked about, about what
11 he called the convex protrusion right there (indicating)
12 in the driver's door. And there was a close-up picture
13 that I just -- I can't seem to put my hand on, but you'll
14 have it.

15 But that hole or that pushed-out part in the door,
16 well, it couldn't come from a bullet fired from the right
17 rear passenger's seat because what was in the way? The
18 two seats. And there was nothing to indicate that that
19 bullet had traveled through the seats.

20 So that what he did is he went to the side. And,
21 well, the most logical place to shoot it would be through
22 the passenger window. But the passenger's window is
23 intact. So then Mr. Gregory asked him what if the
24 driver's door was open? Well, now, that would change the
25 angle. That that point now, the angle's more back toward

1 somebody could be from that area, but it wouldn't be
2 enough. Once that door is open, that rear -- right rear
3 door is open and that gun is in the car, which we know it
4 was because of that shell casing in the front seat that
5 James Armstrong testified was fired from the same gun as
6 all the rest of the casings that were there at the scene,
7 that we know that door was open, that we know that gun was
8 in the vehicle, and at that point, according to Dustin
9 Kretschmar, now that protrusion makes sense because now
10 the angles are completely open to that car, could -- that
11 gun could have been fired anywhere in there and it could
12 have made that protrusion.

13 That's an example, ladies and gentlemen, of something
14 that Mark Foster said that seems silly and it seems to
15 conflict with what Jay Poole remembers. But according to
16 the evidence, it's true.

17 And while we're on that subject, do you recall what
18 Mark Foster testified to about what happened when they
19 went over to that car? That he and Doo-Doo were on the
20 side and with Mays, and he knocked on that driver's
21 window? And then when he told them -- after he asked
22 about the Woo Gang, he said, "Eat 'em" and they started
23 kind of tussling on that side of the car, that then Mays
24 walked around to the other side, opened that door and
25 fired inside?

1 Ladies and gentlemen, the latent evidence in this
2 case -- Mr. Chambers called Mark Foster the star witness.
3 He's not the star witness. He provided evidence, and he
4 provided it early, and he minimized his own involvement as
5 people are prone to do. But the star witness in this
6 case, ladies and gentlemen, is the forensic evidence.
7 It's the latent evidence here that backs up exactly what
8 he said, that Mr. Foster was on this side of the car,
9 which he was, that Mr. Rice was on this side of the car,
10 which is backed up by the fingerprint example. You even
11 have Mr. Mays's print on this door.

12 Mr. Poole is the owner of the car. You'd expect to
13 see his prints all over the car. And, in fact, you do see
14 his prints not only on the side of the car, on the trunk
15 where he gets into the trunk on occasion in his own car,
16 and on the passenger's side.

17 Ms. Boyd -- everyone says, Ms. Boyd says, Mr. Foster
18 says, Mr. Poole says, Ms. Berger says that Ms. Boyd was
19 sitting up front. Remember, he told Zay to get in the
20 backseat so he could sit up front with the girl that he
21 liked, and that's where Kennedy Boyd's fingerprint is.
22 And there's Mr. Mays's print on that back door where he
23 grabbed that door and he opened that door and he fired
24 inside.

25 And, ladies and gentlemen, the latent evidence in

1 this case is the evidence that confirms and corroborates
2 what Mark Foster told authorities. They didn't think Mark
3 Foster was some saint that came in there with a, okay,
4 we're going to believe everything that you said. But what
5 he said bore out truth in the latent evidence. What he
6 said about the driver's door being open so he can get in
7 there and punch, that that -- and the back door being open
8 explains why there's that protrusion of that bullet
9 hitting that door, that driver's door. That the latent
10 evidence, that the trajectory evidence are the star
11 witnesses of this case, not Mark Foster. Mark Foster went
12 in there, tried to save himself and tell the truth about
13 what other people did, not what he did. And every single
14 time, as Mr. Chambers pointed out, his story, well, got
15 confronted with this evidence. Okay, I was more involved
16 that I -- yes, I was more involved in that.

17 And I would say, ladies and gentlemen, by the second
18 to the last witness that you heard who told you that
19 Mr. Mays told him that he got the call from Mark Foster,
20 that you can believe that that is true as well, that Mark
21 Foster made that call that got Cheese over there, and they
22 all went down there to confront the people in that car and
23 see whether they were Woo Gang, the people that were
24 responsible for that death of Little D.

25 You remember that Jay testified that even though he

1 was struck and apparently like slumped down, he was able
2 to get that car started and get that car moving. And as
3 he got that car moving, he began to pull off as Cheese
4 continued to fire. This time, of course, the door is shut
5 or starting to shut. He fires through that door.

6 And, of course, according to the medical examiner,
7 that one of those bullets that went through that door is
8 the bullet that killed Zay. How do we know that? Do you
9 remember him talking about that wound? Do you remember
10 him talking specifically about the chest wound? If I
11 could find it in here -- but he showed you that mark and
12 he showed you how it was kind of irregular instead of the
13 tip of the bullet coming in.

14 And then you have these little parts on the outside
15 that he described as being whatever it was this bullet hit
16 before it hit Mr. Cook's body, that those were marks made
17 by whatever it went through, whether it was the glass,
18 whether it was that hole in the glass on the rear
19 passenger's side or going through the door itself, that it
20 struck something before it struck Zay -- or Zay. And that
21 in those last few shots that he got off as the car's
22 pulling off, he gets Zay, Zay gets out of that car, the
23 doors aren't locked, they aren't -- you're able to open
24 them, and then he starts running down to try to get to the
25 only refuge and cover he can see, which is that tree. And

1 he never makes it. Don't need anybody to testify to that.
2 You can see that.

3 According to Mr. Desue, Mr. Mays then gives Doo-Doo
4 his gun. They take off running. And you remember that
5 consistently the description that Jay Poole gave and
6 others was of the suspect being in all black, the shooter
7 being in all black. Sweatpants, shorts, whatever it was,
8 was all black. You can look at that photograph, ladies
9 and gentlemen, of those two running, and they're both
10 wearing white shirts. Look at that photo. They're both
11 wearing white shirts. Look at the -- you've got the
12 entire footage. You can look back there and see it
13 yourself. You can stop it anywhere you want, whether it's
14 some kind of a manipulation of a photograph and look at it
15 yourself. It's in evidence. You can see it. They're
16 wearing white shirts.

17 And I want you to think about this. Because it
18 doesn't make any sense until Mr. Desue's information came
19 into law enforcement that you had this 9-1-1 caller that
20 was not even really talking to dispatch at the time. And
21 you can play that back when you're back in the jury room.
22 You had a 9-1-1 caller that was talking clearly to
23 somebody that was on scene and said, "Yeah. I just saw
24 them, the guys running with the gun." She said that. So
25 you've got a 9-1-1 caller who says that, and then

1 Mr. Desue. How in the world did Mr. Desue know that?
2 Don't forget about that gun, because I want to go back and
3 talk about that a little bit more.

4 Cheese hands his gun to Doo-Doo. He jumps in the
5 car. As Doo-Doo and Foster flee the scene, Jay pulls down
6 the hill. He stops his car. Ladies and gentlemen, he
7 stops his car. He's been shot. You can hear his voice on
8 this 9-1-1 recording. But he stops his car. He runs back
9 up the hill, and he grabs his friend and he drags him to
10 the car, a body that can't react. That deadweight is
11 heavy. He's shot and he's staying there to pull his
12 friend. And, ladies and gentlemen, makes Mr. Poole a
13 hero. Not for smoking marijuana, not for doing something
14 he shouldn't have been doing, but he knew his friend was
15 hurt and he wasn't going to leave him.

16 And you can see on that video he's desperate. He
17 doesn't know what to do. And at some point, he's rocking
18 the whole car trying to -- does he know CPR? I have no
19 idea. Trying to bring his friend back. And you remember
20 that point, and you can hear it on the 9-1-1 call where he
21 says, "Zay." He wasn't leaving without his friend. Yeah,
22 he smokes some marijuana, but that's a guy whose character
23 you can respect.

24 In that same shot where you see Jay pulling Zay and
25 trying to get him into the car, you can see that Chevy

1 Malibu coming down. Doesn't turn left. It goes all the
2 way across, goes back behind the office, it comes out
3 further down and turns right and takes off. And you'll
4 recall that there's a 9-1-1 caller when the dispatch
5 asked, "Do you have any information about the shooter?"

6 "Well, I don't remember what color it was, but it was
7 a dark four-door car headed out towards the pet cemetery."
8 Now, she said "Tulip." And if you're very familiar with
9 that area, you know Tulip goes out toward 291. But it
10 basically comes in, and remember Ms. Ashley saying, yes,
11 some people refer to the main street that goes all through
12 it as Tulip. Because it comes in as Tulip. There's not a
13 separate road sign, and they kind of think the whole thing
14 is technically called City Heights Court or something like
15 that. But going towards the pet cemetery.

16 And Sergeant Brewer told you where that pet cemetery
17 was. It was over there near the animal shelter. It makes
18 perfect sense. You have an animal shelter, and there's a
19 pet cemetery right near it on the property of the Boulder
20 Creek Apartments, that he was headed that way. Same
21 direction that Mr. Mays's dark-colored four-door sedan was
22 going.

23 Jay calls 9-1-1, as we've talked about. But what I
24 don't understand or what doesn't make any sense is why
25 later on Cheese says this isn't his car. That's not my

1 car. Did you catch a slip, though, in his statement?
2 There was one later point in that interview, and you can
3 go back and listen to it, where he says, "I don't know why
4 anybody was in my car out there." He says that. He knows
5 it's his car. And then a second later he's like, I mean,
6 because I don't have a Chevy Malibu. It's that -- it's
7 that green Honda that I was in. That was Katrina's car,
8 but it's mine even though it's got a car seat in it, it's
9 got baby diapers in it that the mom needs. And her purse.
10 Her purse is sitting in the backseat of that car. But
11 it's my car, and that's the car that I drive. Katrina
12 doesn't have a car, I guess.

13 But that's not the testimony Katrina provided. She
14 was driving that Honda. She didn't get back into
15 Greenville from Easley until -- or she didn't see -- she
16 didn't get back -- or leave for Greenville until 1:30,
17 took about 30 minutes, 1:30, 2:00. She didn't call Cheese
18 until between 3:00 and 4:00. Why? Because it's dinner.
19 She's talking about dinner, whether he's going to come
20 over for dinner. She was driving the Malibu. That was
21 her car. Why would he distance himself from that vehicle?
22 Let's think about that for a minute.

23 The next day or that night Katrina's got to take her
24 kids to school the next morning. She needs that car to go
25 to work, and she doesn't have it. She doesn't know that

1 perhaps that Mr. Mays has been arrested, and that car's
2 not coming back to her.

3 Well, he left the keys at her house, so she goes over
4 and gets the car, gets the Malibu, takes it back over.
5 And do you remember her testifying that the family called
6 and said, "You need to bring that car back or we're going
7 to report it stolen"? So she does. She gets her friend
8 to take her out there. She drops off the car, and then
9 she doesn't get the car back until the next day. And when
10 she gets it back the next day, she's able to use it for
11 one or maybe two days before they find her at her place of
12 employment and that car's over there.

13 They impound it, and they check it. They check it on
14 the outside and on the inside. And look how many prints
15 came off of this vehicle. 25 identifiable prints off of
16 this vehicle. They searched the Malibu. There's three.
17 There's three prints on the whole car. And who do they
18 belong to? Katrina Shipley. Mays is the driver, Mays is
19 the owner of the car and his print's not on the car. What
20 else is not on the car?

21 You listen to -- and how you can be away from this
22 case for two and a half years, have a completely different
23 job that you're into like Mr. Evett has, maybe not be able
24 to remember every single thing. You go back and you
25 listen to the testimony of Blake Wolfe where he checked

1 that steering wheel. It's the steering wheel of the
2 Malibu. It's not the steering wheel in that Crown
3 Victoria. It was the steering wheel of the Malibu. Well,
4 that's the Malibu that was coming away from the crime
5 scene. You would check that for gunshot residue, because
6 presumably, if the shooter was in there, it might be on
7 the steering wheel. Now, granted, it was several days
8 later. You heard from Lieutenant Nates that they won't
9 even accept it after six hours. So why they tested it in
10 this case, not have any idea, but that you wouldn't expect
11 to see any there anyway.

12 But maybe there's another reason that there was no
13 gunshot residue on that steering well. Maybe there's
14 another reason why you couldn't find the owner, the
15 registered owner's fingerprints on their own car. And
16 maybe it had something to do with what was going on that
17 night when the car went back to the family before it was
18 given back to Katrina the next day for her to use.
19 Because remember, she's the only person whose prints
20 showed up on the Malibu.

21 You heard Mark Foster testify that he and Doo-Doo ran
22 through the woods, there's a picture of them here,
23 separating Boulder Creek from Magnolia Place and arrive at
24 Magnolia Place near where, remember what Ms. Williams
25 said, his uncle lived, the pastor of the church.

1 Well, he was headed toward an area where he is
2 familiar with. And he's there with Doo-Doo. And he calls
3 his mom to come get him.

4 And, ladies and gentlemen, there's one reason why
5 Mark Foster is not sitting over here with these other two
6 individuals. And you might say, oh, well, that's because
7 Mark Foster came in and provided this information. Well,
8 maybe. That one reason is Bertha Williams. Because
9 without the strength of his mother, who knows whether or
10 not Mark would have been able to go in there and tell the
11 law enforcement officers what he'd done, even if he was
12 going to minimize his own involvement. We're talking
13 about a situation where someone died, and that really,
14 Bertha Williams, who testified from this stand that when
15 she got there, she picked up her son and she picked up
16 Doo-Doo, she picked up Mr. Rice, that she took Mr. Rice --
17 interestingly enough, do you remember where she said she
18 dropped him off, the apartments that where she dropped him
19 off? The Crestwood Apartments. And do you remember what
20 Mr. Desue told you Mr. Mays was that morning? That when
21 Mr. Foster called to wake him up, he was at the Crestwood
22 Apartments. It makes sense that when you split up and you
23 hand somebody the gun, that the plan is to meet back up
24 once the smoke clears. And where was he taken? To
25 Crestwood Apartments.

1 And while we're on that subject, if he had the gun,
2 then it makes sense that he has gunshot residue on his
3 hand, Shyheem Rice, Doo-Doo.

4 So when Bertha pulled into the Crestwood Apartments,
5 they were both in the backseat. And do you remember when
6 Foster talked about dapping up? Dapping up, what does
7 that mean? Shaking hands with Rice. And where was Mark
8 Foster headed? In just an hour or two, he was headed to
9 the Law Enforcement Center where he would be interviewed
10 and that residue would be found on his hand. And I would
11 submit to you yet another piece of proof that what
12 Mr. Desue is telling you is true. Because none of those
13 witnesses there, none of them put a gun in Mr. Foster's
14 hand or have him firing it.

15 Mr. Mays is either described by his size and the kind
16 of hair that he has. I think Kennedy called it wild,
17 which you can see in the video when he's arrested the
18 following day. He's described and identified by Mr. Poole
19 in that photo lineup. You know, if his dreads were just a
20 little bit longer, that's it. I'm sure something's going
21 to be made of the fact he's only 80 percent. But in
22 Mr. Poole's mind, the difference between 80 and 100 is
23 dreads being a little bit longer. Sometimes it's
24 important to know what people mean and how they interpret
25 things when they say what they say. So it's important

1 that he made that statement "if his dreads were just a
2 little bit longer, that's him."

3 And Kennedy also -- and you can see the reaction for
4 Kennedi Boyd. Is he in the room? Yes. Can you point him
5 out? I can't. And she wouldn't. But that they looked
6 nothing like they did then. The person looked nothing
7 like he did then. Look at Mr. Rice. He does not look
8 substantially dissimilar to when this incident occurred,
9 but Mr. Mays does. Who is she talking about? But she
10 does know that it was a guy named Cheese that she had seen
11 the day before or two days before. She knew who the
12 person was. But he doesn't look anything like that today.

13 When Mr. Foster arrived at the LEC to talk to
14 investigators, why does he admit to something that even
15 Mr. Poole doesn't remember, kind of fighting with Jay?
16 Why does he admit to that? I mean, wouldn't you rather
17 say, if you're trying to kind of distance yourself, I
18 didn't do anything. I was just there. He shot and he
19 fought. But he admits he was there.

20 If you're the parent of a child, you know it's truth
21 when your child is telling you, yeah, they did it, but I
22 did it too. Well, now we know the truth, because why
23 would they admit to something that gets them more involved
24 if it wasn't true? And you might say to yourself, well,
25 because he's saying he didn't shoot. He can say he's

1 involved. But, again, why does he do that?

2 But Mr. Poole doesn't remember a fight at all.
3 Remember, Mr. Poole was shot and was driving out of there.
4 And all of the things that Mr. Poole did right after that
5 incident, Mr. Foster remembers it. Mr. Desue talks about
6 how Mays said when Mr. Foster called him, he's talking
7 about fighting with somebody or seeing somebody either
8 earlier or when he got there, but there's evidence that
9 suggests that that is true. Now, not any evidence to say
10 that this was a knock-down, drag-out, but maybe just a
11 distraction long enough for Mr. Mays to get around to the
12 other side of that car.

13 We asked -- I asked Mr. Foster about these scratches
14 on his arm -- on his arms. He said he got those in the
15 woods. So you wouldn't expect his blood to be on that
16 car. There's no reason to believe that his blood would be
17 on that car. And, in fact, the blood, you can look at
18 these pictures and this car, is in the passenger's seat,
19 the front passenger's seat and some in the backseat.

20 So I want to come back to Ms. Shipley. Mr. Foster is
21 there. He's telling the story. Some of it checks out,
22 some of it doesn't. But, ladies and gentlemen, a lot of
23 what Mr. Foster told those police officers is borne out by
24 the physical evidence.

25 But why can't we put Mr. Mays in that Chevy Malibu?

1 It's registered to him. Why can't we put him in it?

2 When Ms. Shipley testified, she says that Cheese, she
3 contacts Cheese around maybe 3:00 to 4:00 and she goes to
4 pick him up. She goes to pick him up near Chile's house
5 at the park, that they drive home. And when they drive
6 home, she tells you this route that she took all the way
7 down Laurens Road. If anybody's familiar with that
8 portion of Laurens Road, there is a Family Dollar right
9 there on that Laurens Road. She said she had at least her
10 little kid in the car when she went to go pick him up.
11 Didn't remember making any stops on the way out to pick up
12 Cheese.

13 But in that car, there's -- and I'm talking about in
14 the Honda that Mr. Mays was driving, there's a receipt.
15 And you can take a look at this receipt. You can look at
16 the date on it, 4/2/17. Look at the time. 3:44 p.m.,
17 exactly the time when she would have been coming down
18 Laurens Road headed down to Haywood to go down to Halton
19 Road to her apartment.

20 And look at the list of things that are purchased.
21 And on here, Pine Sol cleaner, Ajax cleaner, Clorox
22 disinfecting wipes. Yes. They're things that you can
23 pick up, you can use in any household. But that -- those
24 items that were purchased that day were in that car that
25 day. And remember that the following day, Mr. Mays,

1 Cheese, took that car to go see his mom, and he got
2 arrested over in the Cherrydale area about 2:45 in the
3 afternoon. And that night when Katrina went to pick up
4 that Chevy Malibu, she had to give it back to them and
5 they gave it back to her the following day. You can use
6 it now. And it didn't have a print on it not belonging to
7 Mays. It didn't have any gunshot residue. Nothing on the
8 steering wheel. And take a look at that, and try to
9 imagine why that would be something that on the way to
10 picking him up and taking him home, that those cleaning
11 supplies would have been purchased. Could there be a
12 possible explanation for it? Absolutely. But when you
13 put it together, you look at the totality of the evidence,
14 and you're looking for explanations for why there's no
15 latent evidence on that Chevy Malibu that belonged to the
16 registered owner. There were cleaning supplies that were
17 purchased the afternoon of the shooting. It was within
18 two to three hours of the shooting.

19 Ladies and gentlemen, those are the facts in this
20 case. You have a situation where someone was shot the
21 afternoon on a sunny day in Boulder Creek Apartments, and
22 the driver, the two ladies that were in the car
23 immediately before the incident, the surviving three all
24 have consistent descriptions identified or picked out
25 Mr. Mays as the shooter. All heard him say, "Y'all Woo?"

1 And the explanation was given to you as to why there would
2 be some kind of issue with people who identified with
3 Little D Barber and the Woo Gang.

4 Ladies and gentlemen, in a few minutes after the
5 closing arguments that you hear from the defense
6 attorneys, you're going to get an opportunity to go back
7 and look at this evidence and to see the evidence that
8 exists here, to hear from -- you've already heard from the
9 witnesses. You've already heard from Mr. Mays's mouth
10 through Mr. Desue about what happened, and it's
11 consistent. And when you look at the evidence in total,
12 it points to that (indicating) man and that (indicating)
13 man and Mr. Foster as going over there and under the
14 mistaken belief or the belief that these individuals that
15 were in this car were Woo, that they were responsible for
16 their -- the death of their friend, and they were going to
17 hold them accountable.

18 Ladies and gentlemen, after you've determined the
19 facts in this case about what happened, and only you are
20 the ones that can determine that, you're going to take the
21 law that Judge Verdin gives to you, and you're going to
22 apply that law. And we've gone through that law, talked
23 about that and what it is and the State's burden. These
24 defendants had a choice, ladies and gentlemen. They had a
25 choice. Their choices were intentional. They knew right

1 from wrong. And ultimately, that's why we're here.

2 Ladies and gentlemen, I would submit to you, talk
3 about two people being in the wrong place at the wrong
4 time, and they paid for it with their lives. Please
5 consider the evidence carefully. If I've said something,
6 I knocked my coffee cup across the table, I've done things
7 that -- that -- I think you remember that the evidence in
8 this case is what you must evaluate. And when someone
9 tells you what the evidence is, that you resolve that in
10 favor of what the evidence actually is.

11 The evidence is that Mr. Mays was in that court on
12 April 22nd -- or April 4th [sic] of 2017 at 1:45. He
13 pulled in there at 1:40. He got out of that car. He
14 talked to his friend Doo-Doo and Mark Foster. And they
15 went over to that car, confronted Mr. Poole and Mr. Cook,
16 and then shot. And Mr. Cook died and Mr. Poole barely
17 survived. They're guilty of attempted murder and murder.
18 And, ladies and gentlemen, I would ask you to follow your
19 oath to consider the evidence and hold them accountable.

20 THE COURT: Thank you, Mr. Fretwell.

21 Ms. Ross?

22 MS. ROSS: Thank you, Your Honor.

23 Ladies and gentlemen, anyone need to stand up and
24 stretch a little, you're welcome to. I get to. I'm happy
25 to.

1 I represent Mr. Rice. People have said isn't it hard
2 to be a criminal defense attorney representing guilty
3 people? It's hard to represent an innocent person.
4 There's so much riding on it, and I get emotional.

5 And I'll tell you, at the beginning, I said what's
6 happening in this case is the State was conforming the
7 evidence to convict my client. It's not -- Mr. Foster's
8 testimony up there was not consistent with the forensic
9 evidence. He met with the State. He met with the
10 solicitor over and over again. He talked to law
11 enforcement for hours. And his testimony was then formed
12 to conform to the evidence in the case.

13 Now, I'll tell you, Mr. Rice made a big mistake. And
14 you see it right in that video where he read his rights
15 and he's like, "I don't remember." That was wrong. He
16 should have told he was there, he should have told what
17 happened.

18 He lived there. He lives right across the street,
19 and he stupidly assumed that living in an apartment
20 complex with I think they said 90 videotapes would somehow
21 -- video evidence would somehow come around and show he
22 wasn't guilty, he wasn't involved in this. He asked about
23 the videos. But he didn't say, "I didn't do it. This is
24 what I saw. This is what happened." He didn't say that,
25 and that is super wrong. And there is a young man

1 severely injured and another young man who's deceased.
2 And that's terrible.

3 I'm going to start off with some notes I made about
4 some mischaracterized evidence that was presented to you
5 throughout this closing argument. And I will just start
6 with, wow, that was a big one, saying that because
7 Mr. Foster testified that when he dropped him off at this
8 apartment complex, they shook hands. I don't even know
9 what that means, whether they shook hands or not.

10 But first, Shyheem Rice is left-handed. He's been
11 writing the whole time. You can see it on that video when
12 he fills out the form. He's left-handed, so he would
13 shoot with his left hand. If he shook with his right
14 hand, that's not going to pass GSR because Shyheem Rice is
15 left-handed. He would have used his left hand. So this
16 is taking little bits of evidence and conforming them to
17 try to make Shyheem Rice look guilty of something when
18 he's not.

19 Also, another witness who's easy to conform is a
20 jailhouse snitch. What they are hoping for is to get a
21 better deal, get some kind of better deal down the line to
22 get off this mandatory 25 years by supplying substantial
23 assistance to the State. That's what he's going for.
24 He's saying, "No, I didn't get anything." He's going for
25 that.

1 And you'll notice that the solicitor mentioned
2 Mr. Desue's testimony a million times throughout his
3 closing. He was saying you heard from Mr. Desue this, you
4 heard that. This is the testimony that he is fully
5 empowered to manipulate and control.

6 And I don't really care, you know. I represent
7 Mr. Rice. I don't care about Mr. Mays's case. But I just
8 submit to you, if you're down incarcerated and you sit
9 there and are talking to someone, why would you say, "Oh,
10 yeah, and then they left me at these apartments where I
11 had dinner that day"? Why would you be talking about
12 which apartments you had dinner that day two and a half
13 years ago? It just makes no sense. And I just submit to
14 you that this is evidence that's being -- that's
15 conformable, you know, that's being presented to you to
16 wrap up a tight little case when there is none against
17 Mr. Rice. And that's just a perfect example of, oops,
18 Mr. Rice is left-handed. He wouldn't have GSR on his
19 right hand when he shook hands.

20 Also, the 9-1-1 tapes, I was flipping through my
21 notes and I apologize that I'm kind of a spaz and do
22 things like that. But my notes in the 9-1-1 case -- I
23 mean calls, which were -- you have them. You can listen
24 to them again. They're devastating and it was terrible to
25 listen to. I heard, "They're shooting at each other. A

1 white Crown Vic shooting at a guy running. The guy who
2 shot, ran." That's what I heard. I didn't say -- I
3 didn't hear, "The guy ran off with the gun," but I could
4 be wrong. But I think that was a mischaracterization of
5 the evidence in order to present a stronger case against
6 Mr. Rice than actually exists.

7 Now, I spent the second day of this trial very
8 frustrated because I've been doing this for 20 something
9 years, and you used to have statements that people would
10 write out when they were arrested. And they'd say, "What
11 happened?" and then you'd go up to them and say, "Isn't
12 that your statement? Isn't that what you said right after
13 you were arrested?"

14 And then they'd say, "Oh, yeah. I did say two
15 people, not three people when I was originally arrested."

16 And I kept on working with that witness trying to get
17 that out, but I didn't have that statement. I had an hour
18 and a half of video that I was trying to manipulate, and
19 that was no good. But eventually, it did come out that,
20 yeah, originally, I did say I saw two people.

21 The solicitor suggested over and over again everyone
22 pointed to Mr. Rice being there. No, they didn't. No one
23 said he was there except for Mr. Foster. No one
24 identified him. Mr. Poole was shown a lineup the day
25 afterwards. Notice they didn't put that lineup into

1 evidence. He was shown -- well, we know. They all
2 testified. Everyone got a lineup of Mr. Rice, and no one
3 picked him out there. The only thing Mr. Foster is
4 telling that's the truth is Mr. Rice was out there with
5 his girlfriend right before the shooting, and they ran off
6 together and got in Mr. Foster's mother's car.

7 Now, just aside, who takes their girlfriend to go
8 shoot somebody? Hey, we've got this murder we're about to
9 do. Come on, girlfriend. Let's go out there and hang out
10 with everyone else so you might get shot too. No one does
11 that. And Mr. Rice would never do that because he didn't
12 know any of this thing was happening. He had no idea. He
13 was out there. He saw something going on. He ran up to
14 the car. And we know, I get it, he did run up to the car,
15 and he shouldn't have done that. And he was friends with
16 Mr. Foster.

17 Now, look where the prints are on the car. Remember
18 it was backed in? And Mr. Poole says someone came and
19 knocked on the window, suggesting it's up.

20 Now, there was nothing about Woo Gang in Mr. Poole's
21 original statement. Nothing. And I submit you wouldn't
22 be able to hear very well anyway. Woo Gang only comes
23 into play once the State is investing in promoting
24 Mr. Foster's story. But look. Mr. Foster's prints are on
25 the front of the car. So if you're trying to pull off,

1 someone's on the front of the car, I would just say who is
2 more responsible for holding that in place? The one at
3 the front of the car or the ones whose prints happen to be
4 at the back of the car?

5 And we don't know when those prints were put there.
6 You know, Mr. Foster could have just seen Shyheem touching
7 the car earlier and been like, boom, let's bring him in.
8 Let's bring him in.

9 And I think Mr. Fretwell was totally correct, totally
10 getting off-kilter in this, when he said that Bertha
11 Williams is the reason Mr. Foster is not in jail for
12 murder. She flat out is. And I just -- I think of that
13 conversation, I've got two teenagers, the idea of when
14 you're in a car and your son says, "Oh, by the way, that
15 killing, I was involved in that."

16 You're like, "You did what? You're doing what?"

17 And what does the kid say? He says, "No. Actually,
18 it was Doo-Doo who was really responsible. It wasn't
19 really me. I wasn't the one who brought this on. It was
20 Doo-Doo. It wasn't about me, but Doo-Doo." And that's
21 the story they went with.

22 I submit you've got to read a lot with this broken
23 phone. I mean, if forensic wasn't able to go back and do
24 double duty to try to find out, oh, yeah, Foster did call
25 Mays, that's how -- that's how they got that up. Foster

1 called me, and then we conformed the story. Originally,
2 there's no mention of that. We conformed the story and
3 say, oh, yeah, well, I did call Mays to do some marijuana.
4 I submit to you, you know, that's after the fact. That is
5 BS conforming to what the evidence showed after the fact.
6 And it's throwing Mr. Rice under the bus. I mean, what's
7 the best way if a lion's chasing you? Throw out a chunk
8 of meat. Throw out Doo-Doo. He won't stand up for
9 himself and speak up for himself. He lives out there.
10 And that's exactly what Marcus Foster did, and the State
11 ate up that story. They just went with it and said,
12 "Yeah, we'll go with that."

13 Talk about aiding and abetting, hand of one, hand of
14 all. I submit to you, that has to be part of the plan and
15 that you're getting involved in something that a natural
16 consequence would be that someone died. If I said I'm
17 going to go kick this sign, boom, and someone dies, I'm
18 not guilty of the hand of one, hand of all. It has to be
19 I planned to go do an armed robbery and someone happens to
20 die, or I plan to go murder someone and we all get
21 together with a plan and someone dies. That's hand of
22 one, hand of all. That's not what we're talking about
23 here.

24 Shyheem Rice just got caught in this net and just did
25 not speak up for himself and defend himself. He's not

1 guilty of murder. It's the most serious thing going here.
2 No. He's not guilty of these shootings. He didn't know
3 this was going to happen. His problem is, after the fact,
4 he didn't tell what happened, and that's wrong. That's a
5 whole different thing.

6 Going through, I'm going to quick look through my
7 notes and talk about, you know, just going about -- more
8 about, you know, Marcus Foster knew Jay Poole was coming.
9 That was the thing that got to me about the solicitor's
10 closing argument, this stuff about the Cook versus Cooks
11 and how they could have thought Woo Gang. My testimony, I
12 mean, that I heard from Foster, he had no idea that anyone
13 named Cook was in the car. How would he know Cook was in
14 the car until after the fact? I just think that's a
15 happenstance that's made up that the State's bringing in
16 to support this sort of Woo Gang theory of this case,
17 which they seem to be relying on, versus the theory that
18 Marcus Foster was pissed because someone was in the
19 backseat of a car with his girlfriend. And if there was
20 any kind of Woo Gang thing, I think it was Marcus Foster's
21 thing. It was his cut. There's no evidence this has
22 anything to do with Shyheem Rice. If that was it, it was
23 Marcus Foster's deal, not Mr. Rice's.

24 The testimony about the GSR on the steering wheel,
25 what I heard is they got gunshot residue off of Poole,

1 this car's steering wheel. I mean, they tested it and it
2 turned out there was none. It had nothing to do with that
3 other car. I don't know what that was all about.

4 I'm going through to see, trying to not miss
5 anything. There's so much going on here.

6 Okay. I would just ask that you look at that
7 surveillance video a little bit, because bigger than life
8 you see one car, which I think is a Chevy Malibu, busting
9 out out of there. But you see another car, a second white
10 Crown Vic zooming out of there just around everybody. And
11 you will see that. You didn't hear much about it. I
12 tried to bring a little bit about it.

13 But they took that car into evidence and looked at it
14 and they didn't find any evidence on it. And the owners
15 of that car just declined to be questioned. So they're
16 out of here. They didn't -- they're not even brought into
17 this whole situation. No charges made. They were clearly
18 there all over the place. And I'd submit that there were
19 some prints on that car that didn't match anyone, and if
20 they'd investigate and found out who they were, maybe we'd
21 have some other people involved. But they ran away, and
22 no charges against them.

23 I'm just going to go -- and remember in my opening I
24 said that Shyheem lived right across the street? I meant
25 kind of across the street from that yard. It was just

1 right across the street. And you can see it in some
2 pictures. I think I saw it around like 39. So there's
3 the hill. There's Shyheem's building, 23, right there.
4 He's out there with his girlfriend.

5 Just going back thinking about -- I think I did this
6 already, but neither Boyd or Berger, the two girls that
7 were right there right in the car, identified Mr. Rice at
8 all as even being there. They didn't notice him. Just
9 like Mr. Poole didn't notice him either. Not at all.

10 I guess the State's changing that story, but you'll
11 note that Mr. Foster originally said that there was a
12 fight and Shyheem was involved in this fight, and he was
13 the one fighting Cook, right? That was his testimony.
14 You heard from the doctor. Mr. Cook, you know, was shot
15 and was dead, but he had no evidence. There was no
16 evidence on his body of a physical altercation whatsoever.

17 And so -- and also with Mr. Poole, the knock was
18 saying, "What's up with y'all?" That's what he had
19 testified to before.

20 And another thing -- I'm just going through with
21 points at this point. I wasn't sure what Mr. Poole was
22 saying about the doors, the handles not opening the doors
23 of the car. But just remember the girls were getting in
24 and out of the car back and forth. Somehow they were
25 getting in and out of the car. There was no testimony

1 anyone was over there letting them in. But then you heard
2 from Investigator Evett that he just didn't bother to get
3 -- pursue those DNA, you know, off the handles of that car
4 because he thought he had enough.

5 And, again, what it's going to is them just depending
6 on the story of the first person who came in, Mr. Foster.
7 And it's great that he reported to law enforcement and
8 it's great that he came in. But what he said were lies,
9 and they were proven over and over again to be lies and he
10 threw my client -- my client's been in jail for over two
11 years because of what Mr. Foster said against him which
12 was not true and was continually proven to be untrue.

13 At the Spinx station, there was a witness, Jessica
14 Woods, who wasn't brought in today. Neither was
15 Investigator Picone who questioned her. And I just ask
16 y'all to consider why you didn't hear from those
17 witnesses, and just consider that maybe their testimony
18 wouldn't conform exactly to this story that's been created
19 for you.

20 The hand-off of the gun through Mr. Desue saying that
21 somehow Mr. Mays handed the gun to Mr. Foster and he ran
22 off with the gun, I'd submit that that has no credibility.
23 Why would -- you know, no one's mom noticed why does this
24 kid get in the car with a gun? He didn't have a backpack
25 like Mr. Foster where he could have had his gun in his

1 backpack. And you remember Mr. Foster talking about you
2 can see in the picture he's running along with the
3 backpack with what Ms. Boyd said was a gun inside of it.

4 I just -- this case has a lot of holes and no
5 strength against my client, Mr. Foster [sic]. The State
6 has the burden of proof, proof beyond a reasonable doubt,
7 and I will -- I can keep talking all day about reasonable
8 doubt. I doubt this, I have reasonable doubt. But I'm
9 trying to get a lot of them out there.

10 What the State has proven to you is that Mr. Rice was
11 there. I'd submit he lived there, and that's really about
12 it.

13 Mr. Rice has an absolute right to remain silent, and
14 the judge will instruct you on that. He did not talk, and
15 I sort of addressed how that was not great. But that's
16 not proof beyond a reasonable doubt of guilt of murder and
17 attempted murder. There were a lot of people out there
18 that day who didn't talk. Lots and lots of people. Just
19 look at the video. There were a lot of people there.
20 Ms. Boyd testified there were a lot of people there.
21 There were a lot of people there, and a lot of them didn't
22 talk. And that's sad, but that's not murder.

23 Again, like I said in the beginning, sadly, Shyheem
24 is not going to defend himself and speak up for himself.
25 He's going to stay quiet. That's him, and that's what

1 he's done here. But that's not murder. And, ladies and
2 gentlemen, the evidence is not there, and I'd ask you to
3 find him not guilty of both charges.

4 And I'd also just remind you as you go back there and
5 deliberate, there's a lot that I didn't say. I wish I
6 could be more organized and say everything and present it
7 beautifully, but that's not me. But each one of you is
8 tasked with a terrific duty here. And I would ask you to
9 respect each other's opinions. And if someone has
10 reasonable doubt -- and I'd submit to you someone will.
11 If you go back in there and look at each other and say, "I
12 don't think they've proven it against this guy Rice," and
13 just go ahead, that's not guilty. Come back with a not
14 guilty verdict. If you don't feel that way, I'd ask you
15 to go over all this evidence, and I think at the end of
16 it, you'll still find him not guilty. But I'd ask you to
17 respect if one of you feels like the State has failed to
18 prove any element of these two charges beyond a reasonable
19 doubt, the correct verdict is not guilty, and I'd ask you
20 to find my client not guilty.

21 Thank you.

22 THE COURT: Thank you, Ms. Ross.

23 Mr. Chambers?

24 MR. CHAMBERS: May it please the Court, Your Honor.

25 Solicitor.

1 Ladies and gentlemen, April 2, 2017, as we've all
2 heard, that was just an otherwise beautiful, peaceful
3 Sunday day. And something really tragic happened that
4 day. I hope that, through the course of this trial, the
5 way that I maybe have conducted myself and the way that
6 I've asked questions and maybe I've been aggressive at
7 times, that's me representing my client, Anthony Mays.
8 He's sitting over there. He's an innocent man. He
9 remains innocent unless and until they prove beyond a
10 reasonable doubt that he did something wrong. And I would
11 submit to you that they have not met their burden.

12 But I would be remiss if I didn't say when this
13 started that Mr. Cook and Mr. Poole did not, in any way,
14 deserve what happened to them. Two young men doing what
15 young men do, going to see a couple of girls, particularly
16 Mr. Poole going to see Kennedy Boyd. And as she
17 indicated, they were trying to date a little better. They
18 go over to hang out, smoke a little weed, the kind of
19 thing that young men do. And they did not deserve what
20 happened to them.

21 But what they do deserve is real justice, not for
22 somebody who is not guilty to be convicted, but for the
23 guilty person to be convicted.

24 Now, the solicitor has given you his entire case.
25 They called 27 witnesses. They put in a whole lot of

1 evidence, and we didn't put in any evidence. And I know
2 that there are going to be folks who go, wait a minute.
3 Why is that?

4 But as Ms. Ross told you and as Her Honor as told you
5 and as Her Honor will tell you again, there is no burden
6 whatsoever on the defense. And I would submit to you that
7 there was no need to put up any sort of a defense of this
8 case because, and this will become clear as I go through
9 this, there is -- and this is rare. I've tried a lot of
10 cases over the years. I don't get this very much. But
11 there is objective proof in this case that my client is
12 not guilty. There is objective scientific proof that
13 despite everyone's best efforts to put a gun in his hand,
14 that he was not the person who fired a gun on that day.

15 Now, that proof is very simple. You heard from James
16 Armstrong, the forensics expert. He came in here and he
17 testified to you that he tested all of the spent
18 cartridges -- and you have those there in evidence -- that
19 were fired out there that day. They were all from the
20 same gun. He was able to tell through the striations and
21 the patterns and the things they do when they look at
22 ballistics. He was able to determine that they were all
23 fired from the same gun, a .40 caliber. It's the same
24 kind of weapon that you see these officers are wearing.
25 It's sort of the standard issue. It's a good size gun.

1 It's got a lot of kick to it.

2 And the way that a pistol works is when -- as opposed
3 to a revolver, some of you may be familiar with a revolver
4 where you shoot, the chamber stays in the cartridge. It
5 doesn't eject anything. But with a pistol, the kind these
6 officers carry, when you fire it, the chamber comes back,
7 the cartridge is spent, you know. It comes out the other
8 side, is what I'm trying to say. So as you do that, you
9 get gunshot, you have gunpowder that's part of this
10 process. It comes out the front, and it also comes out as
11 that cartridge is coming out.

12 So what happens when you fire a gun, ladies and
13 gentlemen? Well, gunshot residue. Gunshot residue. The
14 solicitor is aware of this evidence. They know that this
15 evidence is a problem for their case.

16 So what do they do? Well, they do call Lieutenant
17 Jennifer Nates. She came in here and testified. And they
18 tested Mr. Cook. They found one particle of gunshot.
19 This is a person who was shot at from close range who had
20 one particle of gunshot residue. They tested the steering
21 wheel in that same car. No gunshot residue. It's right
22 there in the car. And then they tested the right hand,
23 the gun hand, the shooting hand of Mark Foster. And guess
24 what? She told you they found multiple particles of
25 gunshot residue: palm of his hand and the back of his

1 hand. And think about it, folks. When you fire a weapon,
2 how are you holding it? Where would the gunshot residue
3 be?

4 Now, they tried to downplay it at every turn. When I
5 asked the Lieutenant Nates about it, she said, "Well, we
6 can't say it came from firing a gun. It could come from
7 other sources."

8 When I asked Investigator Evett about it, he said,
9 "Well, he would just have to be in close proximity." But
10 remember, he's outside. Remember Mark Foster's testimony
11 that he was on the other side of the car from where the
12 gun was being fired. He's saying that he was on the
13 driver's side. He's saying that Mr. Mays was on the
14 passenger's side as he was firing. There is no way that
15 he would get any gunshot residue that way.

16 And, of course, the solicitor, again, realizing that
17 it's a potential problem for him, says, well, he got it
18 when they "dapped" up. Now, think about that. He wants
19 you to believe that as opposed to Mark Foster firing a
20 gun, which would result in multiple particles, because
21 that's the easiest way to get it on you. That's why they
22 check for it. That's why they checked his hand was to see
23 if he had fired a gun. That's why they did it. And yet
24 they ignored the positive result that they got. We'll
25 talk about that some more in a minute. But they want you

1 to believe that this is how it happened.

2 Okay. Mr. Mays does all this shooting, and then he
3 hands the gun off to Mr. Rice, and then he apparently runs
4 off in another direction, according to them. And, for
5 some reason, Rice and Foster run up the hill together.
6 And supposedly, Rice has the gun. Now, his lawyer's
7 already pointed out to you he's left-handed. Hand
8 somebody a gun, they're going to carry it in their left
9 hand. When they dap up, he uses his right hand.

10 But let's assume that he held it in his right hand.
11 First of all, Rice didn't fire the gun. Nobody has said
12 he fired a gun. So yeah, he might get a little bit of
13 gunshot residue if he's holding a gun. But then how
14 likely is it that he's -- what's he going to do? I mean,
15 take my gun and put it over here while we dap up.

16 Where's the gun? You didn't hear Foster say anything
17 about seeing a gun. You didn't see Foster's mother saying
18 anything about seeing a gun. Where's the gun? Foster, he
19 would be dying to tell you about that. Rice had that gun.
20 I saw him. No. Who had the gun? The person who shot it,
21 Mr. Foster. And that's how he got gunshot residue on his
22 hand.

23 And so as you start going through this evidence, when
24 you look at all this evidence they put in and you think
25 back on all the testimony -- and I'm going to spend a

1 little bit of time talking about that too -- I want you to
2 always come back to that. Gunshot residue on Foster's
3 shooting hand, multiple particles.

4 And remember what Lieutenant Nate said about gunshot
5 residue. It's delicate. Doesn't last long. We wouldn't
6 even test it after six hours because it's easily
7 destroyed. But the more you have, the closer the contact
8 you came, the longer it's going to stay on there, and
9 especially if you're in possession of the weapon. You've
10 got that pistol.

11 Now, it was not visible when Ms. Williams picked her
12 son Mark Foster up or we probably would have heard
13 something about it unless she helped him get rid of it.
14 And I'm not, in any way, saying she did. What's more
15 likely to happen is he took the gun and put it in his
16 backpack which we heard testimony he had with him. We
17 heard testimony that he carries a gun in his backpack. We
18 heard testimony from Kennedy Boyd that he is known to
19 carry a gun.

20 So when you start going through their case, when you
21 get back there to deliberate and you start looking at, you
22 know, well, so-and-so said that Mark -- that Anthony Mays
23 had the gun in his hand and da, da, da, always think back
24 to the gunshot residue. There's one thing about it.
25 There are inconsistencies in testimony, there are lies

1 sometimes in testimony, there are sometimes just mistakes
2 in testimony.

3 But the great thing about forensic evidence is it's
4 objective. That's why it's so powerful. That's why law
5 enforcement spent so much money on it. That's why they
6 have such a large staff of forensic officers. It's
7 objective. It's not subject to inconsistency. It's not
8 subject to lies. It's something you can rely on. But the
9 problem is, if you ignore it, it does you no good.

10 What is another piece of really objective evidence
11 that we can look at in this case to determine that
12 Mr. Mays was not at the car at the time the shooting
13 occurred? Now, there is fingerprint evidence that shows
14 that Mr. Mays came into contact with that car. And I
15 would submit to you that more than likely, he was out
16 there that day. His car was there. We know that he had
17 been called to come over there by Mr. Foster. And this is
18 interesting to me, because I heard the solicitor say in
19 his closing argument that Mr. Foster had called Anthony
20 Mays up and said, "You need to come over here. Woo Gang's
21 over here," or something to that effect, and that there
22 was this plan afoot.

23 Ladies and gentlemen, as the solicitor said, you can
24 go back and listen to any of this testimony you want to.
25 You all listened, and you know as much about this case as

1 I do at this point after listening to all the evidence.
2 You know the evidence as well as I do. But that's not
3 what Mr. Foster said.

4 Mr. Foster said, "I called him," talking about Kwame
5 Mays, "to bring me some weed." And he said when he was
6 talking to Shyheem, "I'm waiting on Cheese to bring me
7 some weed." And we know from the broken cell phone that
8 they recovered that there were a couple of calls back and
9 forth to Kwame Mays. Well, you know, you've got to call
10 your weed guy. You want some weed, you call your weed
11 guy. Weed guy comes over and delivers. That's the only
12 reason that Kwame Mays was over there that day. That's
13 the only reason.

14 And remember, they were smoking weed in the car.
15 Maybe he walked down there with him before any of this
16 trouble happened. And I don't mean to jump around, but it
17 leads me to the point if you remember with Mr. Poole, one
18 of the things he said, and there were some -- you know,
19 and listen, Mr. Poole went through a lot. I mean, you
20 can't look at that video and not realize what he went
21 through. I mean, my God. He got shot. His friend got
22 shot. He got down -- he got down there where his friend
23 was and heroically -- I mean, it breaks your heart
24 watching him trying to get his friend back into the car,
25 taking him up to the Spinx. That frantic call to 9-1-1,

1 all those things. So when he has trouble, you know,
2 keeping things straight, I understand that. You know, the
3 solicitor was talking about the fact that he would have
4 trouble keeping things straight, and I would agree with
5 that. And, again, we'll talk about that some more again.

6 But one of the things that I think he said that is
7 really important is this, and that is there was some
8 discussion back and forth about how many people walked up
9 to the car. And if you'll remember, on his direct
10 testimony, he said there were three, because that's
11 consistent with what Foster said. But then we went back,
12 and as Ms. Ross said, there was -- you know, there's a lot
13 of trouble with videotapes and audiotapes. There was an
14 audiotape where he was interviewed in the hospital. And
15 after being able to listen to that audiotape, he
16 remembered that he did originally say there were four
17 people that walked up to the car. But then in responding
18 to me, he goes, "But one of them walked away." Well,
19 ladies and gentlemen, I would submit to you that the one
20 that walked away before anything happened was Anthony
21 Kwame Mays. And that's probably when he touched the car.
22 That's probably why his prints are on there.

23 And so is there proof that he walked away? Is there
24 proof that he wasn't down there when the shots were fired?
25 And I would submit to you that there is. And, again, it's

1 objective proof. It's objective proof. It's something
2 that you can look at.

3 You heard testimony that there are cameras all over
4 that complex. You heard testimony that they got 90 pieces
5 of video, and then they had the expert come in here and
6 put all of them together, chronological order so that you
7 can look at it.

8 You saw the video. You've even got some still photos
9 in there. And what did you see? You saw several things
10 that are really important. Well, you saw the two young
11 ladies running away, literally running away. Now, there's
12 some, you know, dispute back and forth about when they
13 left the car, if they were there when the shooting
14 occurred or shortly after the shooting occurred and that
15 sort of thing. But there's a picture -- there's video of
16 them running away.

17 There's video of the people that we know to be Marcus
18 Foster and Shyheem Rice running up the hill together. And
19 the solicitor even indicated to you that, based on the
20 9-1-1 call he had extrapolated from that, that one of
21 those people had a gun because he said the 9-1-1 caller
22 saw somebody carrying a gun. Well, I don't disagree with
23 that, because that person carrying a gun, probably Marcus
24 Foster.

25 We saw the tragic video of Mr. Cook running away from

1 the car and collapsing. And who did you not see video of
2 running away from the car? Well, that was Anthony Kwame
3 Mays. All those cameras, all that video, and yet you
4 don't see Mr. Mays running away from the car. Why?
5 Because he had already left. He wasn't at the car. He
6 wasn't part of any of these things that were going on.
7 There's no way around that. There's nothing that they can
8 say in response to that. It's an absolute fact, and it's
9 right there before you when you go back there to
10 deliberate.

11 So -- but we've got, you say, these IDs. Okay.
12 Well, let's start with that. First of all, as I told you
13 from the outset, Marcus Foster is the person who had
14 reason to be upset. Marcus Foster's girlfriend was in the
15 backseat with another guy and had been sitting out there
16 for quite some time. For at least 15 minutes. He knew
17 she was there. He said he didn't know who was in the car.
18 He didn't say anything about knowing it was somebody named
19 Cook.

20 You heard from Kennedi Boyd that she asked his
21 permission before they came out there. She wanted to
22 avoid drama. She said in response to questioning that he
23 is jealous and possessive where Jackie's concerned.
24 That's an absolute fact. She said that he had a gun, and
25 that she had seen the gun and she knew that he had a gun.

1 And, again, the solicitor knew that was a potential
2 problem. So they bring in this -- he says, "Oh, that's a
3 BB gun. I carried a BB gun around." She didn't say it
4 was a BB gun. She said he had a gun and he kept it in his
5 backpack. So he had the motive.

6 And the other thing, the whole thing about Little D
7 and the shooting being over Little D and the Woo Gang
8 stuff, that all came from Marcus Foster. Every bit of it
9 all came from Marcus Foster. You heard from the
10 testimony, both direct and then on cross, after Mr. Poole
11 had an opportunity to listen to his audiotape, he didn't
12 say anything about Woo Gang. He said that the person that
13 walked up to the window and tapped said something to the
14 effect of what are y'all up to. He didn't say anything
15 about Woo Gang. That came from Marcus Foster. That came
16 from Marcus Foster.

17 So he had the motive, he had the means. And even if
18 this Little D thing were involved somehow, Little D is
19 Marcus Foster's cousin. That's how he described him.
20 Now, he said they might not actually be blood kin, but he
21 feels close enough to him that he referred to him as a
22 cousin. Meant something to him. Not kin to Anthony Mays.
23 Not kin to Shyheem Rice. He's close enough to be
24 considered a cousin.

25 So we've got motive. We've got means. We've already

1 talked about the fact that he had the gunshot residue. He
2 fired a weapon, folks. There's no question about it.

3 But then what else did he do? He ran away as hard as
4 he can go. A long way. I mean, I don't know how many of
5 you all are familiar with that area, but it's a pretty
6 good distance, especially if you're running flat out the
7 way those people on that video were up that hill, through
8 the woods so hard that he scratched himself all to pieces.
9 See it in those pictures. That's somebody that is trying
10 really hard to get away from someplace. That's somebody
11 running because they're guilty.

12 And then what did he do? Well, he had his mom come
13 pick him up. He said he went to church to pray about it.
14 Praying maybe because he's got a guilty conscience. Just
15 killed somebody.

16 But what else did he do? Well, he sent a -- some
17 sort of a text message on Facebook messaging. I don't
18 know what it was. Something like that. And he apologized
19 to Kennedy. He's apologizing to her. And he talked about
20 the guns coming out. And then he tried to play that off
21 later as he just threw that in there. I don't even
22 remember exactly what he said. But the bottom line is not
23 only did he run away through the woods, but he apologized
24 to Kennedy about what happened. He's sorry. Why?
25 Because he did something wrong. He put her in harm's way.

1 He felt bad about that.

2 But then this whole notion of self-preservation kicks
3 in. Mr. Foster says, "Hmm, go turn myself in." Maybe it
4 was his mother that talked him into it. I don't know.
5 But I know that when he got down there at the Law
6 Enforcement Center, he was down there to save himself, and
7 he was willing to throw anybody he could under the bus to
8 save himself. He even admitted on the stand, and the
9 officer later corroborated. He said to the police, "I'll
10 do whatever I need to do to get out from under this murder
11 charge." And he did it. He did it. He got out from
12 under this murder charge.

13 While these two young men sat in jail awaiting trial,
14 he's been out. He told you he was working a new job, that
15 he pled guilty to some charges. They deferred sentencing,
16 because they wanted to see how he did here in trial and
17 he'll get sentenced later. And he'll probably get credit
18 for his cooperation. Guess what? That deal he cut, it
19 didn't include -- it didn't include pleading guilty to
20 murder. He's not going to prison for murder. And yet,
21 when you look at the evidence, there you go.

22 So they talk about everybody putting the gun in
23 Anthony Mays's hand. Who put a gun in Anthony Mays's
24 hand? Well, Marcus Foster did. And as soon as he told
25 the police that, they took it and ran with it. And it was

1 like tunnel vision.

2 Now, listen. I'm not here to tell you that I think
3 the police are corrupt. I'm not here to tell you that
4 they intentionally set out to do anything wrong. I know a
5 lot of these guys. They're good people. They serve the
6 community. They're trying to do a good job. They believe
7 Anthony Mays and Shyheem Rice are guilty. I don't have
8 any doubt about that. The solicitor believes he's guilty.
9 But that doesn't make him guilty, and that doesn't mean
10 they can't make mistakes.

11 And one of the best ways to make a mistake is to get
12 tunnel vision about anything, and it's to preclude the
13 possibility that something else could happen, and it's
14 following what you believe happened as opposed -- as
15 opposed, ladies and gentlemen, to following where the
16 evidence leads you like when I asked Investigator Evett
17 when you got the results back from that gunshot residue
18 test, did it not give you some pause for concern? Did it
19 not make you rethink what you thought about who the
20 shooter was? When you saw that text where he apologized
21 for what happened, that didn't cause you some concern?
22 When you didn't see any video of Anthony Mays running away
23 from the car, that didn't cause you to question what
24 happened, to maybe go out and canvass some other people,
25 to maybe go back and talk to Foster and try and pin him

1 down?

2 The solicitor asked him on direct, "Marcus Foster,
3 think of any reason why you'd have gunshot residue on your
4 hand?"

5 "No."

6 Well, he knew. He knew because he fired the gun.
7 And the police ignored it because it didn't fit with what
8 they believed. Okay.

9 Now, so only two people in any way, shape or form
10 indicated that Anthony Mays had a gun in his hand. Marcus
11 Foster, well, we've talked enough about him. But then you
12 have Mr. Poole. And listen. I think Mr. Poole did his
13 absolute best to try and be honest about what happened.
14 But as we already pointed out, there were some significant
15 things that were different, okay? He said there was no
16 fight. Now, he was consistent about that. But something
17 that's interesting is that Investigator Evett -- and
18 you'll remember I asked him about it -- in his report had
19 written down that when they went to talk to him at the
20 hospital and they taped that interview, that he said Cook
21 began fighting, saying Poole said Cook began fighting with
22 Rice at first, then Foster joined in the fight and he went
23 on from there.

24 One thing Mr. Poole said, there was no fight. And
25 the solicitor said, well, the reason he said there was no

1 fight is because it was so traumatic for him he didn't
2 remember it. But what happened was, and Investigator
3 Evett even alluded to it when he was on the stand, is,
4 well, I probably mixed that up with what Marcus Foster
5 told me. Well, that's exactly what he did, because they
6 took that narrative that was established by Marcus Foster
7 and they ran with it through this whole case. Tunnel
8 vision. Tunnel vision. That's exactly what it is.

9 The girls that came and testified were the only other
10 people that were out there at the scene. You know, with
11 Jackie Berger, I mean, ladies and gentlemen, you heard her
12 testimony. She didn't really add much of anything. I
13 mean, she basically didn't -- came in and said she didn't
14 know much of anything. She didn't identify anybody.

15 They wanted Katrina Boyd [sic] to say that the person
16 that she said she saw with a gun was Anthony Mays. And if
17 you'll remember, she said she didn't know. And the
18 solicitor walked up -- I think there was somebody sitting
19 over here, an investigator, and he walked over and he
20 said, "Is this the person you saw with a gun?"

21 And she said, "No."

22 And then he walked over here and he says, "Is this
23 the person you saw with a gun?"

24 And she kind of in a low voice said, "Yes."

25 And I couldn't quite hear it, so I said, "What did

1 she say?"

2 And Judge Verdin said, "She said 'yes.'" Because
3 that's what she said. She identified Shyheem Rice as the
4 person that she saw with a gun that day.

5 So the truth of the matter is, she couldn't identify
6 anybody. And if she had seen Anthony Mays with a gun, she
7 could have easily pointed over there and said that. And
8 that's clearly what the solicitor wanted her to do. She
9 didn't do that because she didn't see him with a gun.

10 Now, I would submit to you that Mr. Poole saw Anthony
11 Mays out there that day. Because, again, his fingerprints
12 were on the car. He said that there were four people that
13 walked up and then one walked away. And I think in his
14 mind when they showed him those pictures, he flashed back
15 to having seen Mr. Mays out there at the scene. And so
16 when they showed him the lineup, he said -- and, again,
17 this is not me just making this up. I confirmed this with
18 Mr. Poole when he was on the stand and with Investigator
19 Evett when he was on the stand. As he was looking at it,
20 he said that Number 2 kind of looks like him. That was
21 his statement. Number 2 kind of looks like him. And then
22 after that he said, "More than likely might be if he had
23 longer dreads." And then the officers pushed him to put a
24 percentage on it. And in response to their question, he
25 said, "80 percent."

1 Well, folks, especially given the circumstances here,
2 Number 2 kind of looks like him. Do you feel good about
3 that? Does that erase any reasonable doubt in your mind?
4 More than likely might be him if his dreads were a little
5 longer. Does that erase reasonable doubt from your mind?
6 I mean, I lost my hair when I was about 38. I've been
7 wearing it like this forever. If I walked in here with a
8 toupee after seeing me all week, you'd still know it was
9 me? I'd look different. I'd probably be a little bit
10 better looking, but you'd know, and you could say with
11 100 percent certainty that it was me.

12 He wasn't sure. He had been in surgery the day
13 before. He had been shot the day before. He had watched
14 his friend die literally in his arms the day before. And
15 he had seen my client out there at the scene. So I can
16 understand how that happened, but he wasn't sure.

17 You know, if I told any of you, hey, let's take this
18 flight together. Let's go on a trip. And there's an
19 80 percent chance that we're going to make it there alive
20 on this plane. Do you feel good about climbing on that
21 plane or would you have reasonable doubt in your mind?
22 20 percent, ladies and gentlemen, that's a lot of doubt.
23 And that is coming on them asking him to come up with an
24 amount. This is after he said, "Number 2 kind of looks
25 like him." And, again, this is not me saying this. This

1 is in the record. Listen to it.

2 And then finally, they tried at every turn. We've
3 got to pin it on Anthony Mays. Anthony Mays is who Foster
4 told us had the gun. And then we've got this -- you know,
5 Mr. Poole said that he's pretty sure. We've got that.

6 And then out of the blue, here comes the jailhouse
7 snitch. Jailhouse snitch. That's a term. And as this
8 Mr. Desue said, they're not very well thought of in the
9 Department of Corrections. And you say to yourself, well,
10 why would somebody step forward. Why?

11 You know, you can call me cynical, but I don't think
12 a man who is serving a 25-year sentence in prison steps
13 forward out of some sort of civic duty. I don't think he
14 steps forward because he wants to help out the police. I
15 don't think he steps forward because he wants to see
16 justice done. He steps forward because he's got something
17 to gain or somebody has something to gain. Well, what is
18 that?

19 Well, we know a couple of things. One, we know he's
20 serving a 25-year sentence. We know that he is not due to
21 be released until November of 2036. That's a long time.
22 And so I think we can safely conclude that he wants to
23 somehow reduce that.

24 Now, I believe when the solicitor elicited the
25 testimony that they didn't offer him anything, but that

1 doesn't mean he's not looking for something down the road.
2 But in this particular case, there's another reason, and
3 perhaps a better reason for him to say what he said. And
4 that is he lived next door for a very long time over there
5 at what was City Heights and is now Boulder Creek
6 Apartments. He lived over there beside Marcus Foster,
7 Senior. He knew Marcus Foster well. He called him Little
8 Marcus, and so he wants to help Marcus out. Because
9 remember, Marcus is the guy that had everything to lose in
10 this case, and Marcus is the one that said he would do
11 anything to get out from under a murder charge, and Marcus
12 is the one who knew Keith Desue, this Good Samaritan who
13 comes forward to give this testimony.

14 And the other thing that's important, and I brought
15 this out when I talked to him, is he was caught in the
16 Department of Corrections shortly after the police and the
17 prosecutor talked to him with a cell phone. Ah,
18 contraband. What does that allow him to do? That allows
19 you to talk unfettered to anybody you want to on the
20 outside, to send texts back and forth.

21 And he knew a few things about the case, although
22 strangely, they were very specific things. He claims that
23 Anthony told that there were -- that the ammunition was
24 .40 caliber Smith & Wesson. He claimed that there were
25 five shots. Well, there were actually more than that, as

1 you heard and you can see from the evidence there.
2 Claimed that Anthony told him that Mr. Cook had got two
3 shots in the chest. He claimed that he told him that he
4 had given the gun to Doo-Doo. But then when the solicitor
5 tried to push him a little bit more about to get some
6 other things out, he didn't remember those things. He
7 knew a few things.

8 And how did he know those things? Well, those are
9 all things that you can get in what's called criminal
10 discovery. And that is when somebody is charged with a
11 crime, like Mr. Foster was originally charged with murder.
12 You get copies of police reports, ballistics reports.
13 Everything that you see presented here the defense gets to
14 look at beforehand. He could easily have gotten access to
15 that either by looking at it directly or somebody telling
16 him a few salient facts about the case so that when he
17 comes in to court to testify for you, he knows a few
18 things, and it makes him sound believable. And he can
19 mention the whole Little D thing because that relates back
20 to what Mr. Foster said. Mr. Foster is the only one that
21 brought Little D into this until you heard from Keith
22 Desue.

23 So Her Honor is going to tell you that for everybody
24 that testifies, you get to consider their demeanor, their
25 reason for testifying, whether they had any motivation to

1 not tell the truth, and very importantly in this case,
2 whether it's corroborated by any other evidence. Those
3 are all things, ladies and gentlemen, that you get to
4 consider.

5 And why, ladies and gentlemen, would it even be
6 important, this whole thing about him giving Doo-Doo the
7 gun? First of all, I just -- from a logistical standpoint
8 what everybody said was going on out there, even if we
9 were to assume for argument's sake, and as I've already
10 told you I don't believe this happened, things happened
11 out there so fast, when did this gun exchange supposedly
12 happen that Mays was supposed to give the gun to Doo-Doo?
13 I didn't hear anybody -- I mean, how would that even
14 happen? Shyheem and Foster took off running as fast as
15 they could. Those girls had taken off running as fast as
16 they could. And, again, we don't even see Anthony in the
17 video anywhere. So he said that because Foster or
18 somebody related to Foster told him that. And Foster, of
19 course, had easy access because he was out. He wasn't in
20 jail. He cut a deal, working a job. He's living life.
21 And Desue had a cell phone and nothing to lose by coming
22 forward. So when you consider his testimony, consider all
23 of that. Consider all of that.

24 Like I said, in his closing argument, the solicitor,
25 based on what I heard, is asking for a lot of -- for you

1 to engage in a lot of speculation, a lot of conjecture.
2 And he's trying to take little things and tie them in and
3 go, well, this proves this and this proves that. But
4 that's all it is. It's not based on anything. Every
5 witness that testified, there were inconsistencies. There
6 were things that didn't make sense. There were things
7 that didn't add up. And that's particularly true with
8 Mr. Foster, who is their star witness, whose -- everything
9 he said they based their investigation on.

10 But the one thing, as hard as they have tried, and
11 I'm going to circle back to this, that they cannot
12 adequately explain and that is objective truth in this
13 case: gunshot residue. So when you go back there and you
14 start talking about it -- now, I agree with the solicitor.
15 Use the common sense that you brought with you, that's
16 your greatest asset, and ask yourself how would you get
17 multiple particles of gunshot residue? You would get it
18 by firing a gun. And you would certainly get it on your
19 palm and on the back of your hand.

20 Where would you come into contact with the most
21 gunshot residue? By firing a weapon. Not by standing
22 outside while somebody else shoots. Not by shaking hands
23 with somebody. Not by doing any of those things. By
24 firing a gun, and by later handling the gun where, at some
25 point, you're going to dispose of because he carried the

1 gun with him and he had the gun with him. And they cannot
2 overcome that piece of evidence, objective scientific
3 fact.

4 And remember, no video of Anthony Mays running away
5 because he had already walked away from that car. You
6 would have seen him run away. You would have seen it, and
7 they would have had it in here to play for you. And they
8 didn't, because they don't have it, because he didn't run
9 away from the car after the shooting occurred. That is
10 absolute fact. It's a provable fact, just like the
11 gunshot residue is provable. And that overcomes any
12 reasonable doubt in this case.

13 And as I told you -- and I'm about to finish because
14 I know I've been talking a long time and I'm the third
15 person you've had to listen to. But this is important,
16 and that's why I'm taking as much time as I am.

17 Reasonable doubt is the kind of doubt that causes a
18 reasonable person to hesitate to act. Proof that
19 overcomes that is proof that leaves you firmly convinced.
20 So, ladies and gentlemen, based on what we just talked
21 about, based on this gunshot residue evidence, based on
22 this lack of a video, based on the inconsistencies in
23 everybody's testimony, based on what I would say were the
24 lies of Keith Desue when he came in here and testified, do
25 you feel firmly convinced? Is there hesitation? Because

1 that's reasonable doubt, folks. That's their standard.
2 And that's their standard because these are high stakes.

3 This is the court where somebody can lose their
4 liberty. This is the court where somebody can be branded
5 a murderer. And this is the court where you have to get
6 things right. You don't get a second chance. You can't
7 say to yourself they believe it so I believe it. You
8 can't say to yourself he wouldn't be sitting over there
9 being called the defendant if he hadn't done anything.
10 You can't say to yourself rightfully I feel bad for these
11 folks, these victims. I want to bring them justice.
12 That's not what you're here to do.

13 You took an oath to hold them to their burden. And
14 if you hold them to their burden in this case, you've got
15 to find Anthony Mays not guilty. There's no proof beyond
16 a reasonable doubt that he did anything wrong. And, in
17 fact, there's objective proof that he's innocent. There's
18 objective proof that he didn't fire a weapon. There's
19 objective proof that he didn't run away from that car.

20 Ladies and gentlemen, I appreciate your time and
21 attention. I appreciate you listening to me, tolerating
22 what I've had to say. I thank you very much for it. I
23 know I've probably gone on too long. But, you know,
24 Anthony Mays, I'm an advocate for him. This is a process
25 he doesn't understand. He hired me to come in here and

1 represent him and to protect his rights, and I take that
2 seriously.

3 And I'm going to do the hardest thing I've got to do
4 all day. I'm going to go over there and sit down. And
5 I'm going to probably think of some things that I wish
6 that I had said or maybe, you know, second-guess some
7 things that maybe I should have done. But there's one
8 thing that always gives me solace in these cases, and that
9 is you jurors gave up essentially a week of your lives to
10 come in here and render service to your community. And
11 it's a valuable service.

12 As I said, John Adams said that trial by jury is the
13 very heart and lungs of liberty. And that's not an
14 overstatement. That's not sophistry. That is real and
15 it's important.

16 Anthony Mays, while he has been nervous about it,
17 he's been looking forward to this today, because he has
18 been carrying the burden of this over his head for the
19 last two years and seven months. Now the case is about to
20 go back there with you, and you get to consider the
21 evidence. I would submit to you that they have fallen
22 woefully short of proving anything beyond a reasonable
23 doubt when it comes to the guilt of Anthony Mays.

24 We appreciate you being here, and we look forward to
25 your verdict in this case. Thank you very much.

1 THE COURT: Thank you, Mr. Chambers.

2 Ladies and gentlemen, my charge on the law is about
3 25 minutes, if I'm estimating correctly. And I've done
4 enough of them I think I'm right. You've been going for a
5 while. I'm going to let you have a break, a quick break
6 before we do it.

7 Mr. Foreperson, when you go back there, here's what
8 I'd like for you to do. You all have been at our disposal
9 all week, and we appreciate that. Now the tables are
10 about to turn and we're going to be at your disposal.

11 We've got a couple of options here today, and I'm
12 going to do whatever you want to do. You can come back
13 in, I can charge you on the law and then I can send you
14 back to deliberate for as long as you want to this
15 evening, okay? We can order you in some dinner, and I am
16 fine to do that, and we are all fine to do that. I can
17 charge you on the law, you can deliberate for a while and
18 then decide you want to break for the evening and come
19 back tomorrow. Or I can wait to charge you on the law
20 tomorrow morning and you can come back and deliberate
21 tomorrow. Those are your options as I see them right now.

22 But if you'll go back there, and as you take your
23 break, kind of informally talk about that. I don't know
24 what people's obligations are after 5:00, and that's the
25 reason I'm asking you, okay? So thank y'all so much.

1 The case is not yours to deliberate yet. Not quite.
2 So if you'll just go back there, don't talk about the
3 case, but please do discuss our schedule. Thank you.

4 (WHEREUPON, the jury exits the courtroom at 4:16 p.m.)

5 THE COURT: All right. Let's be in recess for ten
6 minutes.

7 (WHEREUPON, a recess is taken at 4:17 p.m.)

8 THE COURT: Will y'all go back there and ask them
9 what their decision is?

10 (Pause in proceedings.)

11 THE BAILIFF: Your Honor, they'd rather do the charge
12 tomorrow, do everything tomorrow.

13 THE COURT: All right. Very well then. Then we'll
14 bring them back in, and I will -- I'll bring them back in
15 and just let them go for the evening. All right.

16 I'm actually glad that that's what their doing. I'd
17 like for them to be close in time to the charge on the
18 law, and I think it also means that they're taking their
19 duty really seriously. So that's -- and that also means
20 we don't have to do another order for Mr. Desue because
21 the trial is not over.

22 MR. FRETWELL: Right.

23 MS. ROSS: You want to bring them back in to talk?

24 THE COURT: I'm going to bring them back in.

25 MS. ROSS: Okay.

1 THE COURT: I'm a little bit surprised, but, I mean,
2 I'm glad that they're doing that. I think that's a wise
3 decision, but I am surprised.

4 (WHEREUPON, the jury entered the courtroom at 4:30 p.m.)

5 THE COURT: All right. Ladies and gentlemen, I heard
6 that your decision is to come back fresh tomorrow morning.
7 And I have to tell you that not only do I appreciate that,
8 but the attorneys in this case appreciate that very much.
9 That lets us know not that there was a wrong decision
10 here, but that lets us know how seriously you're taking
11 your duty. And that is very important to us, everyone
12 here. So I'm going to let you go home for the evening.

13 As you know, we are not quite there yet, which means
14 to our alternates, that we're not quite there yet. And so
15 we've got to get through my charge on the law. So I'm
16 going to let you go for the evening. Just forget you're a
17 juror in this case. And then tomorrow we'll start off
18 with my charge on the law at 9:30, then the case will be
19 in your hands about 10:00.

20 You don't need to make lunch plans or anything like
21 that because if you are still deliberating, I want you to
22 rest assured, as I said, we're at your disposal, we'll
23 bring lunch in for you. We'll take care of whatever you
24 need, okay?

25 All right. Thank you so much. I hope you have a

1 good evening.

2 (WHEREUPON, the jury exits the courtroom at 4:32 p.m.)

3 THE COURT: All right. How about since we've got
4 another evening kind of surprisingly, how about I send
5 y'all the final charge on the law that I've got just to
6 see if y'all want to look over it one more time for any
7 comments or anything like that? Once again, I'll tell you
8 I'll probably be looking at it. I'll definitely be
9 monitoring my email tonight to see if you all want to
10 email anything to me or even tomorrow morning.

11 I thought y'all have tried a heck of a case. I mean,
12 really, a heck of a case. And I'll just say to the victim
13 in this case and the family of the victim, I don't think
14 you could have had a case more thoroughly tried. And I
15 say to the defendants in this case and to the family
16 members, same thing. You could not have had a case more
17 thoroughly or better tried. This is -- this is -- no
18 stone's been left unturned by any of these attorneys, and
19 it's really a pleasure to see them. And I'm actually
20 really glad my law clerk got to see such a well-tried case
21 from both sides, all three sides.

22 All right. To our folks who are coming in a little
23 bit late, the jury decided to wait and hear my charge on
24 the law tomorrow, so we'll pick up tomorrow morning at
25 9:30.

1 All right. Thank y'all.

2 (WHEREUPON, a recess is taken at 4:34 p.m., to be
3 reconvened Friday, November 8, 2019.)

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1 FRIDAY, NOVEMBER 8, 2019

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3 (WHEREUPON, proceedings commenced at 9:30 a.m.)

4 THE COURT: I assume y'all had an opportunity to look

5 at the charge.

6 MR. FRETWELL: No objections, Judge.

7 THE COURT: I saw no emails.

8 MS. ROSS: Yeah. And I missed that email. But I

9 just now looked at -- I did look at the charges and went

10 over it. My only issue is that the hand of one is sort of

11 the last thing they hear about. I wouldn't mind if it was

12 a little buried up in the first part. But that would just

13 be my only issue with that.

14 THE COURT: Yeah. Oh, well.

15 Yes, sir?

16 MR. CHAMBERS: Yeah. I didn't respond by email, but

17 that was just because I looked it over and it was fine

18 with me. No objection.

19 THE COURT: Good, good.

20 Is our jury here yet?

21 THE BAILIFF: Yes, ma'am.

22 THE COURT: Oh, okay. Let's bring them in.

23 (Pause in proceedings.)

24 THE COURT: All right. I've been insistent on folks

25 -- I've turned on my microphone, as you can tell, that

1 I've had off this whole time. I've been insistent that
2 folks not be talking in the gallery when other people are
3 talking. And if you think I've been insistent before, now
4 that I'm going to talk, I'm going to be real insistent.

5 If you don't think you can hold your emotions under
6 my charge on the law, again, please feel free to leave. I
7 probably could not. And so -- but other than that, it's
8 going to be about 25 minutes, so I anticipate ending about
9 10:00. So just be prepared that there can't be anybody
10 come or go out of the courtroom during that time, okay?

11 (WHEREUPON, the jury entered the courtroom at 9:35 a.m.)

12 THE COURT: Good morning, ladies and gentlemen. I
13 want to thank you all again for really thinking through
14 how you wanted to schedule this today. And we all, the
15 attorneys and I, both appreciate it very much as does
16 everyone involved in this case.

17 I want to start by telling you a couple of things.
18 First of all, I'm required by law to read to you
19 instructions, and you might have seen me speaking with my
20 law clerk, Mr. Maurides. He's a new lawyer, and he's been
21 here, we've been talking about the jury charge and getting
22 this ready for you throughout this trial. But I am
23 required to read these to you.

24 The attorneys, however, in this case have been
25 gracious enough to say that you can have a written copy of

1 this to help you in the jury deliberation room. So we're
2 going to give you a copy of that. That is not something
3 that is standard, but these attorneys really want you to
4 have this back there with you, both sides do.

5 Finally, I want to talk to you about something that I
6 want you just to have first and foremost in your mind, and
7 that is that each of these defendants stand on their own,
8 okay? In other words, you must consider each of these --
9 each of these defendants separately, completely
10 separately. Second -- and the State's theory of the case
11 has them together, but you must consider whether the State
12 has met their burden of proof as to each one, okay?

13 Second, they are each charged with two separate
14 charges. You must consider each of those charges
15 separately. Okay. And what we have done is made verdict
16 forms that have each of the defendants separately, so just
17 to remind you, you must consider them separately and have
18 each of the charges separately. And I think the verdict
19 forms are self-explanatory, Mr. Foreperson.

20 I just wanted to start with that, and I may end with
21 that as well because I want you to keep it foremost in
22 your mind.

23 CHARGE ON THE LAW

24 THE COURT: All right. Mr. Foreperson, ladies and
25 gentlemen of the jury, you have seen and heard the

1 evidence presented as well as the arguments of counsel.
2 It now becomes my duty and obligation to instruct you on
3 the applicable law in this case. It will then be your
4 duty and obligation to begin your deliberations through
5 which process you will decide the facts, apply the law as
6 instructed by the Court and determine whether the State
7 met its burden of proof.

8 It is your exclusive duty to determine the facts in
9 this case. You do that based on your own common sense
10 examination and evaluation of the testimony and other
11 evidence received during the trial of this case. You
12 12 jurors alone will decide what weight, value and effect
13 that is to be given to any particular testimony or other
14 evidence received. Your ultimate goal is to determine
15 whether the State has met its burden of proof in this
16 case, and in doing so, you will have fulfilled your
17 obligation to determine whether the State has met its
18 burden of proof beyond a reasonable doubt.

19 In this case, the State of South Carolina, through
20 the circuit solicitor, has charged each of the defendants
21 with the criminal offenses known as murder and attempted
22 murder. The allegations charging the defendant in these
23 crimes are set forth in the indictments that have been
24 previously explained to you. The indictments are not
25 evidence in this case and may not be considered by you as

1 evidence against the defendants in any way.

2 As to each of the charges set forth in the
3 indictments, the defendants have entered a plea of not
4 guilty. That plea of not guilty has therefore placed upon
5 the State the burden of proving the allegations that are
6 set forth in the indictments, the burden of proving each
7 of the essential elements of any crimes charged, and
8 therefore, the burden of proving the guilt of the
9 defendants to the satisfaction of you 12 jurors beyond a
10 reasonable doubt before a verdict of guilty could be
11 returned as to any indictment.

12 The burden is never upon a defendant to prove that he
13 is not guilty or to prove that he is innocent because, in
14 some cases, that might not be possible. The burden is
15 always upon the State, because they have made the
16 allegations, to prove that the defendant is guilty beyond
17 a reasonable doubt.

18 You are further instructed that it is a vital,
19 important and cardinal rule of law that every defendant in
20 a criminal trial, no matter how serious the offense might
21 be for which he stands charged, shall always be presumed
22 innocent of that charge. And that presumption of
23 innocence shall be with the defendant from the moment of
24 his arrest and throughout the course of the criminal
25 process and even throughout the course of the actual

1 trial. The presumption of innocence shall be with the
2 defendant even as you go into the jury deliberation room
3 to begin your deliberations, and that presumption of
4 innocence shall be with him there and be with him forever
5 unless you 12 jurors determine that he is no longer
6 entitled to that presumption of innocence. It is only if,
7 unless and until you are satisfied of the defendant's
8 guilt beyond a reasonable doubt that he would no longer be
9 entitled to that presumption of innocence.

10 I remind you that during this trial, you and I have
11 certain duties to perform. As the trial judge, it is my
12 responsibility to preside over the trial of this case, and
13 I also have the duty to rule on the admissibility of the
14 evidence offered during this trial. You are to consider
15 only the competent evidence before you. If there was any
16 testimony ordered stricken from the record in this case,
17 you must disregard that testimony. You are to consider
18 only the testimony which has been presented from this
19 witness stand, the exhibits which have been made a part of
20 the record in this case, and any stipulations of counsel.

21 I have the additional duty to charge you the law
22 applicable to this case. As the presiding judge, I am the
23 sole judge of the law of this case, and it is your duty as
24 jurors to accept and apply the law as I now state it to
25 you. If you already have any idea as to what the law is

1 or what the law ought to be and it does not agree with
2 what I now tell you the law is, you must abandon this idea
3 because you are sworn to accept the law and apply the law
4 exactly as I state it to you.

5 In every case tried in this court before a jury, the
6 jury becomes the sole and exclusive judge of the facts in
7 the case. A trial judge cannot intimate, state, comment
8 on or make any statement whatsoever to a trial jury about
9 the facts in a case. Since you the jury are the sole
10 judge of the facts in this case, you are not to infer from
11 what I have said during the progress of this trial in
12 ruling on the admissibility of evidence or otherwise or
13 anything I say to you now, during the course of this
14 instruction, that I have any opinion about the facts in
15 this case. I do not. The law does not allow me to have
16 an opinion about the facts in this case. This is a matter
17 solely for you the jury to determine. As jurors it's your
18 duty to determine the effect, value, weight and truth of
19 the evidence presented during this trial.

20 The State has the burden of proving the defendants
21 guilty beyond a reasonable doubt. Some of you may have
22 served as jurors in civil cases where you were told that
23 it is only necessary to prove that a fact is more likely
24 true than not true, such as by the greater weight or
25 preponderance of the evidence. In criminal cases, the

1 State's proof must be more powerful than that. It must be
2 beyond a reasonable doubt.

3 Reasonable doubt is the kind of doubt that would make
4 a reasonable person hesitate to act. Proof beyond a
5 reasonable doubt is proof that leaves you firmly convinced
6 of the defendant's guilt. There are very few things that
7 we know in this world with absolute certainty, and in
8 criminal cases, the law does not require proof beyond
9 every possible doubt.

10 If, based on your consideration of the evidence, you
11 are firmly convinced the defendant is guilty of the crimes
12 charged, you must find the defendant guilty. If, on the
13 other hand, you think there is a real possibility that the
14 defendant is not guilty, you must give the defendant the
15 benefit of the doubt and find him not guilty.

16 Facts and circumstances that merely place upon a
17 defendant a grave suspicion of the crime charged or that
18 merely raise a speculation or conjecture of the
19 defendant's guilt are not sufficient to authorize a
20 conviction of the accused.

21 There are two types of evidence which are generally
22 presented during a trial: direct evidence and
23 circumstantial evidence. Direct evidence is testimony of
24 a person who claims to have actual knowledge of a fact
25 such as an eyewitness. It is evidence which immediately

1 establishes the main fact to be proved.

2 Circumstantial evidence is proof of a chain of facts
3 and circumstances indicating the existence of a fact. It
4 is evidence which immediately establishes collateral facts
5 from which the main fact may be inferred. Circumstantial
6 evidence is based on inference and not on personal
7 knowledge or observation.

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

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

17 Necessarily, you must determine the credibility of
18 witnesses who have testified in this case. Credibility
19 simply means believability. It becomes your duty as
20 jurors to analyze and to evaluate the evidence and
21 determine if the State has met its burden of proof in this
22 case. In determining the believability of witnesses who
23 have testified in this case, you may believe one witness
24 over several witnesses or several witnesses over one
25 witness. You may believe a part of the testimony of a

1 witness and reject the remaining part of the testimony of
2 that same witness. You may believe the testimony of a
3 witness in its entirety or reject the testimony of a
4 witness in its entirety. You may consider whether any
5 witness has exhibited to you any interest, bias, prejudice
6 or other motive in this case. You may also consider the
7 appearance and manner of a witness while on the witness
8 stand.

9 The rules of evidence ordinarily do not permit
10 witnesses to testify to opinions or conclusions. An
11 exception to this rule exists for witnesses we call expert
12 witnesses. A witness who, by education and experience,
13 has become an expert in some art, science, profession or
14 calling, may state an opinion as to relevant and material
15 matter in which the witness claims to be an expert and may
16 also state the reasons for that opinion.

17 You should consider any expert opinion received in
18 evidence in this case, and like any other evidence, give
19 it the weight you think it deserves. If you decide that
20 an opinion of an expert witness is not based on sufficient
21 education and experience, or if you conclude that the
22 reasons given in support of the opinion are not sound, or
23 that the opinion is outweighed by other evidence, you may
24 disregard that opinion entirely. An expert witness's
25 testimony is to be given no greater weight than that of

1 other witnesses simply because the witness is an expert.
2 Further, you are not required to accept an expert's
3 opinion even though it is uncontradicted.

4 An issue in this case is the identification of the
5 defendants as the persons who committed the crimes
6 charged. The State has the burden of proving identity
7 beyond a reasonable doubt. You must be satisfied beyond a
8 reasonable doubt of the accuracy of the identification of
9 the defendants before you may convict the defendants.

10 Identification testimony is an expression of belief
11 or impression by a witness. You must determine the
12 accuracy of the identification of the defendants. You
13 must consider the believability of each identification
14 witness in the same way as any other witness. You may
15 consider whether the witness had an adequate opportunity
16 to observe the offender at the time of the offense. This
17 will be affected by things like how long or short a time
18 was available, how far or close the witness was, the
19 lighting conditions and whether the witness had a chance
20 to see or know the person in the past.

21 Once again, I instruct you that the burden of proof
22 on the State extends to every element of the crime
23 charged, and this specifically includes the burden of
24 proving beyond a reasonable doubt the identity of a
25 defendant as the person who committed the crime. If,

1 after examining the testimony, you have a reasonable doubt
2 as to the accuracy of the identification, you must find
3 the defendant not guilty.

4 Let's take a second and just all stand up for just
5 one minute. A morning charge is a difficult thing and I'm
6 afraid I'm going to lose a couple of you if we don't just
7 take a little stretch, okay?

8 All right. Let's start back.

9 Statements alleged to have been made by the
10 defendants have been admitted into evidence in this case.
11 While the court has determined that the statements are
12 admissible, I instruct you that you make the ultimate
13 decision of whether or not the defendants made the
14 statements. If a defendant did make the statements, you
15 must determine whether the statements were made by the
16 defendant voluntarily and of his own free will. This
17 means that the statements were not caused by pressure,
18 force, fear, threats, coercion or intimidation or by hope
19 or a promise of leniency or a reward of any kind.

20 In determining whether the statement was voluntary,
21 you should consider both the characteristics of the
22 defendant and the details of the questioning. Some of the
23 factors that you must consider are, one, the age of the
24 defendant; two, the defendant's education or lack of
25 education; three, the defendant's mental ability or

1 capacity; four, the defendant's IQ or intelligence; five,
2 the defendant's background and environment; six, the place
3 and length of detention; seven, the nature of the
4 questioning; and eight, the advice or lack thereof of the
5 defendant of his constitutional rights including but not
6 limited to the right to remain silent, that any statement
7 could be used against him in a court of law, the right to
8 have a lawyer present, that if he could not afford a
9 lawyer, a lawyer would be appointed to represent him
10 without any cost, and that he should stop making a
11 statement any time -- that he could stop making a
12 statement at any time. I apologize.

13 You must carefully consider all of the surrounding
14 circumstances before you give any weight to an alleged
15 statement. The State has the burden of proving beyond a
16 reasonable doubt that the alleged statements were
17 voluntary. If you determine it was, you may give the
18 statements any further consideration that you deem proper.
19 You must decide what weight, if any, should be given to
20 the alleged statements. If you determine the alleged
21 statements were not the free and voluntary statements of
22 the defendants, you should not consider them at all.

23 I instruct you and emphasize that the fact the
24 defendants did not testify is not a factor to be
25 considered by you in any way in your deliberation and may

1 not be considered in any way as to your consideration on
2 the question of the guilt or innocence of the defendants.
3 It must not be considered by you in any manner whatsoever.
4 A defendant has the constitutional right to remain silent,
5 and the assertion of this right must not be considered by
6 you in your deliberations. I repeat, under your juror
7 oath, you are to draw no conclusion whatsoever from the
8 fact that the defendants in this case did not testify.
9 The fact that the defendants did not testify should not
10 even be discussed in the jury room.

11 The burden of proof, as I have stated to you, is on
12 the State. The defendants are not required to prove their
13 innocence. The burden of proof remains on the State to
14 prove guilt beyond a reasonable doubt.

15 In order to establish criminal liability, the State
16 must also prove criminal intent. For a particular crime,
17 the mental state required might be purpose, intent,
18 knowledge, recklessness or criminal negligence.

19 The State must prove criminal intent beyond a
20 reasonable doubt. Criminal intent is a matter that must
21 be determined by the jury from the facts of the case.
22 There is no way to prove criminal intent to a mathematical
23 certainty, so the law says that criminal intent may be
24 inferred from the circumstances shown to have existed.
25 This is how you determine whether or not the element

1 requiring intent was present.

2 It is not necessary to establish intent by direct
3 evidence. Intent may be established by circumstantial
4 evidence or by taking into consideration the acts of the
5 parties and all the facts and circumstances of the case.

6 Criminal intent is a conscious state of wrongdoing.
7 It is up to you to determine what the defendant intended
8 to do based on the circumstances shown to have existed in
9 this case.

10 The defendants are separately charged with murder.
11 The State must prove beyond a reasonable doubt the
12 defendants killed another person with malice aforethought.

13 Malice is hatred, ill will or hostility towards
14 another person. It is the intentional doing of a wrongful
15 act without just cause or excuse with an intent to inflict
16 an injury or under circumstances that the law will infer
17 an evil intent.

18 Malice aforethought does not require that malice
19 exists for any particular time before the act is
20 committed, but malice must exist in the mind of the
21 defendant just before and at the time the act is
22 committed; therefore, there must be a combination of the
23 previous evil intent and the act.

24 Malice aforethought may be express or inferred.
25 These terms express or inferred do not mean different

1 kinds of malice but merely the manner in which malice may
2 be shown to exist. That is either by direct evidence or
3 by inference from the facts and circumstances which are
4 proved.

5 Express malice is shown when a person speaks words
6 which express hatred or ill will for another or when the
7 person prepared beforehand to do the act which was later
8 accomplished, for example, lying in wait for a person or
9 any other acts of preparation going to show that the deed
10 was within the defendant's mind would be express malice.

11 The defendants are separately charged with attempted
12 murder. Attempted murder is the performance of an act or
13 acts which tend but fail to kill a human being. In order
14 to prove this crime, the State must prove the defendant
15 had the specific intent to kill or did attempt to kill
16 another person with malice aforethought.

17 Malice is the deliberate intention unlawfully to kill
18 a human. Malice, once again, is hatred, ill will or
19 hostility towards another person. It is the intentional
20 doing of a wrongful act without just cause or excuse with
21 an intent to inflict an injury.

22 Malice aforethought, once again, does not require
23 that malice exists for any particular time before the act
24 is committed, but malice must exist in the mind of the
25 defendant just before and at the time the act is

1 committed; therefore, there must be a combination of the
2 previous evil intent and the act.

3 If the defendant, with malice aforethought, attempts
4 to kill another person but by mistake injures or kills a
5 different person, the defendant still has the intent to
6 kill. The intent to kill is merely transferred from the
7 original person the defendant attempted to kill to the
8 actual person killed or injured.

9 If a crime is committed by two or more people who are
10 acting together in committing a crime, the act of one is
11 the act of all. A person who joins with another to commit
12 an unlawful act is criminally responsible for everything
13 done by the other person which happens as a probable or
14 natural consequence of the acts done in carrying out the
15 common plan and purpose. If two or more people are
16 together, acting together, assisting each other in
17 committing the offense, the act of one is the act of all,
18 or as it is sometimes said, the hand of one is the hand of
19 all.

20 Prior knowledge that a crime is going to be committed
21 without more is not sufficient to make a person guilty of
22 that crime. Mere knowledge that another person is going
23 to commit a crime, even if the defendant is present when
24 the crime is committed, is not sufficient to convict the
25 defendant as a principal. Guilt as a principal is shown

1 by actual or constructive presence at the scene as a
2 result of a prior arrangement; therefore, a finding of a
3 prior arranged plan or common scheme is necessary for
4 finding of guilt as a principal. The State must prove
5 beyond a reasonable doubt by competent evidence the theory
6 of the hand of one is the hand of all.

7 A principal in a crime is one who either actually
8 commits the crime or who is present aiding, abetting or
9 assisting in committing the crime. When a person does an
10 act in the presence of and with the assistance of another,
11 the act is done by both.

12 Where two or more acting with a common plan or intent
13 are present at the commission of a crime, it does not
14 matter who actually commits the crime. All are guilty.
15 The hand of one is the hand of all.

16 Present at the commission of a crime means to be
17 sufficiently near to aid and abet and assist in the
18 commission of the crime; however, mere presence at the
19 scene of a crime is not sufficient to convict one as a
20 principal on the theory of aiding and abetting.

21 Intent is also a necessary element where there must
22 have been a common design or intent to commit the crime
23 and the crime must have been committed pursuant thereto
24 with the persons aiding and abetting by some overt act.

25 Intent means intending the result which actually

1 occurs, not accidentally or involuntarily. Intent may be
2 shown by acts and conduct of the defendant and other
3 circumstances from which you may naturally and reasonably
4 infer intent. The State must prove these elements beyond
5 a reasonable doubt.

6 As I told you earlier, I will give you a copy of
7 these instructions in written form. During your
8 deliberations, you may refer to the instructions to guide
9 your decision-making. You must consider the instructions
10 as a whole and not follow some and ignore others. Please
11 return the instructions to the Court at the time your
12 verdict is rendered.

13 Ladies and gentlemen, your verdict must be a
14 unanimous one -- or they must be unanimous ones, I will
15 say. Mr. Foreperson, when the jury agrees on the
16 verdicts, you will write the verdict on the verdict forms
17 and sign your name as the foreperson and date it, then
18 activate the light outside of your jury deliberation room
19 to signal to the bailiff that you have reached your
20 verdicts. At that time, we will receive you back into the
21 courtroom.

22 I now ask that you go to your jury room but do not
23 begin deliberations until you're told by the bailiff to do
24 so. There are some very short matters that I need to take
25 up with the attorneys before you begin your deliberations.

1 It will be your signal to begin deliberating when the
2 bailiff tells you to do so when you receive all the
3 evidence in this case, when you receive the verdict forms
4 and my instructions on the law.

5 Thank you so much.

6 (WHEREUPON, the jury exits the courtroom at 10:00 a.m.)

7 THE COURT: Any objections to my charge on the law
8 from the State?

9 MR. FRETWELL: No, Your Honor.

10 THE COURT: Any from the defense?

11 MS. ROSS: Just subject to my prior request.

12 THE COURT: Very well.

13 And Mr. Chambers?

14 MR. CHAMBERS: I don't have an objection, Your Honor,
15 but somewhat concerned that we have two verdict forms with
16 two separate charges on each, and I don't know if maybe
17 you feel like it would be appropriate to give them some
18 further instruction on how to go about marking the verdict
19 forms.

20 THE COURT: Do you want to take a look at these
21 verdict forms. And let's see what you think.

22 MR. CHAMBERS: Okay. Yeah. That seems pretty clear.
23 I think we're okay.

24 THE COURT: Okay. If anybody else wants to look at
25 them, you're welcome to. They -- and, of course, the

1 indictments are sitting right here. They're not going
2 back.

3 Okay. As long as everybody's good with that, are all
4 the exhibits together? Do y'all want to take a look at
5 them to see, make sure that they're all there and just
6 make sure there's not any in there that shouldn't be?

7 MR. FRETWELL: Be happy to, Judge.

8 THE COURT: Okay. All right. If y'all want to do
9 that, then I'll give you these. And once those are ready
10 to go back, then we'll be in recess pending a verdict.

11 (WHEREUPON, a recess is taken at 10:10 a.m., and the jury
12 starts deliberations.)

13 THE COURT: Ladies and gentlemen, it's my
14 understanding that the jury has reached a verdict. I want
15 to begin by saying, and I say this in every case, I want
16 to begin by saying there's going to be people who will
17 like the outcome and people who don't like the outcome.
18 That's the nature of a trial. That's it. But this jury
19 didn't ask to be involved in this. They got told they had
20 to be involved in this. They don't deserve any kind of
21 outburst, any kind of comments or anything like that. And
22 to that end, I want to be very, very clear. You can look
23 around. We've got a number of deputies in here. We've
24 got a number of deputies outside. And I have a red button
25 right here that if I were to ever hit that button, we

1 would be literally inundated from people from the
2 sheriff's office.

3 So I say all that to say if anybody feels like
4 they're going to not be able to hold their emotions, and
5 as I have said repeatedly throughout this, if it were my
6 loved one, I don't know that I could on either side. If
7 you feel like you can't hold your emotions, now is the
8 time to go, okay? If there's an outburst or there's
9 anything like that, I've instructed these deputies, you're
10 going to be taken into custody, and my contempt powers
11 without a trial, without anything are six months, just six
12 months just like that. So I need for everybody to
13 understand that.

14 Now, I understand it's an emotional day and I get
15 that. I really do. But I just need you to know that
16 we're going to have to all control our emotions.

17 All right. As long as everybody understands that,
18 then we're going to go ahead and bring the jury back in.

19 (WHEREUPON, the jury entered the courtroom at 2:07 p.m.)

20 THE COURT: Ladies and gentlemen, it's my
21 understanding that you've reached a verdict; is that
22 correct, Mr. Foreperson?

23 JURY FOREPERSON: Yes, ma'am, we have.

24 THE COURT: Will you please give the verdict forms to
25 the bailiff. Thank you so much.

1 The verdict forms appear to be in order. And I'll
2 ask Madam Clerk to please publish them.

3 VERDICT

4 THE CLERK: In the case of the State of South
5 Carolina vs. Shyheem Hassan Rice, Indictment Number
6 2017-GS-23-7934, as to the charge of murder, we the jury
7 unanimously find the defendant not guilty. As to the
8 charge of attempted murder, we the jury unanimously find
9 the defendant not guilty. Signed, jury foreperson.

10 The State of South Carolina versus Anthony Kwame
11 Mays, Indictment Number 2017-GS-23-7936, as to the charge
12 of murder, we the jury unanimously find the defendant
13 guilty of murder. As to the charge of attempted murder,
14 we the jury unanimously find the defendant guilty of
15 attempted murder. Signed, jury foreperson.

16 Ladies and gentlemen of the jury, if you agree that
17 this is the verdict you reached in your deliberation room,
18 please raise your right hand.

19 (WHEREUPON, all jurors raised their right hands.)

20 THE CLERK: Thank you.

21 THE COURT: Ladies and gentlemen, I speak for all the
22 attorneys involved in this matter. We thank you so much
23 for your service.

24 Mr. Fretwell, anything from the State before I
25 release the jury?

1 MR. FRETWELL: No, ma'am.

2 THE COURT: Anything, Ms. Ross, before I release the
3 jury?

4 MS. ROSS: No, ma'am.

5 THE COURT: Mr. Chambers, anything before I release
6 the jury?

7 MR. CHAMBERS: No, Your Honor.

8 THE COURT: All right. Thank you so much.

9 Ladies and gentlemen, if you'll step to your jury
10 deliberation room, I just want to say a brief goodbye to
11 you before you leave for the week. Thank you.

12 (WHEREUPON, the jury exits the courtroom at 2:10 p.m.)

13 THE COURT: I understand. I understand, certainly.

14 All right. Mr. Rice, as you -- I don't know if you
15 have any other charges pending. I don't know if you have
16 any other charges pending. But as to these charges, I'm
17 sure you understand the jury has found you not guilty and
18 therefore you will be released on these charges. All
19 right. And then we'll turn to sentencing of Mr. Mays in
20 just a few minutes. All right. Thank you.

21 And I want to thank everybody for how you handled
22 yourself during this. Thank you.

23 (Pause in proceedings.)

24 THE COURT: All right. We can move to sentencing.
25 I will tell you that the jury -- you know, if it's

1 any consolation to anybody, they struggled. They
2 struggled, and they were -- they took their duty very,
3 very, seriously. They also were very complimentary of the
4 lawyers involved in this case. And they understood the
5 duty that they were called to do, and it weighed on them.
6 So they were pretty amazing people.

7 All right. We can now move to sentencing in this
8 case. Mr. Chambers, you and your client like to come
9 forward?

10 MR. CHAMBERS: And, Your Honor, just for the record,
11 before we proceed, I would make a motion under the rules
12 for a new trial and judgment notwithstanding the verdict.

13 THE COURT: Well, I appreciate your motion, and it's
14 respectfully denied. But it's certainly preserved for the
15 record.

16 SENTENCING

17 THE COURT: Mr. Fretwell, is there anything else from
18 the State? Of course, I've heard the facts in great
19 detail and I've also heard Mr. Mays's record previously.

20 MR. FRETWELL: Judge, the only thing that we have is
21 the input from the victims.

22 THE COURT: Yes.

23 MR. FRETWELL: Your Honor, first, you're going to
24 hear from Aziza Aiken, who is Jaikario Poole's mother.

25 THE COURT: Yes, ma'am?

1 MS. AIKEN: I'm Aziza Aiken, Jay's mom, Jaikario
2 Poole.

3 I don't even know what I'm going to say just yet. I
4 address you, right?

5 THE COURT: Yes, ma'am.

6 MS. AIKEN: Okay. I just ask that you sentence him
7 to the maximum that you can. For one, he -- I think he
8 has kids and he cared nothing about the people in the car.
9 And I think two and a half years ago I prayed that he
10 didn't find peace, and I meant that, because he took away
11 a life.

12 And I don't want no ill-will to the family, because
13 Lord knows when we raise our kids, we raise our kids. I
14 have no ill will towards him. But as far as him, and I
15 probably will eventually pray for peace for him, but as
16 far as right now, he shot him for no reason. He just got
17 out of the car and he just started shooting. He didn't
18 care who was in the car. He didn't know who was in the
19 car. He just got out. He shot Zay. Zay was so quiet,
20 getting his life together. He was mannerful, he was -- he
21 was staying with us. He was the best that he could be as
22 far as a son. We came to know him as a son.

23 My son got off. He was happy to see Zay. They went
24 out. It's just -- it was a beautiful day. We had
25 breakfast that morning. We were just laughing and stuff,

1 and then two hours later, they're gone.

2 I got the call my son was dead, but it was actually
3 Zay. So when I found out my son was alive, I knew he was
4 gone. And I was so sad about that because now his mom's
5 got to grieve.

6 But I just really ask you to please sentence him to
7 the maximum that you can because he hasn't done nothing to
8 reach out. I don't know if he's reached out to them or a
9 letter or something or anything: I'm sorry, I'm sorry for
10 the life that I took. So I feel he doesn't care.

11 THE COURT: And I will say this much, ma'am. The
12 only thing I'll say about that is, you know, he's got one
13 of the best lawyers in South Carolina, and I know his
14 lawyer would not have allowed him to do that. I just will
15 say that one little small explanation. I know his lawyer
16 would not have allowed him to do that.

17 MS. AIKEN: Yes, ma'am. He did have a good lawyer.

18 THE COURT: I understand what you're saying, though.

19 MS. AIKEN: But I'm just asking for justice for Zay
20 and for my son as well that he doesn't get to do this to
21 anyone else.

22 THE COURT: Yes, ma'am. Absolutely.

23 MS. AIKEN: Thank you.

24 THE COURT: Thank you.

25 MR. FRETWELL: Judge, just so you know, before

1 Ms. Cook speaks, I wanted you to know that Mr. Poole
2 wanted to be here, and he just physically couldn't be
3 here.

4 THE COURT: Okay. That's understandable.

5 MR. FRETWELL: Yes, ma'am.

6 Ms. Cook? This is Tamika Cook, Azaveon Cook's
7 mother.

8 MS. COOK: My name is Tamika Cook.

9 THE COURT: Yes, ma'am.

10 MS. COOK: I'm Azaveon Cook's mother.

11 I first want to thank the Court. I want to thank the
12 solicitor's office. Great job.

13 No matter what happens today, my child is not coming
14 back. I have a graveyard that I visit. I used to visit
15 this graveyard every day trying to figure out what did my
16 son do wrong. Why was his life cut short? Who gave this
17 guy this opportunity to even think that it's okay for him
18 to be God? So every day that he has sat in that
19 Greenville County Detention Center and when he went down
20 the road, I prayed that my son, I prayed that my son would
21 reveal himself to him, and he would show him you are a
22 monster. You should never be able to get to society.

23 So I pray today, Your Honor, that you do life for
24 life. He took my child's life. I will never see my baby
25 again. Never. I will never hear Azaveon's voice. I will

1 never hear him say, "Mama, I love you. Mama, cook me some
2 chicken Alfredo. Mama, I'm trying to be who I need to be,
3 mama."

4 He don't have no kids. I don't have nobody to look
5 at to see my son no more. These children are just giving
6 their lives away, just for whatever it is that they're
7 trying to be, which is nothing. My son was trying to be
8 somebody. He was just at the wrong place at the wrong
9 time.

10 And I ask today that you -- you sentence this man.
11 And I don't care what day, what hour it may be, I will be
12 here. I don't care if he ever go up for parole. I'll be
13 here. Because I want to make sure that I represent my son
14 Azaveon to the fullest, because my baby did not deserve to
15 die. Not the way he was shot. No. He didn't deserve
16 that. Azaveon was a good dude, well mannered. You can't
17 control what your kids do when they're not around you, but
18 my baby was not like that.

19 And his mama can go and see him. His mama can hear
20 his voice. But I'll never see my child again. I'll never
21 hear his voice again. All I do is record -- I listen to
22 the recordings. I see pictures. And I ask if you've got
23 children, Your Honor, that you think about that family.

24 THE COURT: I do.

25 MS. COOK: I cry so many tears, I can't cry no more.

1 I've went to that graveyard so many times, I can't go no
2 more. I ask God to keep me every day. Every day, God,
3 every day. Every day, oh, God, every day. Oh, Jesus,
4 every day I ask him to keep me.

5 Your Honor, please, I beg you, I beg you, I beg you,
6 please don't ever give this man freedom again.

7 THE COURT: Ma'am, before you sit down, if I could
8 just say to you, I am a mother, and I can't possibly -- I
9 don't even know that I can let my mind even go to try and
10 feel the grief you feel. And I cannot tell you how sorry
11 I am. I've never had a case like this, frankly. I've
12 been doing this I think nine or so years. I've never had
13 a case where just literally the wrong person just in the
14 wrong place at the wrong moment doing nothing wrong was
15 killed in this way. And I can't imagine what you are
16 going through. But I know I don't have to thank you for
17 doing this, but thank you for being here on behalf of your
18 son. I know you're always going to do that.

19 MS. COOK: Thank you.

20 THE COURT: Thank you.

21 Mr. Fretwell, anything else on behalf of the State?

22 MR. FRETWELL: No, Your Honor.

23 THE COURT: All right. Mr. Chambers?

24 MR. CHAMBERS: You know, Your Honor, this is one of
25 those situations where I really -- I don't know that

1 there's anything that I can say or do that would have any
2 impact really as far as sentencing goes. I mean, as I
3 said when I stood up to do my closing argument, much like
4 you, you have children, I'm a father of four. I certainly
5 understand the grief and the way that Ms. Cook feels and
6 the way that Mr. Poole's mother feels. I understand those
7 things.

8 And as I said, and I was sincere about it, neither
9 one of these young men did anything in the world wrong.
10 They didn't do anything to deserve what happened to them.

11 The one thing I know, though, and I've spent a good
12 bit of time with my client over the last couple of years
13 we worked together on this case, put everything that I
14 have into it, you know, he has a child that he cares
15 about, you know. He has a life. He has a family. And he
16 has always, from day one, expressed to me that he was
17 innocent.

18 I believe, as you heard as we presented, that there
19 was reasonable doubt. Certainly, believe that Marcus
20 Foster, who apparently did not get charged, who did not
21 have to go forward on a murder charge, was involved in
22 this. In fact, our belief was that he was the shooter
23 based on the evidence that the solicitor submitted. And I
24 know none of that has any impact on sentence because the
25 jury has spoken. That's been our situation all along.

1 And we knew going into this that if he's found guilty,
2 he's going to get a substantial sentence.

3 I don't know if Anthony, at this point, is even
4 prepared to say anything. But is there anything you'd
5 like to say?

6 DEFENDANT MAYS: Yes, I would.

7 THE COURT: Yes, sir.

8 DEFENDANT MAYS: Well, first of all, I want to thank
9 just everybody for doing their jobs. I just want to thank
10 everybody for doing their jobs. Y'all did a great job of
11 everything y'all did.

12 To the family, I do apologize for the loss of their
13 son and the hurt of the other, but just on my behalf, and
14 I'm mad at myself because I didn't explain myself when I
15 had the opportunity to talk to the investigator to tell my
16 side of the story, and I just had another opportunity and
17 I downed that one too because I thought it was going to
18 get proven that I was innocent. Still to this moment I am
19 innocent. But, you know, that's neither here nor there at
20 this point in time. But like I said to the family, I do
21 want to apologize to their family, though. Sorry.

22 THE COURT: Well, Mr. Mays, it's hard to square the
23 person that stands in front of me with the person who
24 stood in front of that car that day with a gun. I can't
25 imagine what led you to do that. As I believe Mr. Poole's

1 mother said, I can't imagine what led you to the point
2 where you thought you could play God. The grief you've
3 caused is just unimaginable, and I think they could have
4 borne it maybe just a little bit better if those two young
5 men had done anything, anything to have deserved it other
6 than coming to visit. I think they could have borne it if
7 they hadn't been men full of hope and promise and lives
8 ahead of them.

9 I know your mother sat here throughout this trial,
10 and she seems like a kind and good woman who supported you
11 and loved you throughout that trial. And it's not lost on
12 me that there are three women -- well, one woman who's
13 living with a son who is going to be forever changed by
14 this and two women who are losing their son -- one who's
15 lost her son for forever and another who knows that she's
16 going to lose her son for a very long time. But what you
17 did on that day was so callous, so cold.

18 In light of all the circumstances -- and the other
19 thing, Mr. Mays, is, you know, Mr. Rice, it was hard to
20 think that he was -- I don't know if he was involved or
21 not, but it was hard to think with his record that he had
22 jumped to something like this. But you come in here with
23 a bad record, even at the age of 29 a bad record.

24 Ma'am, I just want to tell you, his mother, I'm going
25 to give him a very substantial sentence. I'm not going to

1 give him life. And the reason is for him to possibly have
2 some hope. He'll serve day for day of this sentence,
3 meaning every day that I give him is what he'll serve.
4 And by my calculations, he'll be an old man when he's
5 released. He'll be an old man. But I just wanted to
6 explain myself to you before I pass sentence.

7 Sentence of the Court is 40 years on murder and
8 30 years on attempted murder.

9 And to the families, I wish you the best of luck, and
10 you're in my prayers. Thank you.

11 (WHEREUPON, Court's Exhibit Number 2 was marked for
12 identification; proceedings concluded at 2:35 p.m.)

WITNESSES
Randle Evett
Greenville County Sheriffs Office

4/3/2017

ARREST WARRANT NUMBER
Count One - 2017A2330203162
Count Two - 2017A2330203163
Count Three - DIRECT PRESENTMENT A
Count Four - DIRECT PRESENTMENT B

ACTION OF GRAND JURY
TRUE BILL
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-23-
AOF 007936, A, B
The State of South Carolina
County of Greenville

COURT OF GENERAL SESSIONS
September TERM 2017

THE STATE
vs.
ANTHONY KWAME MAYS

Indictment for
0116 / 3410 / 3431 / 3432
MURDER / ATTEMPTED MURDER / ASSAULT
AND BATTERY BY MOB 1ST DEGREE /
ASSAULT AND BATTERY BY MOB 2ND DEGREE
VIOLATION § 16-03-0010 / § 16-03-0029
§ 16-03-0210 / § 16-03-0210

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SC Court of Appeals

A Certified Copy
Paul B. W. O.
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 10/18/19

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
**MURDER / ATTEMPTED MURDER / ASSAULT AND
 BATTERY BY MOB 1ST DEGREE / ASSAULT AND
 BATTERY BY MOB 2ND DEGREE**

At a Court of General Sessions, convened on

SEP 26 2017

the Grand Jurors of Greenville

County present upon their oath:

COUNT ONE

MURDER

That ANTHONY KWAME MAYS did in Greenville County, on or about the 2nd day of April, 2017, unlawfully and with malice aforethought kill AZAVEON COOK by means of shooting him with a handgun, causing him to die as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

ATTEMPTED MURDER

That ANTHONY KWAME MAYS did in Greenville County, on or about the 2nd day of April 2017, unlawfully, with malice aforethought and with the intent to kill, attempt to kill JAIKARIO POOLE. This is in violation of § 16-3-29 of the South Carolina Code of Laws (1976) as amended.

COUNT THREE

ASSAULT AND BATTERY BY MOB 1ST DEGREE

That ANTHONY KWAME MAYS did in Greenville County on or about the 2nd day of April, 2017, willfully and unlawfully participate as part of a mob who inflicted an act of violence upon AZAVEON COOK resulting in his death. This is in violation of §16-03-0210 of the South Carolina Code of Laws (1976) as amended.

COUNT FOUR

ASSAULT AND BATTERY BY MOB 2ND DEGREE

That ANTHONY KWAME MAYS did in Greenville County on or about the 2nd day of April, 2017, willfully and unlawfully participate as part of a mob who inflicted an act of violence upon JAIKARIO POOLE resulting in serious bodily injury. This is in violation of §16-03-0210 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR


 BAR # 17016

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS ≤ 30 yr

COUNTY OF Greenville
 STATE VS.
Anthony Kwame Mays

AKA: _____
 Race: BLACK Sex: M Age: 29
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Attempted Murder

INDICTMENT/CASE#: 2017GS2307936A/W#: 2017A2330203163Date of Offense: 4/2/2017S.C. Code § 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 17016 65302
Fretwell, Allen SC Bar# Defendant CHAMBERS, RANDALL SC Bar#
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 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 SCDOC.
☐ The Defendant is to be placed on the 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 (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 _____

Recipient: _____

*Fine:	\$	
§14-1-206 (Assessments 107.5 %)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

TOTAL \$ 129.75

Clerk of Court/ Deputy Clerk Paul B. Wickensmire
 Court Reporter: C. Smith

SCCA/217 (04/2018)

Obtain GED ☐
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 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: _____

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☐ Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk of Appeals
 during probation and shall be collected before
 any other fees.

Presiding Judge [Signature]
 Judge Code: 2162
 Sentence Date: 11-8-19

STATE OF SOUTH CAROLINA

149910

IN THE COURT OF GENERAL SESSIONS

307-LIFE

COUNTY OF Greenville
 STATE VS.
Anthony Kwame Mays
 AKA:
 Race: BLACK Sex: M Age: 29
 DOB: SS#
 Address:
 City, State, Zip:
 DL#: SID#
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder

INDICTMENT/CASE#: 2017GS2307936
 A/W#: 2017A2330203162
 Date of Offense: 4/2/2017
 S.C. Code § 16-03-0010, 0020
 CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Fretwell, Allen 17016 SC Bar# Defendant CHAMBERS, RANDALL 65302 SC Bar#
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 40 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 SCDoc.

☐ The Defendant is to be placed on the 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 (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

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5 %)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§56-5-2995 (DUI Assessment)	\$12 \$
§56-1-286 (DUI Breath Test)	\$25 \$
Proviso (Public Def/Probation)	\$500 \$
§14-1-212 (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150 \$
§50-21-114(BUI Breath Test Fee)	\$50 \$
§56-5-2942(I) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$ <u>3.75</u>

TOTAL

\$ 128.75

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

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:

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☐ Appointed PD or appointed other counsel.
 Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Paul B. Wickensmier

Court Reporter: C. Smith

Presiding Judge

Judge Code: 2102

Sentence Date: 11-8-19



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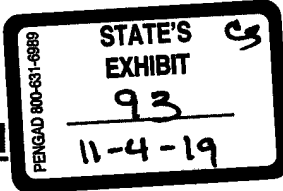
6

Printed: Monday, April 3, 2017 8:44 AM

4-3-17



AFFIDAVIT OF PHOTOGRAPH IDENTIFICATION

Case #: 1-17-058257Date: 4-3-17 Time: 10:57Location: Greenville Memorial Hospital

I, Jai kario Poole, have reviewed a group of 6 photographs
 this 3 day of April, 2017, from which I have positively identified photograph number 2
 displayed to me by Inv. Picone of
GCSO as being the person who

I am 80% sure ^{he} shot at us at
 Boulder Creek Apts.

Signature

Address

200 Kensington Rd. Apt 102 Taylors sc.

Phone

Home

Business/Cell

Witnesses:

THE STATE OF SOUTH CAROLINA
In The Appellate Court

APPEAL FROM GREENVILLE COUNTY
 Court of General Sessions

Letitia H. Verdin, Circuit Court Judge

2017-GS-23007936

19 NOV 15 AM 9:07
 Paul Wickersham CJC G/L SC

The State..... Respondent,

v.

Anthony Kwame Mays Appellant.

NOTICE OF APPEAL

Anthony Kwame Mays appeals his conviction and sentence in this case. The sentence was imposed by the honorable Letitia H. Verdin on November 8, 2019. I received the certified indictments and sentencing sheets on November 15, 2019.

Date: November 15, 2019.


 Randall L. Chambers, 65302
 804 Laurens Road
 Greenville, South Carolina 29607
 Attorney for Appellant

Other Counsel of Record:
 Allen Fretwell
 Thirteenth Circuit Solicitor's Office
 305 East North Street, Suite 325
 Greenville, SC 29601
 Attorney for Respondent

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SC Court of Appeals

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

STATE OF SOUTH CAROLINA)

VS.)

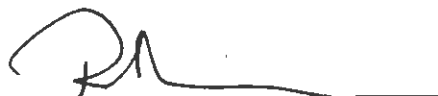
ANTHONY KWAME MAYS)
DEFENDANT.)
_____)

IN THE APPELLATE COURT

AFFIDAVIT OF SERVICE
BY MAIL

PERSONALLY APPEARED before me the undersigned, Randall L. Chambers, who being duly sworn, deposes and says that he is the attorney for Anthony Kwame Mays in the above-captioned action, does hereby certify that on this the day of November 15, 2019, served upon Allen Fretwell, Assistant Solicitor the Notice of Appeal by placing said Notice of Appeal in the United States mail with proper postage affixed thereto to insure proper delivery to the address below:

Allen Fretwell
Thirteenth Circuit Solicitor's Office
305 East North Street, Suite 325
Greenville, SC 29601



Randall L. Chambers
Attorney for Defendant

SWORN TO and subscribed before me

This 15 day of November, 2019

Belinda Medlin
Notary Public for South Carolina

My Commission Expires: Jan 18, 2024

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NOV 19 2019

SC Court of Appeals

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

STATE OF SOUTH CAROLINA)

VS.)

ANTHONY KWAME MAYS)
DEFENDANT.)
_____)

IN THE APPELLATE COURT

AFFIDAVIT OF SERVICE
BY MAIL

PERSONALLY APPEARED before me the undersigned, Randall L. Chambers, who being duly sworn, deposes and says that he is the attorney for Anthony Kwame Mays in the above-captioned action, does hereby certify that on this the day of November 15, 2019, served upon Alan Wilson, Attorney General the Notice of Appeal by placing said Notice of Appeal in the United States mail with proper postage affixed thereto to insure proper delivery to the address below:

The Honorable Alan Wilson
Attorney General
P.O. Box 11549
Columbia, SC 29211


Randall L. Chambers
Attorney for Defendant

SWORN TO and subscribed before me

This 15 day of November, 2019


Notary Public for South Carolina
My Commission Expires: Jan. 18, 2024

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NOV 19 2019
SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,

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Apr 07 2021

SC Court of Appeals

s/ Taylor D. Gilliam

Taylor D. Gilliam

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 7th day of April, 2021.