

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

RECEIVED

Oct 08 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MALETTE DENISE KIMBROUGH,

APPELLANT

APPELLATE CASE NO. 2019-001013

RECORD ON APPEAL

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STATE’S EXHIBIT NO. 2 (DVD--911 TAPE)

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS
2018-GS-23-06044

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

MALETTE DENISE KIMBROUGH)

A/K/A MELETTE DENISE)

KIMBROUGH,)

DEFENDANT.)

ORIGINAL

June 10, 11, and 12, 2019
Greenville, South Carolina

B E F O R E:

THE HONORABLE LETITIA H. VERDIN, JUDGE; and a jury.

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

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Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for Greenville County.

1 your oath, you need to identify yourself as a juror and
2 then report that to the bailiff, please. And, as I said,
3 if that person continued to try to talk to you, you have
4 every assurance that I would take care of that situation
5 right away.

6 Now, is there any objection to my initial charge from
7 the State?

8 MR. WESTON: Nothing from the State, Your Honor.

9 THE COURT: Any from the Defense?

10 MR. BANNISTER: No, ma'am.

11 THE COURT: All right. We're ready to proceed with
12 opening statements.

13 Yes, sir.

14 MR. MCCOLLUM: May it please the Court, Your Honor.

15 THE COURT: Yes, sir.

16 OPENING STATEMENTS

17 MR. MCCOLLUM: Ladies and gentlemen of the jury,
18 there's no rational reason for Ruby Flamm to be dead. The
19 evidence in this case will show that Ms. Flamm was the
20 victim of a senseless act of violence, and that the
21 Defendant, Malette Kimbrough, murdered her.

22 I, Anthony McCollum, along with Jeff Weston, are
23 prosecuting Ms. Kimbrough for the murder of Ms. Ruby
24 Flamm. The evidence will show that the Defendant
25 possessed a weapon and did intentionally kill Ms. Flamm

1 with malice aforethought.

2 Now that you know what this case is about, I'll let
3 you know what to expect in this trial. You will hear from
4 multiple witnesses. You will hear witness testimony that
5 in the early morning hours of November 19, 2016, Ruby
6 Flamm was in her home with her daughter, Ruby Smith, with
7 her grandson, Lorenzo Pardlow, and with the Defendant.

8 You'll, also, hear testimony that the Defendant was
9 present in the bedroom of Ruby Flamm. You will hear that
10 in the early morning hours, Ruby Smith, her daughter,
11 heard a loud bang in the house. She awoke -- she awoke,
12 went to her mother's room and found her mother in the bed
13 dead with a gunshot wound to the head. She, also, found
14 the Defendant was no longer present in the room.

15 You will hear testimony -- you will hear testimony
16 that the Defendant showed up at her daughter's home, which
17 is located close to the murder scene, shortly in --
18 shortly after the murder. You will hear testimony from
19 the law enforcement deputies and the investigators who
20 investigated Ms. Flamm's murder.

21 You will, also, hear from Ms. Flamm's neighbor, who
22 upon hearing the gunshot went out to the porch. He will
23 testify and let you know what he saw. In addition to that
24 testimony, you will hear from investigators who tracked
25 down the Defendant in the hours following the murder. You

1 will, also, hear from forensic technicians that assisted
2 in the law enforcement investigation.

3 Ladies and gentlemen, after the evidence and
4 testimony has been presented, you will find that there is
5 no reasonable explanation that anyone else, other than the
6 Defendant, murdered Ms. Ruby Flamm. At the conclusion of
7 this case, we, the State, will ask that you return a
8 verdict of guilty for murder against the Defendant,
9 Malette Kimbrough.

10 Thank you.

11 THE COURT: Thank you, Mr. McCollum.

12 Yes, sir.

13 MR. BANNISTER: Thank you, Your Honor.

14 As jurors, when you come in, you know really nothing
15 about the facts of this case. This is kind of our
16 opportunities as lawyers to sort of give you a picture of
17 what you're going to hear.

18 Think of a puzzle that you're trying to get the
19 pieces to fit in. What we tell you is kind of what it
20 looks like. So that when you hear the testimony, you'll
21 be able to take that piece and put -- fit it into the
22 puzzle. And then at the end, you will then get a picture
23 of what happened.

24 Now, as the Prosecutor said, this happened on
25 November the 19th, 2016. That was a Saturday morning.

1 What happened before that day, Malette Kimbrough and Ruby
2 Flamm, who is the deceased, were friends.

3 Unfortunately -- excuse me. Unfortunately, Ruby Flamm
4 used drugs. Cocaine was her drug of choice. The forensic
5 autopsy will show that she had cocaine in her system. The
6 testimony will show that she was a drug addict for a long
7 time.

8 She had a house off of Cedar Lane Road in Greenville.
9 She lived there with her daughter, Ms. Smith, and her
10 grandson. She and Malette Kimbrough were friends.

11 Malette Kimbrough had an accident. She wears a brace
12 to this day, a broken neck.

13 Unfortunately, she, also, on this occasion came to
14 Ms. Flamm's house early in the week and they began to use
15 drugs together. The testimony will let you know that
16 Ms. Kimbrough was buying drugs for Ms. Flamm and bringing
17 them back. There was other drug use in this particular
18 house.

19 Ms. Kimbrough only brought drugs that she used there.
20 But, also, she brought food. She did Ms. Flamm's hair.
21 She helped her bathe. She slept in the room with her.
22 And they were -- there was absolutely no animosity
23 whatsoever.

24 Motive is not a necessary element that the State has
25 to prove. But as you listen to the testimony, motive has

1 to be something that you consider. And there's no motive
2 for Malette Kimbrough in any way, shape, or form to harm
3 Ms. Flamm.

4 Now, Friday afternoon when this happened, there were
5 a lot of relatives and their friends at Ms. Flamm's, her
6 daughter, her son-in-law that came over to the house. One
7 even came over named Portia Jenkins, who, actually, fired
8 a pistol that afternoon, Friday afternoon. You'll hear it
9 described as a lot of drama, a lot of arguments.
10 Ms. Smith ordered everybody out, get out of the house.
11 That's where the animosity came in.

12 Sometime that night, Ms. Flamm was having a breathing
13 problem. She had diabetes. She went to sleep.
14 Ms. Kimbrough had not a harsh word. She was in there
15 asleep in the same room with her. Ms. Kimbrough decided,
16 at some point that night, to leave, and she did. She left
17 and went to her daughter's house, which is some distance
18 away.

19 And shortly thereafter, Ms. Flamm was found with a
20 bullet -- gunshot wound to her head by her daughter. Her
21 daughter and grandson heard no shot. They didn't hear any
22 noise -- they heard some noise, but no shot. When they
23 found Ms. Flamm dead, of course, they called the police.
24 And the police conducted an investigation.

25 When Ms. Kimbrough got to her daughter's house, she

1 had a bag of clothes or something with her. There was no
2 firearm, no gun. No gun has ever been found or tested
3 that was used to kill Ms. Flamm. There's not going to be
4 any gunshot residue on any of the clothes, or hands, or so
5 forth of Ms. Kimbrough.

6 So at the end of the day, what the solicitor's office
7 is, actually, going to ask you to do is to sort of guess
8 that Ms. Kimbrough was the one that pulled the trigger.

9 Now, the Judge said you'll take the law -- she'll
10 give you the law. When you come in today, she'll, also,
11 tell you that every Defendant has the presumption of
12 innocence. Right now, if we stopped and you went out to
13 the jury room, you would have to say not guilty. Because
14 the presumption of innocence means if you voted right now,
15 you would say not guilty.

16 That presumption of innocence follows Ms. Kimbrough
17 all the way through this trial. As you listen to the
18 testimony, I ask you to keep in mind. Where is there a
19 motive? Where is there -- there are no eye witnesses.
20 Where is there any fingerprints, DNA, other evidence
21 showing that Ms. Kimbrough was the one who murdered
22 Ms. Flamm? I'll ask you to consider the investigation.
23 Where is there any evidence, other than the fact that, at
24 some point, Ms. Kimbrough left and Ruby Flamm was found
25 sometime later? And she had been shot.

1 When we get finished and we, finally, make our final
2 arguments to you -- of course, things come up in a trial
3 that nobody anticipates, including the lawyers. At the
4 end, we will have another opportunity to address you as to
5 the inferences and how you apply those to the law. At
6 that point, we will ask that you return a verdict that
7 speaks the truth, which is not proven, not guilty.

8 Thank you very much.

9 THE COURT: Thank you, Mr. Bannister.

10 Is the State ready to proceed?

11 MR. WESTON: Yes, ma'am, Your Honor.

12 The State would call Ms. Ruby Lynn Smith.

13 Your Honor, as Ms. Smith approaches, let me just
14 advise the Court, she is hard of hearing. So if it's okay
15 with the Court, I'd like to stand up close to her to
16 question her.

17 THE COURT: Absolutely.

18 MR. WESTON: And just I'd advise Counsel of the same
19 thing. She has a very difficult time hearing.

20 THE CLERK: Ms. Smith, if you'll -- ma'am, there you
21 go. Can you just stand there? There you go.

22 Place your left hand on the Bible --

23 THE WITNESS: I can't hear you.

24 THE BAILIFF: Left hand on the Bible and raise your
25 right hand.

1 THE CLERK: Okay. I'll help you. There you go.
2 Raise that hand. There you go.

3 WHEREUPON,

4 RUBY LYNN SMITH,
5 after first having been duly sworn, testified as follows:

6 THE CLERK: All right. Thank you.

7 THE COURT: And, Mr. Weston, I turned up the podium
8 microphone, if that's helpful to you at all.

9 MR. WESTON: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. WESTON:

12 Q Would you like some water, Ms. Smith?

13 A I can't hear.

14 MR. WESTON: Your Honor, I'm just going to move up.

15 THE COURT: That'll be fine.

16 BY MR. WESTON:

17 Q I'm sorry, Ms. Smith. Would you like some water?

18 A (There was no response.)

19 Q Would you like some water?

20 A No. I can't hear.

21 Q Okay. Which is your good ear?

22 A My left -- both of them -- both of them -- I'm deaf
23 in both of them.

24 Q Okay. I'm going to try to speak loudly and slowly.

25 Okay.

1 A Okay.

2 Q And if you don't understand what I ask you, just ask
3 me to repeat the question. Okay.

4 A Okay.

5 Q All right. Would you state your full name for the
6 Court?

7 A Ruby Lynn Smith.

8 Q And how old are you, Ms. Smith?

9 A I'm 62.

10 Q All right. And do you work, Ms. Smith?

11 A No, sir. I'm on disability.

12 Q All right. And do you have any children?

13 A No, sir.

14 Q All right. And where do you live?

15 A I live at [REDACTED] -- [REDACTED] Shaw Street now.

16 Q Shaw Street?

17 A Uh-huh.

18 Q All right. Now, back in 2016, when your mother
19 passed --

20 A Yes.

21 Q -- where were you living then?

22 A On Cedar Lane Road -- off of Cedar Lane Road, [REDACTED] -- I
23 think [REDACTED] 6 Colonial Avenue.

24 Q [REDACTED] 6 Colonial Avenue?

25 A Uh-huh.

1 Q And is that here in Greenville?

2 A Yeah.

3 Q Is that in Greenville County?

4 A That's in Greenville, South Carolina.

5 Q Okay. And is that in Greenville County?

6 A Uh-huh.

7 Q Thank you, ma'am.

8 All right. Now, you are -- what is your relation --

9 what's your relationship to Ms. Ruby Flamm?

10 A That's my mother.

11 Q Okay. And how old was your mother when she died?

12 A I'm not for sure.

13 Q Was she about 75?

14 A Yes, sir, about 75, 76.

15 Q Okay. Let's talk about your mother for a little bit.

16 Okay. What would you consider your mother's medical
17 condition? Was she able to work at that time?

18 A No. She was -- she had high blood sugar and
19 diabetes.

20 Q All right. Was -- could she walk without the help of
21 a cane, or a chair -- or a wheelchair?

22 A No, a wheelchair.

23 Q All right. So she could not walk on her own?

24 A No. If she got a crutch, she might could walk a
25 little bit on the crutch. But she mostly had to use a

1 wheelchair.

2 Q All right. And did -- did you live in the same house
3 with her on Colonial Avenue?

4 A Yes, sir.

5 Q Okay. And I'm talking about the time -- at the time
6 she passed?

7 A Yes, sir.

8 Q Okay. Did she take medications at the time?

9 A Yes, sir.

10 Q Did she take a number of different medications?

11 A Yes, sir.

12 Q Okay. And did she take them every day?

13 A Every day, yes, sir.

14 Q All right. And I'm assuming --

15 MR. WESTON: Excuse me, Your Honor. May we approach?

16 THE COURT: Certainly.

17 MR. WESTON: I'm sorry. Wait -- just give us one
18 second.

19 (WHEREUPON, a bench conference was held.)

20 BY MR. WESTON:

21 Q I am so sorry, Ms. Smith, for stopping. Are you
22 ready?

23 A Yes, sir.

24 Q Okay. And once again, if you don't understand what I
25 said -- if you don't hear me, just ask me to repeat. Okay.

1 A Okay.

2 Q What was your mother's mental condition? Was she
3 a -- did she have a -- a good mind?

4 A Yeah. She had a good mind.

5 Q Okay. Was she -- around the time she died, was she
6 depressed or anything?

7 A No, sir.

8 Q Did she ever talk about killing herself?

9 A No, sir.

10 Q Okay. And I think I was getting ready to ask you --
11 I may have asked or may not have. Your mother, I assume,
12 was not working at the time she died?

13 A No, sir.

14 Q When was the last time she had worked? About how
15 many years before this?

16 A It'd been years. I don't know. But it had been
17 years. She worked at the dry cleaners.

18 Q All right. She worked at the dry cleaners?

19 A Uh-huh.

20 Q Okay. Now, I think your mother -- and there's been
21 some reference already. Your mother, when she slept, she
22 had some kind of a machine that she used; is that correct?

23 A Sleep machine.

24 Q A sleep machine?

25 A Uh-huh.

1 Q And did you help take care of that machine --

2 A Uh-huh. I put water in it every night.

3 Q Okay. And it required that you put water in it?

4 A Because that way -- she have to have water in it to
5 keep that air coming to her.

6 Q It was -- basically, it was an oxygen machine --

7 A Yeah.

8 Q Okay. And she would -- and it had a -- I guess sort
9 of a plastic mask that went over her nose and her mouth --

10 A Uh-huh.

11 Q Okay. And let me -- just so -- because the court
12 reporter has to take down everything that you say and I
13 say, let me finish what I'm --

14 A Okay.

15 Q -- saying before you start talking. Okay.

16 A Okay.

17 Q Because she can't take down what both of us are
18 saying.

19 A Okay.

20 Q All right. So as I was saying, the machine that she
21 had -- the sleep machine, it had a -- like, a plastic mask
22 that went over her nose and her mouth?

23 A Yes, sir.

24 Q And at some point, there was a part of the machine
25 where you had to -- somebody had to put water in it from

1 time to time?

2 A Yes, sir.

3 Q All right. Now, would it be fair and truthful to say
4 that your mother at the time she died used drugs, illegal
5 drugs?

6 A Yeah. Yes, sir.

7 Q Did she smoke marijuana?

8 A No. She smoked crack.

9 Q I'm sorry?

10 A No. She smoked crack.

11 Q Okay. And at the time -- and we're talking about
12 around the time your mother died now.

13 A Uh-huh.

14 Q Okay. And I'm -- I am reluctant to talk about this,
15 but it's necessary. At the time your mother died, did you
16 smoke marijuana, not that day necessarily, but around that
17 time? Were you -- did you smoke marijuana?

18 A No, sir.

19 Q Did you smoke crack?

20 A No, sir.

21 Q Okay. Did you use any illegal drugs?

22 A Yes, sir, crack. But I didn't do none that night.

23 Q No. I'm not talking about that night. I'm just
24 talking about around that time. You, also, used crack
25 around --

1 A Yes, sir.

2 Q -- that time -- during the weeks surrounding the time
3 your mother died?

4 A No, sir, not when my momma died that night.

5 Q Okay. So you did not use any drugs the night your
6 mother died --

7 A No. Two days ago.

8 Q Okay. Let me finish my sentence.

9 A Okay.

10 Q Just so we're clear. You did not use any drugs the
11 night your mother died?

12 A No, sir.

13 Q Okay. Now, let's talk about Ms. Kimbrough. Do you
14 know Ms. Kimbrough seated over there in the white? Do you
15 know her?

16 A Who?

17 Q Denise Kimbrough, do you know her seated over there
18 in the white?

19 A Yeah.

20 Q How do you know her?

21 A She came to our house.

22 Q Okay. Was she a friend of yours or a friend of your
23 mother's?

24 A Both ours.

25 Q Okay. And how long had you known Ms. Kimbrough

1 before your mother died?

2 A I guess about a year.

3 Q All right. And what was the nature -- well, how
4 would you characterize the relationship between
5 Ms. Kimbrough and your mother?

6 A She just kept coming over there hanging around and
7 would get high.

8 Q Would you say they were friends?

9 A Yeah.

10 Q All right. And you said that your mother used crack?

11 A Yes, sir.

12 Q Did you ever see Ms. Kimbrough use crack?

13 A Yes, sir.

14 Q Did your mother and Ms. Kimbrough get high together?

15 A Yes, sir.

16 Q Would it be fair to say they were get-high buddies?

17 A Yes, sir.

18 Q Okay. And, just to be honest, your mother liked
19 Ms. Kimbrough, I take it?

20 A Yes, sir.

21 Q And as far as you knew, Ms. Kimbrough liked your
22 mother?

23 A Yes, sir.

24 Q Okay. Did you ever hear them argue?

25 A No, sir.

1 Q Other than just disagree like people do. But they
2 never had serious arguments that you heard?

3 A No, sir.

4 Q Okay. Now, I'm going to talk with you about the
5 night -- or the morning your mother died. Okay. And I
6 know this is difficult. And I'm going to try to go
7 through it as quickly as I can.

8 About what time did you -- and we're going to work
9 backwards. About what time did you discover that your
10 mother had died? About what time was it?

11 A 4:00 or 4:30.

12 Q In the morning?

13 A In the morning.

14 Q Before daylight?

15 A I done forgot what day it was.

16 Q But it was before sunrise?

17 A Yeah. The sun wasn't getting up quite yet. It was
18 still dark.

19 Q Okay. Now, let's go back to the afternoon before
20 that. All right.

21 A Uh-huh.

22 Q And your mother died in y'all's home at [REDACTED] 6 Colonial
23 Avenue; is that correct?

24 A Yes, sir.

25 Q And she was in her bed?

1 A Yes, sir.

2 Q That's where you found her?

3 A Yes, sir.

4 Q Okay. And going back to the afternoon before that.
5 At that time, who all lived at this house?

6 A Me and my mother.

7 Q Okay. Just the two of y'all?

8 A Uh-huh.

9 Q How many bedrooms did this house have?

10 A It had three bedrooms.

11 Q And I'm assuming your mother -- how many children --
12 how many children did your mother have?

13 A She had seven, but she had six living.

14 Q All right. So she had six living children. I'm
15 assuming she had a lot of grandchildren, too.

16 A Yes, sir.

17 Q And did the children and grandchildren come over from
18 time to time?

19 A Yes, sir, just about every day.

20 Q Were there times when some of the children or
21 grandchildren stayed over at the house?

22 A Yes, sir.

23 Q Okay. And that was with -- was that with your
24 permission and your mother's permission?

25 A Yes, sir.

1 Q All right. Now, so going back to the afternoon
2 before your mother died the following morning. Were y'all
3 having any kind of party? Was there any kind of
4 celebration going on at the house that afternoon or
5 evening? Was -- were you celebrating anything, in
6 particular, somebody's birthday, something like that?

7 A No, sir.

8 Q All right. Do you remember who was at the house
9 about 6:00 or 7:00 that evening?

10 A (There was no response.)

11 Q Before your mother died?

12 A Before my mother died, I had went into the house.

13 Q You had gone --

14 A I went into the house one day, but I don't know what
15 day that was.

16 Q Okay. But -- all right. Let's back -- let's --
17 let's do it from the other end again. Okay. And I -- and
18 I apologize for jumping all over with you.

19 You said you found your mother dead about 4:00 in the
20 morning; is that correct?

21 A Yes.

22 Q Okay. At the time you found her dead, who else was
23 in the house?

24 A Me, Denise --

25 Q You need to talk right into the microphone --

1 A Me -- me, Denise, and my nephew, Lorenzo.

2 Q All right. What's Lorenzo's last name? Is it
3 Pardlow?

4 A Pardlow.

5 Q And this is a grandson --

6 A That's my momma's grandson.

7 Q By another sister? By one of your sisters?

8 A One of my sisters.

9 Q Now, where was Lorenzo in the house?

10 A Back in the bedroom.

11 Q In the third bedroom?

12 A In the third bedroom behind me.

13 Q Was he sleeping over that night?

14 A Yes, sir.

15 Q Now, he didn't live there, did he?

16 A Sir?

17 Q Did he live there?

18 A No, sir.

19 Q Okay. And so let's go back again now. So you said
20 that Lorenzo was there, you were there, your mother was
21 there. And who else?

22 A Denise.

23 Q And by "Denise," you mean Ms. Kimbrough over here?

24 A Yeah. Ms. Kimbrough goes by Denise.

25 Q Okay. And we'll come back to that. Had there been

1 anybody else in the house that evening?

2 A No, sir.

3 Q All right. Was Portia there that evening?

4 A Portia came later on that night, yeah.

5 Q Okay. And was she -- was her boyfriend with her?

6 A Leroy.

7 Q That's her boyfriend?

8 A Yeah.

9 Q And what time did they leave?

10 A They left around about 12:00.

11 Q All right. Did anybody -- who had keys to this
12 house?

13 A Didn't nobody but me and my mother had keys to the
14 house.

15 Q Are you sure Portia didn't have a key to the house?

16 A No. Portia didn't have no key to our house.

17 Q Okay. And so let's talk about the doors for a
18 moment. How many -- was there a front door and a back
19 door?

20 A There was a front door, back door, and side door.

21 Q And did each one of those doors have a lock on the
22 door knob?

23 A It got a bolt lock.

24 Q But did it have a lock on the door knob?

25 A Uh-huh.

1 Q Did it, also, have a bolt lock?

2 A It was a bolt lock.

3 Q All three of the doors?

4 A All three of the doors.

5 Q And who all had keys to those bolt locks?

6 A Me and my mother.

7 Q Okay. And that would be Ms. Ruby Flamm; is that
8 correct?

9 A Uh-huh.

10 Q Okay. So Portia, you said, left about what time?

11 A About 12:00.

12 Q Now, prior to Portia's leaving, did she get into an
13 argument with you or somebody else in the house?

14 A She got into an argument with me. Me and her got
15 into it because I told her to leave out of my house.

16 Q So you ordered her out of the house?

17 A Her and Denise both needed to leave --

18 Q Slow down. Slow down. You're talking -- when you
19 start talking fast, it's hard for everybody to follow you.
20 I'm so sorry, Ms. Smith. Let's slow down.

21 A Okay.

22 Q I was asking you, did you get into an argument with
23 Portia earlier in the evening?

24 A Yes, sir. I told her to leave.

25 Q Okay. And about how old is Portia, by the way? Just

1 generally, about how old is she? About in her 30s or 40s?

2 A I guess about 30. I don't know.

3 Q Okay. But she's a grown up?

4 A Yes, sir.

5 Q Okay. So when you asked her to leave, did she leave?

6 A Yeah, she left.

7 Q Did she -- did her boyfriend leave with her?

8 A Yes, sir.

9 Q When she went outside, did she shoot a gun in the
10 air?

11 A Huh?

12 Q When she went outside, do you remember hearing a
13 gunshot in the air?

14 A (There was no response.)

15 Q When Portia left --

16 A No. They said she shot outside.

17 Q You didn't hear it?

18 A No.

19 Q Okay. But you're hard of hearing?

20 A Yeah.

21 Q Okay. So when Portia left about 11:00 or 12:00, did
22 she ever come back to the house that night?

23 A No, sir.

24 Q Okay. And just to jump way ahead. After you
25 discovered your mother was dead, did you, in fact, call

1 Portia to tell her that your mother -- that her
2 grandmother had been killed?

3 A She never did come back there.

4 Q No, no. Did you call Portia on the phone to advise
5 her --

6 A No, sir.

7 Q You didn't tell her that your mother was dead
8 sometime later that morning --

9 A No.

10 Q Let me finish.

11 A Wait minute. She called to the house.

12 Q And did you speak with her?

13 A Yeah.

14 Q Did you tell her that your mother had -- her
15 grandmother had been killed?

16 A Yeah. She was dead.

17 Q Okay. And let me just ask you, you were -- were you
18 there with -- with your mother the entire time from the
19 time Portia left until --

20 A Yes, sir.

21 Q Let me finish. Please let me finish my sentence.

22 A Okay.

23 Q Okay. Were you with Portia -- I mean, were you with
24 your grand -- with your mother the entire time from the
25 time Portia left until the time you found that your mother

1 was dead? Were you with your mother the entire time in
2 the house?

3 A Yes, sir.

4 Q Did Portia ever come back in that house?

5 A No, sir.

6 Q Is there any way Portia could have killed your mom?

7 A No, sir.

8 Q When Portia left, was she mad at your mom?

9 A No, sir.

10 Q So the argument was with you?

11 A Me.

12 Q And she -- did she have any harsh words with your
13 mother at all?

14 A No, sir.

15 Q Can you think of any reason why Portia would have
16 killed your mother?

17 A No, sir.

18 Q Why she would have killed her own grandmother?

19 A No, sir.

20 Q Okay. So she had no motive?

21 A No, sir.

22 Q Okay. Now, let's talk about Ms. Kimbrough. Okay.
23 She slept over at the house that night; is that correct?

24 A Yes, sir.

25 Q And she slept in your mother's bedroom; is that

1 correct?

2 A Yes, sir.

3 Q And your mother -- the bed your mother slept in, was
4 it a king size, queen size, double bed, or was it --

5 A Hospital bed.

6 Q So she was in a hospital size bed to kind of raise
7 up, and lean back, and whatever?

8 A Yes, sir.

9 Q All right. And I assume it was a single bed for one
10 person?

11 A Yes, sir.

12 Q So where did Ms. Kimbrough sleep?

13 A In the chair.

14 Q Was it, like, a lounge chair?

15 A Yeah. It laid back.

16 Q All right. And was it right next to the bed?

17 A It was right in front of the bed.

18 Q Okay. Let's's assume you're in the bed, you're in
19 your mother's bed. I'm going to start walking back and
20 you tell me when to stop when I get to about where the
21 chair was in --

22 A My momma's bed was right there. And the chair was
23 right there.

24 Q It was about this far?

25 A Yeah.

1 Q Are you sure?

2 A Yeah. It was about this far, the bed and the
3 chair --

4 Q So it was right beside the bed?

5 A Yeah.

6 Q Okay. And it's a small bedroom, isn't it?

7 A It was a nice size bedroom.

8 Q Okay. Was there anybody else sleeping in that room?

9 A No, sir.

10 Q Okay. Now, let's go back in time. How long had
11 Ms. Kimbrough been staying at the house this time with
12 your mother and with y'all? How many days had she been
13 there?

14 A Oh, it'd been a while. Because she stayed for about
15 a week.

16 Q Okay. And did you invite her, by the way?

17 A No. She came up there -- came up to the house with a
18 bag of food, groceries.

19 Q And just to be fair, she was helpful to your mother
20 while she was there, wasn't she?

21 A Huh?

22 Q She was helpful to your mother. She'd do her hair
23 and fix food, wouldn't she?

24 A She might do her hair, but she wasn't her aid.

25 Q But she helped your mother doing her hair and stuff

1 like that --

2 A Yes. She braided her hair --

3 Q She was -- she was a companion to your mother, at
4 least; right?

5 A Yeah. She braided her hair.

6 Q Okay. And they got high together?

7 A Yes, sir.

8 Q Over the week that she was there, were they getting
9 high every day?

10 A Just about.

11 Q And they were smoking crack together?

12 A Yes, sir.

13 Q Okay. And at night, Ms. Kimbrough would sleep in the
14 chair -- the lounge chair next to her bed; is that
15 correct?

16 A Yes, sir.

17 Q Did Ms. Kimbrough have a key to the house?

18 A No, sir.

19 Q Okay. Did Ms. Kimbrough have a car?

20 A Huh?

21 Q Did she arrive in a car that she drove there?

22 A No. Somebody dropped her off up there.

23 Q All right. When she came in, did she bring a
24 suitcase?

25 A Sir?

1 Q Did she have a suitcase, an overnight bag, or
2 suitcase, or something --

3 A Yeah. She had an overnight bag.

4 Q Now, what kind of bag did she have?

5 A She had, like, a tote bag, like, a tote bag with
6 clothes and stuff in it.

7 Q All right. And did she shower there over the week,
8 and -- and wash up, and change clothes --

9 A She washed up and changed clothes.

10 Q All right. And she was -- would it be safe to say, I
11 mean, she may have gone outside, or walked down the
12 street, or gone to the store. But would it be safe to say
13 that she stayed there for a week, or about a week?

14 A Yeah.

15 Q Okay. Now, let's talk about Ms. Kimbrough and guns.
16 And -- and, just to be honest, let's put this straight out
17 there to begin with. Did you ever see Ms. Kimbrough with
18 a gun?

19 A Huh?

20 Q Did you ever see Ms. Kimbrough with a gun?

21 A No.

22 Q Okay. Did you ever hear Ms. Kimbrough talk about a
23 gun?

24 A Uh-huh.

25 Q You have to say "yes" or "no" so she can --

1 A Yes, sir.

2 Q All right. And when did you hear her talk about a
3 gun?

4 A She said her gun got missing. Her son gave it to
5 her. And it was missing. I asked her why she didn't call
6 the police and report it.

7 Q That -- so was this on the -- on the day that your
8 mother died that next morning that she was talking about
9 her gun was missing? Was that the same day?

10 A No. It was the day before that.

11 Q Okay. It was the day before your mother died the
12 next morning?

13 A Yes, sir.

14 Q All right. And she said her gun was missing?

15 A Yes, sir.

16 Q Did she call the police?

17 A No, sir.

18 Q Did she search the house for the gun?

19 A No, sir.

20 Q Was there anybody else in the house at the time she
21 said that?

22 A Me and Lorenzo was in the house. And Portia was in
23 the house.

24 Q Did she accuse any of y'all of stealing the gun, or
25 she just said it was missing?

1 A She said her gun was missing. She kept telling me --
2 asking me, she said, you think Portia got her gun or
3 somebody got her gun. I said, No.

4 Q Did you ever hear anything from anybody -- and I
5 don't want you to say what anybody said. But did you ever
6 hear anything else from anybody else about that gun being
7 found?

8 A She -- no. She told me that her gun was missing.
9 She wanted to know do I have her gun, or something.

10 Q And after about -- after a while when she was
11 talking -- did she just quit talking about it?

12 A She kept talking about her gun was missing. But I
13 asked her why she doesn't call the police.

14 Q Did she tell you why she didn't call the police to
15 report her gun missing?

16 A No. Her gun was gone. That's all. She didn't tell
17 me why she didn't call.

18 Q Okay. Assuming someone had stolen her gun, did she
19 say something along the lines that she knew that she --
20 she was going to leave this place where people was
21 stealing her gun?

22 A No, sir.

23 Q She didn't suggest that she needed to leave?

24 MR. STALVEY: Objection, Your Honor. Leading.

25 MR. WESTON: I'm sorry, Your Honor. I'll try to --

1 THE COURT: All right.

2 MR. WESTON: And I appreciate the leeway in terms of
3 preliminary matters that y'all are allowing me with regard
4 to this witness.

5 THE COURT: Absolutely.

6 BY MR. WESTON:

7 Q So was the gun ever found?

8 A I guess she was fine because she said she got it.

9 Q Okay. Say that slowly. You guess it was found
10 because what?

11 A She said she found it. She got. But I never seen
12 it.

13 Q Okay. Do you know what kind of gun it was? Did she
14 say what kind of gun it was?

15 A She told me one time it was a 38 or a 45, one of the
16 two.

17 Q She said a 38 or a 45?

18 A Yeah. She said one of them two.

19 Q Okay. Now, let's go back to -- excuse me. Let's go
20 to 4:00 in the morning -- or let's go to a few hours
21 before that. About what time did you go to bed that night
22 before your mother was killed?

23 A I was in the bed at about 11:30, 12:00. Because I
24 had -- I had --

25 Q Okay. Slow down. You went to bed at about 11:30 or

1 12:00. And what? Slow down and just kind of say it
2 slowly.

3 A About 11:30 or 12:00 that night.

4 Q Because of why?

5 A I checked my door.

6 Q And you checked the doors. What do you mean you
7 checked the doors?

8 A I made sure my doors was locked.

9 Q All right. And were they locked?

10 A Yes, sir.

11 Q All right. And was Portia in the house?

12 A No. Portia had left.

13 Q A long time before that?

14 A A long time before she had left. Lorenzo was in the
15 house.

16 Q All right. And so it was you, and Lorenzo, and your
17 mother, and --

18 A Denise.

19 Q And Denise Kimbrough?

20 A Uh-huh.

21 Q All right. And where was Lorenzo?

22 A Lorenzo was in the living room, but he went back
23 there in the back room.

24 Q And went to bed, you think?

25 A Yeah.

1 Q All right. And so you went to bed about 12:00 and
2 the doors were locked?

3 A Yes, sir.

4 Q And they were dead bolted from the inside?

5 A Yes, sir.

6 Q All the doors?

7 A Yes, sir.

8 Q Are you sure of that?

9 A Yes, sir.

10 Q All right. And so your mother is in the bedroom with
11 Ms. Kimbrough; is that correct?

12 A Yes, sir.

13 Q All right. So, now, what was the next thing that
14 happened with you, and your mother, and Ms. Kimbrough?

15 A My mother called me around about 3:00 or 3:30 wanting
16 me to come put water in her machine --

17 Q And just -- just to repeat what you're saying.
18 You're saying your -- your mother called you at about 3:00
19 or 3:30 to come and put water in her machine?

20 A Uh-huh.

21 Q Is that what you just said?

22 A Yes, sir.

23 Q Okay. And she just sort of called out to you?

24 A Huh?

25 Q She just called out to you?

1 A Called me on the phone.

2 Q Oh, I'm glad you mentioned that. Was there a phone
3 in your mother's room?

4 A Yes, sir.

5 Q Was it a -- a -- what we call a land line, a phone
6 that was, like, hooked up to the wall?

7 A A phone you could take off the hook.

8 Q A cordless phone?

9 A A cordless phone.

10 Q Okay. And that was in your mother's bedroom?

11 A Yes, sir.

12 Q And it worked?

13 A Yes, sir.

14 Q So if Ms. Kimbrough wanted to use the phone, she
15 could have used that phone?

16 A Yes, sir.

17 Q Okay. Or anybody, for that matter?

18 A Yeah.

19 Q Okay. So at 3:00 or 3:30, your mother called you to
20 come put water in her machine. Did you get up and go do
21 that?

22 A Yes, sir.

23 Q Now, when you went into your mother's bedroom, what
24 did you -- what did you see? Who was there? And where
25 was everybody?

1 A My mother was in the bed. Ms. Kimbrough -- Denise
2 was in the chair.

3 Q Was -- did you talk to Denise? Was she awake?

4 A No, sir.

5 Q As far as you could tell, was she asleep?

6 A She was laying back in the chair with her eyes
7 closed.

8 Q Okay. And did she know how to put water in the
9 machine, by the way, for your mother, Ms. Kimbrough?

10 A No. She didn't do it. I always did it.

11 Q Okay. And so you came in there and put water in the
12 machine. How long did that take, just a minute or two?

13 A It don't take long. If I put too much, then I had
14 [inaudible] --

15 Q Wait a minute. Whoa, whoa. Let's back up. I asked
16 you how long does it take to put the water in the
17 machine --

18 A How long it takes --

19 Q Come back -- come back to the microphone.

20 A How long it takes is about five minutes.

21 Q Okay. So it takes about -- a little less -- about
22 five minutes to do that?

23 A Uh-huh.

24 Q And did you do that successfully? You put the water
25 in the machine --

1 A Uh-huh.

2 Q Was your -- was everything okay?

3 A Yeah. But then she had to call me back and --

4 Q Okay. Let me stop you. Excuse me. I'm sorry. Let
5 me stop you. So you finished up. Did you go back to your
6 bedroom?

7 A Yes, sir.

8 Q And how long were you in your bedroom before your
9 mother called you back again?

10 A It took no more than about five minutes to get to my
11 bedroom to her bedroom.

12 Q So you went back to your bedroom and your mother
13 called you back again for what?

14 A She said because the machine wasn't coming on.

15 Q So it wasn't working right. Something wasn't
16 working?

17 A I had to go back and make it work.

18 Q So you went back into the room. And, once again, who
19 was in the room, and where was everybody?

20 A Denise was in the chair.

21 Q Did she still appear to be asleep?

22 A I guess she was. Her eyes were closed.

23 Q And -- but you didn't have any conversation with her?

24 A No, sir.

25 Q And so you -- your mother was awake?

1 A Yes. She was in the bed.

2 Q Okay. So you fixed the machine again?

3 A Uh-huh.

4 Q And once you fixed the machine, did you leave?

5 A I left there.

6 Q All right. Once you left, what happened -- tell the
7 jury what happened next.

8 A Once I left, I --

9 Q And talk slowly. Talk slowly. Because she has to
10 take down what you're saying.

11 A Once I left, I went to my bedroom.

12 Q And did you get into the bed?

13 A I got in my bed.

14 Q How long were you in the bed before something
15 happened?

16 A Sir?

17 Q How long were you in bed before something else
18 happened?

19 A Before something happened?

20 Q How long -- you said you went back to -- you went to
21 your mother's room for the second time, fixed the machine,
22 then you went back to your room and got in your bed?

23 A Yes, sir.

24 Q How long were you in bed before something -- or the
25 next thing happened?

1 A I was in my bed about -- I guess it had to be about
2 35 minutes, an hour, or so.

3 Q And then what happened?

4 A Then I heard some kind of noise like --

5 Q Stop. I'm sorry --

6 A I heard some kind of noise like a banging door, a
7 crazy noise --

8 Q So you heard some kind of a noise?

9 A Yeah. And I hollered out, I said, Momma, Lorenzo is
10 going to call Uber to come and get him.

11 Q Okay. Let me repeat what you just -- what I think
12 you just said to make sure that the court reporter and
13 everybody heard it correctly. Did you say that you yelled
14 to your mother, Momma, is Lorenzo gone and did he call
15 Uber for him?

16 A Uh-huh.

17 Q Is that what you said, something like that to your
18 mother?

19 A That's what I said. But she never said nothing. And
20 I got up.

21 Q So your mother didn't respond?

22 A Huh-uh.

23 Q So once you got up, what did you do?

24 A I got up and opened the door. I looked in the back.
25 Lorenzo was in the back room. Then I went to the front

1 door --

2 Q Turn back. Turn back close to the microphone.

3 A When I went -- got up -- I got up. I looked in the
4 back room. Lorenzo was in the back room. Lorenzo --

5 Q Stop right there --

6 A Lorenzo was asleep --

7 Q -- I'm sorry, ma'am. Ma'am --

8 A He was asleep --

9 Q Ms. Smith, okay, just stop right there. I want to
10 make sure we kind of do this one step at a time.

11 A Okay.

12 Q So you went to the back room to check on Lorenzo?

13 A I just opened up the door and looked. He was asleep.

14 Q And Lorenzo was in the bed in the back room asleep?

15 A Yeah. Then I seen the front door was open. And my
16 momma's bedroom door was halfway open. I looked in. And
17 I didn't see Denise in the chair. I checked the front
18 door. That's when I looked in there and went to my
19 momma's room. And I seen her laying in the bed with a
20 hole in her head.

21 Q Okay. So you went back and checked on Lorenzo and he
22 was in the back room. Because you thought he might have
23 left, but he hadn't?

24 A Uh-huh.

25 Q He was in the back room asleep?

1 A Yes, sir --

2 Q Is that what you said?

3 A Uh-huh.

4 Q So then you saw the front door was open?

5 A Yes, sir.

6 Q And you saw your mother's door was ajar, it was sort
7 of halfway open?

8 A Halfway open.

9 Q And so when you went into the bedroom, did you see
10 Ms. Kimbrough in the bedroom?

11 A Ms. Kimbrough wasn't in the chair. She was gone.

12 Q Did you see her anywhere in the house?

13 A No. She was nowhere in the house.

14 Q And so when you looked over at your mother, tell the
15 jury what you saw.

16 A When I went over to my mother, I seen my mother
17 laying in the bed with a hole in her head. I kept
18 hollering, Momma, momma, momma. She never did respond to
19 me. And I got on the phone. I called 911.

20 Q And so after you called 911, did --

21 A I told them that Denise must have killed -- shot my
22 momma in the head.

23 Q Okay. Well, that's okay. Just tell -- after you
24 spoke to -- you called 911 and reported what had happened;
25 right?

1 A Yes, sir.

2 Q Okay. And after you did that, did Lorenzo come up
3 front?

4 A Sir?

5 Q Did Lorenzo come up from the back room?

6 A I went and told Lorenzo she had shot my momma in the
7 head. Momma was dead. And Lorenzo came in there and
8 looked. And he got paranoid. He left out the door.

9 I didn't go nowhere. I stayed because they told me
10 don't go nowhere, stay on the phone until they get there.
11 And I stayed on the phone until the police came.

12 Q All right. So -- so the police arrived a short time
13 later; is that correct?

14 A Yes, sir.

15 Q And you were sitting on the porch when they got
16 there --

17 A I was sitting on the porch. I didn't go nowhere. I
18 stayed right there.

19 Q And this is about 4:00 in the morning?

20 A Yes, sir, about 4:00, 4:30 in the morning.

21 Q All right. And --

22 A It was still dark outside.

23 Q Did Ms. Kimbrough say anything to you about the fact
24 that she was leaving?

25 A No, sir.

1 Q Had she said earlier in the evening anything to y'all
2 about the fact that I'm going to be leaving at 3:00 or
3 4:00 in the morning, I'm just going to leave the house and
4 go at 3:00 or 4:00 in the morning?

5 A No, sir.

6 Q All right. Five minutes before you came in and saw
7 your mother was shot -- I'm sorry. I think you said 30 --
8 20 to 30 minutes before you saw your mother was shot and
9 you had gone in the bedroom before, who -- where was
10 Ms. Kimbrough? When -- when you went in there and fixed
11 the machine, where was Ms. Kimbrough?

12 A She was in the chair.

13 Q And when you went back to see and found your mother
14 dead, where was Ms. Kimbrough?

15 A She wasn't in the chair.

16 Q Where was she at?

17 A (There was no response.)

18 Q Was she in the house?

19 A (There was no response.)

20 Q Was she anywhere in the house?

21 A No, sir.

22 Q Did she tell you she was leaving?

23 A No, sir.

24 Q Was the door wide open?

25 A It was halfway open.

1 MR. WESTON: Excuse me, Your Honor, one moment.

2 THE COURT: Certainly.

3 (Pause.)

4 MR. WESTON: Your Honor, that's all I have.

5 Thank you.

6 Answer any questions Counsel might have for you.

7 CROSS-EXAMINATION

8 BY MR. STALVEY:

9 Q Ms. Smith, can you hear me all right?

10 A (There was no response.)

11 Q Can you hear me?

12 A What'd you say, sir?

13 Q I'm going to stand right where Mr. Weston was
14 standing. And I figure I'll talk as loud as he does and
15 you can hear me --

16 A I can't hear in my ear.

17 Q Do you want me to get on this side?

18 A Okay.

19 Q Can you hear me better now?

20 A That's a little bit --

21 Q All right. I just have a few questions. Malette
22 Kimbrough, she brought food to come over there to cook for
23 your mother; correct?

24 A Yes, sir.

25 Q And she had been there all week; correct?

1 A Yes, sir.

2 Q And she brought that food and cooked a meal for your
3 mother; correct?

4 A Uh-huh.

5 Q And everybody else shared in that meal; correct?

6 A Yes, sir.

7 Q She was, also, over there to do your mother's hair;
8 correct?

9 A Yes, sir.

10 Q She helped put her in bed; correct?

11 A No. She put herself in bed.

12 Q Okay. Did she help -- help her do things and take
13 care of her around the house?

14 A She did fix something to eat. She brought food up
15 there that day for everybody.

16 Q Okay. And you were in the house the entire week with
17 Ms. Kimbrough leading up to this shooting; correct?

18 A Sir?

19 Q You were in the house the whole week; right?

20 A Yes, sir.

21 Q And at no time during that week did you ever see
22 Malette Kimbrough with a gun; correct?

23 A No, sir. I never seen her with a gun.

24 Q And you've already testified that you, and Malette,
25 and your mother, Ms. Ruby, y'all all did drugs together;

1 correct?

2 A Yes, sir.

3 Q And there'd be other people that'd come by and do
4 drugs with y'all; correct?

5 A Yes, sir.

6 Q And y'all would be buying drugs; correct?

7 A Yeah. My mother didn't have no money.

8 Q Your mother had no money?

9 A No, sir.

10 Q Okay. Denise did have money; correct?

11 A Yes, sir.

12 Q In fact, she -- she never had a problem with money,
13 she always had money; correct?

14 A Yes, sir.

15 Q And she'd buy the drugs; correct?

16 A Yeah.

17 Q And -- and your mother didn't -- she had no money.
18 She had no cash. She didn't --

19 A She didn't have no cash. She get a check every
20 month.

21 Q All right. Did -- let's talk about Portia. How do
22 you -- what's her relationship to you? That's your
23 sister?

24 A Portia my niece.

25 Q Your niece. And Portia and her boyfriend, Leroy,

1 were at the house until about midnight the night before
2 your mother was found dead; correct?

3 A Yes, sir.

4 Q And you and Portia got into an argument; correct?

5 A Yes, sir.

6 Q And it was a pretty tense argument, wouldn't you
7 agree?

8 A Sir?

9 Q It was a -- y'all got angry with each other; right?

10 A Yes, sir.

11 Q Because Portia went outside and fired her pistol;
12 correct?

13 A Yeah. They said she did. I didn't hear it none.

14 Q Who said she did?

15 A Portia said she did.

16 Q Okay. Did Portia tell you that the day after this
17 happened?

18 A She told me that night. She called on the phone.
19 And I told her my mother was dead.

20 Q Oh, so you had a conversation with Portia the night
21 after you found Ms. Ruby dead?

22 A Huh?

23 Q You had a conversation with Portia --

24 A With Portia. Yeah. She called me.

25 Q That same night; right?

1 A Yeah.

2 Q And that's when Portia told you --

3 MR. WESTON: Objection, Your Honor.

4 THE COURT: What's the objection?

5 MR. WESTON: He's asking for hearsay now. In fact,
6 he's getting ready to recite hearsay himself into the
7 record.

8 MR. STALVEY: Well, I thought she had already
9 testified. But that's all right.

10 THE COURT: All right. Sustained

11 BY MR. STALVEY:

12 Q But you had a conversation with Portia the night
13 after you found Ms. Ruby, your mother, shot; correct?

14 A I -- I told her momma was dead.

15 Q Okay. Was that about an hour, two hours after you
16 called the police?

17 A I don't know how long it was. I'm not for sure.

18 Q But she was one of the first people you called;
19 correct?

20 A Sir?

21 Q She was one of the first people you called and said,
22 My momma's dead?

23 A Yeah.

24 Q That's Portia; right?

25 A Yeah. I told Portia.

1 Q And during the entire week, you never heard your
2 mother and Malette have any type of argument; correct?

3 A No.

4 Q No bad blood between them; correct?

5 A Not that I know of, no.

6 Q In fact, I think she -- I think you told
7 investigators that there's no reason for either of them to
8 be mad at each other?

9 MR. WESTON: Objection, Your Honor. He's asking
10 for -- once again, he's reciting hearsay into the record,
11 Your Honor.

12 MR. STALVEY: I'm -- I'm asking her what she told
13 investigators.

14 THE COURT: Okay. Overruled.

15 MR. WESTON: If he wants to impeach her, now, that's
16 one thing. But he can't -- he can't testify about things
17 that she said to other people.

18 THE COURT: I'm going to give him a little -- I'm
19 going to give him a little bit of leeway on this question.

20 Overruled.

21 Go ahead

22 BY MR. STALVEY:

23 Q There wasn't any reason for Ruby to be mad at
24 Malette; correct?

25 MR. WESTON: Objection, again, Your Honor. He's

1 asked that question three different times and she's said,
2 No.

3 MR. STALVEY: Well, I'm trying to fix it for him.

4 THE COURT: All right. Overruled.

5 Answer the question

6 BY MR. STALVEY:

7 Q There -- there's no reason that you are aware of that
8 either one of them would be mad at each other?

9 A Huh?

10 Q There wasn't any reason for either one of them to be
11 mad at each other; right?

12 A I don't think so, no.

13 Q Ms. Smith, just to make sure. Portia was over there
14 using drugs, too; correct?

15 A No. She wasn't doing no drugs.

16 Q You never saw her doing any drugs?

17 A No.

18 Q How about her boyfriend, Leroy?

19 A No.

20 Q You never saw him do anything; right?

21 A No.

22 Q Had they ever been over there doing drugs?

23 A No.

24 Q Never been over there smoking marijuana?

25 A No.

1 Q Portia never went over there and smoked marijuana?

2 A Portia --

3 MR. WESTON: Objection, Your Honor. Asked and --

4 THE WITNESS: -- smoked marijuana --

5 MR. WESTON: -- answered three different times.

6 THE COURT: Well --

7 THE WITNESS: -- smoked marijuana --

8 THE COURT: Hold on, ma'am --

9 MR. STALVEY: Well, she just gave a different answer.

10 THE COURT: She just gave a different answer, so I'm
11 going to allow it --

12 MR. WESTON: And I didn't hear the answer. I
13 apologize, Your Honor.

14 THE COURT: That's okay. That's okay.

15 So listen -- okay. You, re-ask the question.

16 Ma'am, listen to the question. Okay.

17 MR. STALVEY: Well, she's answered it, Judge.

18 THE COURT: Do you want -- did you get that answer
19 down?

20 THE COURT REPORTER: Maybe she should --

21 THE COURT: I don't think we got it.

22 BY MR. STALVEY:

23 Q You just testified Portia was over there smoking
24 marijuana; correct?

25 A Yes. She was smoking marijuana.

1 MR. STALVEY: Okay. Nothing further, Your Honor.

2 THE COURT: All right. Mr. Weston --

3 MR. WESTON: No redirect, Your Honor.

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

5 THE WITNESS: I can step down?

6 THE COURT: You're done. Okay.

7 All right. Ladies and gentlemen, we're going to take
8 a brief -- a brief break. I'm going to let you get up and
9 stretch your legs, maybe step to your jury deliberation
10 room for just a few minutes -- okay -- just about five
11 minutes. Just one quick second.

12 While you're in your jury deliberation room -- I'm
13 going to sound like a broken record throughout this
14 trial --

15 THE BAILIFF: Remain seated. Remain seated until the
16 jury leaves.

17 THE COURT: -- but, please, do not discuss this case
18 with anyone -- all right -- with each other when you go
19 back there.

20 Okay. Thank you.

21 If everybody will remain seated.

22 Y'all can go.

23 (WHEREUPON, the jury was excused from open court at
24 approximately 3:57 p.m.)

25 THE COURT: All right. Ladies and gentlemen in the

1 the day.

2 Yes, sir.

3 MR. WESTON: Thank you, Your Honor.

4 The State would call Mr. Lorenzo Pardlow.

5 THE CLERK: Sir, please, come forward.

6 If you'd, please, pause at the end of the bench.

7 Place your left hand on the Bible and raise your
8 right hand.

9 WHEREUPON,

10 LORENZO PARDLOW,
11 after first having been duly sworn, testified as follows:

12 THE CLERK: Thank you.

13 Please be seated.

14 And, sir, would you, please, state your name for the
15 record?

16 THE WITNESS: Lorenzo Pardlow.

17 THE CLERK: Thank you, sir.

18 THE COURT: That's exactly the volume we need right
19 there.

20 DIRECT EXAMINATION

21 BY MR. WESTON:

22 Q That was exactly what I was going to say,
23 Mr. Pardlow. I want you to speak loud so that I and the
24 jurors down on this end can hear you. Okay.

25 A Yes, sir.

1 Q All right. Where do you live, Mr. Pardlow?

2 THE COURT: Get closer to that microphone.

3 There you go. I know it seems strange, but.

4 Okay. Go ahead

5 BY MR. WESTON:

6 Q Where do you live, sir?

7 A [REDACTED] Pear Street.

8 Q And that's here in Greenville?

9 A Yes, sir.

10 Q And how old are you?

11 A I'm 30 years old.

12 Q And where do you work, sir?

13 A I work at Hooded Building Products.

14 Q And about how long have you been there?

15 A For a few months now, like, seven months.

16 Q Where'd you work before that?

17 A I worked at H.T. Hackney.

18 Q All right, sir. And what do you do there at this
19 present job?

20 A I load trucks.

21 Q All right, sir. And --

22 MR. WESTON: Excuse me. Your Honor, if I may have
23 one moment.

24 THE COURT: Certainly.

25 (Pause.)

1 MR. WESTON: Thank you, Your Honor

2 BY MR. WESTON:

3 Q Mr. Pardlow, let's just jump right into this. What
4 was your relationship to Ms. Flamm?

5 A That was my grandmother.

6 Q Okay. And she resided at [REDACTED] 6 Colonial Avenue; is
7 that correct?

8 A Yes, sir.

9 Q All right. And Ms. Ruby Smith, what's your
10 relationship to her?

11 A That's my aunt.

12 Q Okay. So your mother is her sister?

13 A Yes, sir.

14 Q All right. And on November 19th of 2016, did you
15 have an occasion to stay over at your grandmother's house?

16 A Yes, sir.

17 Q Now, you -- were you living there at the time, or you
18 just were staying over that particular night?

19 A I was just staying over there that particular night.

20 Q All right. Had you stayed over the night before?

21 A Yes, sir.

22 Q Okay. So you had been there for a couple of nights?

23 A Yes, sir.

24 Q All right. And let's talk about the early evening.

25 Who all was at the house earlier -- was there any kind of

1 a celebration going on, or was just -- was this just a
2 regular evening?

3 A No, sir. It was just a regular evening.

4 Q And did any family members stop by?

5 A Yes, sir.

6 Q Tell the jury -- tell the jury who came by that you
7 can remember.

8 A My cousin, Portia; my cousin, Shante [phonetic]; and
9 my cousin, Tira [phonetic] Smith.

10 Q They didn't come by together, did they?

11 A No, sir.

12 Q They just all sort of just stopped by at some point.
13 Was your grandmother's house sort of a meeting place for
14 the family?

15 A Yes, sir.

16 Q Would that be where y'all would kind of have family
17 meals and stuff on holidays, and things like that?

18 A Yes, sir.

19 Q Okay. So when your cousin -- let's -- let's talk
20 about Portia last. Who were the other two names that you
21 mentioned?

22 A My cousin, Shante, and my cousin, Tira Smith.

23 Q And when they -- about what time did they come by,
24 just -- just generally?

25 A Around 3:00 or 4:00 in the evening.

1 Q And did they -- about what time did they leave?

2 A Later on that night.

3 Q About what, 8:00 or 9:00, 9:00 or 10:00?

4 A Maybe like 8:00 or 9:00.

5 Q Okay. And so the two of them were gone at 9:00,
6 9:30, 10:00?

7 A Yes, sir.

8 Q About what time did Portia leave?

9 A She left roughly, I would say, around 11:00, no later
10 than 11:30.

11 Q And Portia had an altercation with Ms. Smith; is that
12 correct? She had an argument with Ms. Smith?

13 A Yes, sir.

14 Q And as a result of that, did Ms. Smith ask her to
15 leave the house?

16 A Yes, sir.

17 Q And were you involved in that at all?

18 A No, sir.

19 Q Okay. When Portia went outside, did she do anything
20 of note when she went out into the front yard?

21 A She shot in the air.

22 Q All right. And was she -- was she -- was she by
23 herself, or was she with someone?

24 A She was with her friend guy.

25 Q All right. Her boyfriend, so to speak?

1 A Boyfriend, yeah.

2 Q And had they come together?

3 A Yes, sir.

4 Q And did they, in fact, leave together about -- I
5 think you said about 11:00 or so?

6 A Yes, sir.

7 Q And from the time they left until the time your
8 grandmother was killed, do you have any recollection, or
9 knowledge, or information that Portia and/or her boyfriend
10 came back to that house at any time?

11 A No, sir.

12 Q Okay. So once they left about 11:00, who all is left
13 at the house?

14 A Me, my aunt, Ruby Smith, my grandmother, and -- which
15 I know her as Denise.

16 Q All right. And you're talking about Malette
17 Kimbrough?

18 A Yes, sir.

19 Q And do you see her in the courtroom?

20 A Yes, sir, right there.

21 Q Would you describe what she's wearing to the jury?

22 A She's got on a white suit with a neck brace on.

23 Q All right. And how did you know Ms. Kimbrough?

24 A She was a friend of the family at one point.

25 Q All right. And when you say "a friend of the

1 family," were -- were you and she tight?

2 A Not really.

3 Q You didn't have anything against her?

4 A No, sir.

5 Q And far as you know, she didn't have anything against
6 you?

7 A No, sir.

8 Q All right. And she would -- would it be safe to say
9 that she was probably closest to your grandmother?

10 A Yes, sir.

11 Q All right. And do you know how long they had known
12 each other, just generally?

13 A I would say for a couple years.

14 Q Okay. And about when had Ms. Kimbrough come over to
15 your grandmother's house?

16 A Earlier that week.

17 Q And so she had been there for a number of days?

18 A Yes, sir.

19 Q And she's not family; right?

20 A No, sir.

21 Q What was her reason for being there that long?

22 A I mean, to be honest with you --

23 Q Yes, sir. I want you to be honest.

24 A She came -- like I said, she was friends with my
25 grandma. They did drugs together.

1 Q All right. Now, she, also, was very -- was she,
2 also, helpful to your grandmother?

3 A Yes, sir, she was. She did clean up from time to
4 time and fix us something to eat. We helped her when she
5 needed it.

6 Q When you say they did drugs together, what kind of
7 drugs?

8 A They smoked crack.

9 Q All right. And when nighttime came, where did you
10 sleep?

11 A I slept in the back room, kind of like the den.

12 Q Okay. And so that's sort of -- sort of a third
13 bedroom?

14 A Yes, sir.

15 Q And this was in the back of the house?

16 A Yes, sir.

17 Q All right. And where did your aunt, Ms. Smith,
18 sleep?

19 A Right in -- in the room connected to it.

20 Q To the back room?

21 A Yeah, connected to the back room. There's a door
22 that leads from her room to another.

23 Q And her -- is her room further toward the front of
24 the house?

25 A Yes, sir.

1 Q Okay. And where did your grandmother sleep?

2 A She slept in the front room in her bedroom close
3 to -- close to the kitchen and living room.

4 Q And when Ms. Kimbrough was there, where did she
5 sleep?

6 A She slept in my grandma's room, also.

7 Q And where did she sleep in that room?

8 A She slept on her chair.

9 Q So for four to five days, she slept in a lounge
10 chair?

11 A Yes, sir.

12 Q And did she bring -- did she have clothing and stuff
13 there?

14 A She had a tote bag.

15 Q All right. And did she wash, and change clothes, and
16 stuff there?

17 A She did, yes, sir.

18 Q And as far as you know -- because I'm sure you left
19 the house to go to work, and stuff. But as far as you
20 know, did she leave to ever go home during that period of
21 time?

22 A No, sir, not at all.

23 Q And so she helped your grandmother and they got high
24 together?

25 A Yes, sir.

1 Q That was -- they were pretty much -- they were get
2 high buddies?

3 A Yes, sir.

4 Q Okay. And your grandmother was disabled; is that
5 correct?

6 A Yes, sir.

7 Q Would you describe for the jury what her condition --
8 what -- what physically her condition was?

9 A She had real bad arthritis. She had bronchitis,
10 asthma. She wasn't able to walk. She was in a
11 wheelchair. She, also, slept with a breathing machine on.

12 Q Okay. And so did she need help doing things like
13 cooking food --

14 A Yes, sir.

15 Q -- and washing clothes, and stuff like that?

16 A Yes, sir.

17 Q Okay. What about her mental condition? Was she
18 sharp?

19 A Yes, sir.

20 Q I mean, was she depressed in any -- did she appear to
21 be overly depressed around this time?

22 A No, sir.

23 Q Okay. What kind of woman was your grandmother? I
24 mean, if you had to describe her -- if you had to describe
25 her from a personality standpoint, how would you describe

1 your grandmother?

2 A I would say lovable and caring.

3 Q Okay. So on the morning that your grandmother was
4 found shot to death, let's go back to the early part of
5 the evening. You said that at about midnight, the only
6 people left in the house were whom?

7 A It was me; Melette -- well, Malette, excuse me; my
8 aunt, Ruby Smith; and my grandma, Ruby.

9 Q Okay. And you -- did you -- you didn't have a key to
10 the house, did you?

11 A No, sir.

12 Q And did you check the doors to make sure they were
13 locked that night?

14 A No, sir.

15 Q Okay. Do you know if Ms. Smith did that?

16 A She might have. She usually do.

17 Q All right. And so when you went to bed in the
18 back -- about what time did you go to bed?

19 A I'd say about 12:00.

20 Q Prior to your going to bed, did you have an occasion
21 to look in on your grandmother, or just kind of pass her
22 room and just kind of look in there?

23 A Yes, sir.

24 Q And what was the state of affairs in that room? Who
25 was in there?

1 A It was her and Malette.

2 Q Where was your grandmother?

3 A In her bed.

4 Q And where was Ms. Kimbrough?

5 A In her chair.

6 Q And was that chair, like, right next to the bed?

7 A Yes, sir.

8 Q And did Ms. Kimbrough -- were they talking, or did it
9 look like they were going to sleep, or what was -- what is
10 your recollection?

11 A She appeared to be asleep.

12 Q And that's Ms. Kimbrough?

13 A Yes.

14 Q Okay. And so you went to bed about 1:00, I think you
15 said?

16 A About 12:00, maybe 1:00 at the latest.

17 Q All right. And so the house, as far as you know, is
18 secured and everybody's where they -- where you said they
19 were. You went to bed. What was the next thing that
20 happened at 4:00, 3:30, 4:00, 4:30, whatever?

21 A I woke up to my aunt --

22 Q What time?

23 A Sir?

24 Q About what time was that?

25 A About four something, between 4:00 and 4:30.

1 Q All right. And what woke you up?

2 A My aunt, Ruby Smith, calling my grandma's name and
3 she wasn't responding. Then that's when I woke up.

4 Q And so what happened -- tell -- just tell the jury
5 what you did and what happened next.

6 A I woke up to -- she was calling my grandmother's
7 name. She wasn't responding. So that got my attention.
8 As I was getting up, she was -- she was, also, saying, Oh,
9 they killed momma. They killed momma. And she was
10 calling --

11 MR. STALVEY: Your Honor, hearsay.

12 MR. WESTON: Excited utterance, Your Honor.

13 THE COURT: Overruled.

14 MR. WESTON: Thank you, Your Honor.

15 BY MR. WESTON:

16 Q Continue.

17 A And she was calling -- and she was calling me and
18 telling me somebody killed my grandmother. So I went in
19 there to check it out. And she was laying in there in her
20 bed dead, blood dripping from her head.

21 Q All right. Did she seem to have been in a struggle,
22 or was her hands down by her side?

23 A She didn't seem to be in no struggle. Her hands was
24 by her side.

25 Q All right. And where was Ms. Kimbrough?

1 A She was gone.

2 Q Did -- prior to that -- all of that happening, did
3 Ms. Kimbrough tell you she was leaving?

4 A No, sir.

5 Q Earlier in the evening 7:00, 8:00, 9:00, 10:00, did
6 Ms. Kimbrough say something to the effect, listen, I'm
7 going to be leaving tonight, I won't be here in the
8 morning when y'all wake up?

9 MR. STALVEY: Objection.

10 THE WITNESS: No, sir.

11 THE COURT: Sustained.

12 You can rephrase.

13 BY MR. WESTON:

14 Q Did Ms. Kimbrough say anything to y'all earlier in
15 the evening about when she might be leaving the house?

16 A No, sir.

17 Q Did you get any indication from Ms. Kimbrough as to
18 when and how she would be leaving the house?

19 A No, sir.

20 Q When you went to bed at 12:00 -- and looking back at
21 the days that Ms. Kimbrough had been there -- did she have
22 a car at the house?

23 A She had -- she usually have her car, but she didn't
24 have it that day -- that week. She got dropped off.

25 Q So when -- when you saw -- how was the door, by the

1 way? The front door, was it closed and locked still?

2 A It was cracked.

3 Q Okay. And if you don't have a key based on the --

4 the way the dead bolts at that house work, the front door,
5 is there any way you can get in that door?

6 A No, sir.

7 Q But it'd have to have been opened from the inside?

8 A Yes, sir.

9 Q All right. And so you wake up and find the
10 circumstances that you just described. And I'm assuming
11 your aunt is very upset --

12 A Yes, sir.

13 Q -- and she's yelling?

14 Did she call 911?

15 A Yes, sir.

16 Q And so while she's calling 911, what -- what did --
17 tell -- tell the jury what you did.

18 A She called the police. I stepped outside to take a
19 walk for a minute to get myself together. And I took a
20 stroll around the block and came right back.

21 Q Why'd you do that?

22 A Because, I mean, it was -- it was hard for me to see
23 that and deal with that, like, I was -- like, it was -- I
24 was at a loss for words. It seemed like it was just
25 unbelievable. I couldn't believe it.

1 Q So I assume you were very upset, too?

2 A I was.

3 Q And when you got back -- how long were you gone?

4 About five, 10 minutes?

5 A Five or 10 minutes.

6 Q When you got back to the house, what did you find?

7 A The cops was there. They was putting tape around the
8 house, and all of that. And the rest of the family had
9 done got there.

10 Q When you got back -- when you got there, did you go
11 back and did you cross the crime scene tape?

12 A No, sir.

13 Q Did you -- I mean, did you go inside the crime scene
14 tape?

15 A No, sir.

16 Q Did you talk to the police?

17 A I did, yes, sir.

18 Q Okay. Did you give them a statement?

19 A Yes, sir.

20 Q Did you, subsequently, go down to the law enforcement
21 center and give a statement?

22 A Yes, sir.

23 Q Did you hear a gunshot?

24 A No, sir.

25 Q Do you got any -- do you have any idea why you might

1 not have heard a gunshot, given that you were in the same
2 house?

3 A Maybe because I was intoxicated.

4 Q Had you had a good bit to drink that night?

5 A I did.

6 MR. WESTON: Okay. Excuse me, Your Honor.

7 (Pause.)

8 BY MR. WESTON:

9 Q Now, you and the Defendant got along, generally; is
10 that correct?

11 A Yes, sir.

12 Q Okay. And as far as you know, your grandmother had
13 no problems with her when they went to bed that night?

14 A No, sir.

15 Q What was the Defendant wearing when you saw her
16 sitting in that chair?

17 A Jeans and, like, a black hoodie.

18 MR. WESTON: All right. Thank you, sir.

19 Answer any questions Counsel may have for you.

20 THE COURT: Mr. Stalvey.

21 CROSS-EXAMINATION

22 BY MR. STALVEY:

23 Q Mr. Pardlow, were you working at the time this
24 incident occurred?

25 A Yes, sir.

1 Q And what were your hours?

2 A I worked from, like, 2:00 in the afternoon until,
3 like, 10:00 at night.

4 Q Okay. And what -- what days of the week would you
5 normally work?

6 A Monday through Friday.

7 Q And how many days had you been at your grandmother's
8 house prior to the shooting?

9 A A couple days.

10 Q All right. And your grandmother never gave you a key
11 to the house?

12 A No, sir.

13 Q The only way you could get in the house was somebody
14 let you in from the inside?

15 A Yes, sir.

16 Q That's the only way you ever got into the house?

17 A Yes, sir.

18 Q And you never observed Malette Kimbrough with a gun
19 at any time while you were at the house; correct?

20 A That's correct. Yes, sir.

21 Q And you never -- you've testified to it, but you
22 never heard Malette and your grandmother in an argument;
23 correct?

24 A Yes, sir.

25 Q And she was over there. She was doing drugs, but she

1 was, also, taking care of your grandmother; correct?

2 A Correct.

3 Q And she had done that in times in the past. Are you
4 aware of that?

5 A Yes, sir.

6 Q And you were there when Portia and Lynn Smith got
7 into an argument?

8 A Yes, sir.

9 Q Were you outside when Portia fired her pistol?

10 A No, sir. I was in the house.

11 Q Were you -- did you observe the argument between Lynn
12 and Portia?

13 A Yes, sir. It's normal.

14 Q They get -- they get into arguments a lot?

15 A Some.

16 Q Just Lynn and Portia, or other people?

17 A Just -- just my Aunt Lynn and Portia.

18 Q Okay. Mr. Pardlow, could you unlock the house from
19 the outside?

20 A No, sir.

21 Q So even if you had a key, you couldn't unlock --

22 A Yeah, with a key, of course.

23 Q Okay. That'd be, like, a dead bolt; correct?

24 A Yes, sir.

25 MR. STALVEY: Okay. No further questions.

1 MR. WESTON: Excuse me, Your Honor. May we approach?

2 THE COURT: Certainly.

3 MR. WESTON: I don't think this matter's going to
4 take that long.

5 (WHEREUPON, a bench conference was held.)

6 MR. STALVEY: May it please the Court.

7 THE COURT: Yes, sir.

8 BY MR. STALVEY:

9 Q Mr. Pardlow, I'm looking at your prior criminal
10 record. Isn't it true that you were convicted of a grand
11 larceny in 2007?

12 A Yes, sir.

13 Q You, also, were convicted of a burglary second, as
14 well as a distribution of cocaine base first offense; is
15 that correct?

16 A Yes, sir.

17 Q And in 2013, you were convicted of distribution of
18 cocaine base; is that correct?

19 A Could you say that again? Because you said the same
20 thing twice, the same charge. I only got one
21 distribution.

22 Q Okay. Did you get probation for that?

23 A Yes, sir.

24 Q Then in 2017, failure to stop for a blue light. Were
25 you convicted of that?

1 A Yes, sir. I got house arrest.

2 Q And, also, in 2017, driving under suspension second
3 offense. Were you --

4 A Yes, sir.

5 MR. STALVEY: Nothing further.

6 THE COURT: All right. Anything else from the State
7 for this witness?

8 MR. WESTON: Nothing on redirect, Your Honor.

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

10 MR. WESTON: Your Honor, our next witness will take
11 us probably well past 5:00.

12 THE COURT: All right. Very well then.

13 Okay. Well, we're going to get out a little bit
14 early today.

15 Ladies and gentlemen, if you'll be back in your
16 deliberation room tomorrow morning at 9:30. We're going
17 to start tomorrow morning at 9:30.

18 And so I promised you I'd sound like a broken record.
19 Please do not discuss this case with anyone this evening.
20 Just forget you're a juror on this case.

21 I hope you have a good evening. And I'll see you
22 back tomorrow morning.

23 Thank you.

24 (WHEREUPON, the jury was excused from open court at
25 approximately 4:40 p.m.)

1 We are -- the State is about to call a witness that
2 was inadvertently omitted from the witness list that I
3 read to you yesterday. So I need to know if any juror has
4 any contact with, any acquaintance with, is related to in
5 any way the next witness whose name is Keith Ramsey.

6 And I thought in an abundance of caution, I would ask
7 Mr. Ramsey to stand at the door so that -- so you could,
8 actually, see who Mr. Ramsey is.

9 Any member of the jury panel believe he or she knows
10 Mr. Ramsey in any way? Any acquaintance with Mr. Ramsey
11 whatsoever?

12 (WHEREUPON, there was no response.)

13 THE COURT: And -- and none are standing.

14 All right. Very well then.

15 Mr. Ramsey, if you'll come forward and be sworn.

16 THE CLERK: Sir, if you'll, please, pause at the end
17 of the bench.

18 Place your left hand on the Bible and raise your
19 right hand.

20 WHEREUPON,

21 KEITH RAMSEY,
22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 Please be seated.

25 And would you, please, state your name for the

1 record?

2 THE WITNESS: Keith Ramsey.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. WESTON:

6 Q Mr. Ramsey, where do you live?

7 A [REDACTED] 0 Colonial Avenue in Greenville, South Carolina.

8 THE COURT: I need you to speak right into that
9 microphone.

10 THE WITNESS: I'm sorry.

11 THE COURT: That's okay. You can bend it, turn it to
12 you, if you need to.

13 BY MR. WESTON:

14 Q Would you repeat that, please?

15 A [REDACTED] 0 Colonial Avenue, Greenville, South Carolina.

16 Q Is that here in Greenville County?

17 A Yes.

18 Q And how old are you, sir?

19 A 61.

20 Q Are you married?

21 A Yes, sir.

22 Q And how long have you been married?

23 A 41 years.

24 Q And do you have any children?

25 A Four.

1 Q Are they adults?

2 A Yes, sir.

3 Q Do they live at the address with you and your wife?

4 A Just one.

5 Q All right. And are you employed at this time, sir?

6 A No, sir.

7 Q Are you retired?

8 A Yes, sir.

9 Q Where are you retired from?

10 A BMW.

11 Q All right. And do you know why you're here today,
12 about the incident that brings you here today?

13 A Yes, sir.

14 Q And are you familiar with the home of Ms. Ruby Flamm?

15 A Yes, sir.

16 Q And where is your house in conjunction to that house?

17 A Two doors up.

18 Q All right. Is that -- if we're standing on your
19 porch looking out at the street, is that to your left or
20 right?

21 A To my left.

22 Q All right. And how long have you lived at this
23 address?

24 A 12 years now.

25 Q All right. And did you know Ms. Flamm?

1 A Yes, sir.

2 Q How -- did you refer to her as Ms. Flamm, or Ruby,
3 or --

4 A Ruby.

5 Q Y'all had a pretty -- y'all had a good relationship?

6 A Yes, sir.

7 Q All right. Did you know her daughter, Ms. Smith,
8 Ruby Smith?

9 A Yes, sir.

10 Q Did you call her Ruby Smith or Lynn Smith?

11 A Lynn.

12 Q Okay. And so I -- because I don't want to confuse
13 you or the jury. Her daughter is Lynn Smith -- Ruby Lynn
14 Smith. And Ms. Ruby Flamm is her mother, the deceased; is
15 that correct?

16 A Yes, sir.

17 Q And you've known both of them?

18 A Yes, sir.

19 Q Do you know whether Ms. Smith, the daughter, lived
20 with her mother?

21 A Yes, sir.

22 Q And about how long had they been living there, just
23 generally, as far as you know?

24 A About six years.

25 Q All right. And did you have occasion to visit with

1 them from time to time?

2 A Yes, sir.

3 Q And did you provide any assistance to them, for
4 instance, if a car tire needed changing --

5 A Yes, sir.

6 Q -- or something needed done around the house that you
7 could help with? Did y'all have that kind of neighbor
8 relationship?

9 A Yes, very good friends.

10 Q All right. Did you spend a lot of time at the house?

11 A No, sir.

12 Q Did you socialize with them a lot?

13 A Not a lot, no.

14 Q Okay. Any particular reason for that?

15 A Some activity in the house I did not agree with.

16 Q All right. But did any of that activity affect you
17 or your family?

18 A No.

19 Q Okay. Did y'all ever have cross words where y'all
20 went through a significant period of time where y'all sort
21 of fell out with each other?

22 A No.

23 Q Your family and her family?

24 A No, sir.

25 Q Okay. So you would characterize your relationship

1 with the Flamm-Smith family as a good relationship, a
2 neighborly relationship?

3 A Yes, sir.

4 Q All right. I'm going to draw your attention to the
5 morning of November 19th, 2016. Do you remember that
6 morning when the police came to their home?

7 A Yes, sir.

8 Q All right. Were you at home that night -- or that
9 morning?

10 A Yes, sir.

11 Q When -- about 4:00 in the -- about 3:00 or 4:00 in
12 the morning when all this happened, were you in bed?

13 A No, sir. I was just getting ready to go to bed.

14 Q All right. And tell the jury what happened around
15 4:00, or whatever time, when you heard any -- something
16 out of the ordinary. Now, you just tell the story.

17 A I had cut off the TV. And I was getting ready to go
18 to bed, turning the lights off. And I came out of the
19 bathroom going towards the bed, and I heard a gunshot.

20 Q How many shots did you hear?

21 A Just one.

22 Q And where was it coming from in conjunction with your
23 house?

24 A To the left of my house.

25 Q Toward the Flamm house?

1 A Yes, sir. And it was -- it was loud enough I could
2 tell it was very close.

3 Q All right. And you -- at this point, did you know
4 where it was coming from exactly?

5 A No, sir.

6 Q Okay. So what did you do -- well, let me step back.
7 I'm sorry. What time was this, as best you can remember?

8 A It was about 10 after 4:00.

9 Q In the morning?

10 A a.m., yes, sir.

11 Q Okay. And was it still dark outside?

12 A Yes, sir.

13 Q And what did you do once you heard the gunshot?

14 A I reached toward the head of the bed and grabbed my
15 gun and headed towards the front door, looked at the -- I
16 always look at the cable box. I don't know, habit I
17 guess. I always look at the cable box because it's always
18 on, has the time on it.

19 Q And what time did it say?

20 A About 4:10.

21 Q All right. And so when you got to the front, what --
22 what did you see, or what did you do?

23 A I cut the front porch light off, stepped out --

24 Q Why'd you do that?

25 A I'm sorry.

1 Q Why did you cut off the front porch light?

2 A I -- gunshots. And me walking out the door with a
3 gun, I don't want to be a target.

4 Q I understand. Where'd you grow up, sir?

5 A Southern Alabama.

6 Q All right. In the country?

7 A In the swamps, yes, sir.

8 Q All right. And everybody -- did everybody have guns
9 pretty much?

10 A Oh, yeah.

11 Q So was -- when you turned off the front porch -- is
12 that part of the -- I don't want to say training, just
13 part of the way you were brought up?

14 A Yes, sir.

15 Q Okay. And so once you turned off the front porch
16 light, what'd you do or what'd you see then?

17 A I went out the front door. And I have enclosed my
18 wife's porch. And I put in two big open windows at both
19 ends.

20 And so I stepped out the front door and looked to the
21 left. And I seen my neighbor on the front porch. And I
22 looked to the right and I didn't see anything. And I
23 stepped out to the steps and looked to the right and
24 didn't see anything. I looked to the left and I seen a
25 lady down at the stop sign running.

1 Q All right. Was the lady -- are you sure it was a
2 female?

3 A Yes, sir.

4 Q Was she black or white?

5 A Black.

6 Q And what was she wearing?

7 A I couldn't tell what she was wearing, but she was
8 dressed.

9 Q All right. Was it light clothing or dark clothing?

10 A Uh --

11 Q And I'm particularly --

12 A Pants.

13 Q -- concerned about --

14 A Pants.

15 Q I'm sorry. Go ahead.

16 A I'm sorry. The pants were dark and the shirt was
17 light.

18 Q Okay. And did you have any kind of interaction or
19 contact with her at all?

20 A No, sir.

21 Q Did you recognize her?

22 A No, sir.

23 Q All right. But you're comfortable that it was a
24 black female?

25 A Yes, sir.

1 Q And you said she was running?

2 A Yes, sir.

3 Q And was she running away from what would be the
4 direction of the Flamm house?

5 A Yes, sir, away.

6 Q All right. And just for the record, do you know
7 Ms. Kimbrough seated here in the blue at the Defense table
8 there?

9 A No, sir.

10 Q All right. So you have no relationship with her,
11 good or bad?

12 A No, sir. I've seen her, but I don't know her.

13 Q All right. And where have you seen her at?

14 A At Ruby's house.

15 Q All right. Do you know whether it was her that
16 morning, or whether it was not her?

17 A No, sir.

18 Q You don't know whether -- could it have been her?

19 A Yes, sir.

20 Q But you don't know?

21 A No, sir, I do not.

22 Q And just to be clear to the jury, you're not
23 suggesting necessarily it was, are you?

24 A No, sir.

25 Q Okay. When the police came, did they come and sort

1 of -- as part of canvassing the neighborhood, did they
2 speak with you?

3 A Yes, sir.

4 Q And did you, basically, tell them pretty much the
5 same thing you've told us here this morning?

6 A Yes, sir.

7 MR. WESTON: All right. Thank you, sir.

8 CROSS-EXAMINATION

9 BY MR. STALVEY:

10 Q Mr. Ramsey, you spoke with Investigator Bailey the
11 night of this incident; correct?

12 A Yes, sir.

13 Q And you gave him the information regarding what you
14 observed that evening; correct?

15 A Yes, sir.

16 Q Where did you -- where were you working at that time?

17 A BMW.

18 Q Okay. And what -- you said you were -- had just
19 gotten home. What was your -- is that correct?

20 A I worked night shift, yes, sir.

21 Q Okay. What was -- what was that shift time?

22 A I'm sorry.

23 Q What was the time of your work shift that day?

24 A From 8:00 in the evening until we finish.

25 Q And what time do you finish?

1 A Usually, I got off anywhere from -- about 3:30.

2 Q Okay. And when you spoke to Investigator Bailey, you
3 told him that you saw this individual walking toward the
4 corner of Finley and Colonial Avenue; isn't that correct?

5 A She was, actually, trotting, I guess you would say.

6 Q All right. I'm going to show you something to
7 refresh your recollection. If you could look at these
8 last two lines there and read that for me.

9 A Okay.

10 Q Sir, I'll ask you again, isn't it true that you
11 reported to Investigator Bailey you saw this individual
12 walking away?

13 A I did at that time state she was walking, yes.

14 Q And you were unable to identify this person, other
15 than saying she was a female; correct?

16 A Yes, sir.

17 Q You didn't provide whether she was black, or white,
18 or any other details to Investigator Bailey that night,
19 did you?

20 A No, sir.

21 Q And you never observed her carrying anything?

22 A No, sir.

23 Q She didn't have a bag or anything with her in her
24 hand?

25 A Not that I could see.

1 MR. STALVEY: Nothing further, Your Honor.

2 MR. WESTON: Two questions on redirect, Your Honor.

3 THE COURT: Certainly.

4 REDIRECT EXAMINATION

5 BY MR. WESTON:

6 Q Counsel just asked you about whether -- I think he
7 said she didn't have a bag or anything. And you said, not
8 that you could see.

9 A No, sir.

10 Q Are you saying she didn't have a bag, or that you
11 didn't see a bag?

12 A I couldn't tell if she did or if she didn't.

13 Q So you're not saying she didn't have a bag. You just
14 didn't see one?

15 A Right.

16 Q So she could have had a bag?

17 A Yes, sir.

18 MR. WESTON: Thank you, sir.

19 That's all I have, Your Honor.

20 THE COURT: Anything else?

21 MR. STALVEY: No, ma'am, Your Honor.

22 THE COURT: Sir, you can step down.

23 Thank you.

24 MR. WESTON: Your Honor, the State would ask that
25 this witness be released from his subpoena.

1 THE COURT: Any objection to that?

2 MR. STALVEY: No objection.

3 THE COURT: Thank you for being here.

4 THE WITNESS: Thank you.

5 MR. MCCOLLUM: Your Honor, the State calls Tirissa
6 Johnson from 911 dispatch.

7 THE COURT: While she's coming in, would the
8 attorneys approach? Just one from each side is perfectly
9 fine.

10 (WHEREUPON, a bench conference was held.)

11 THE CLERK: Ms. Johnson, please, come forward.

12 If you'd, please, pause at the end of the bench.

13 Place your left hand on the Bible and raise your
14 right hand.

15 WHEREUPON,

16 TIRISSA JOHNSON,
17 after first having been duly sworn, testified as follows:

18 THE CLERK: Thank you.

19 Please be seated.

20 And, please, state your name for the record.

21 THE WITNESS: Tirissa Johnson.

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. MCCOLLUM:

25 Q Good morning, Ms. Johnson.

1 Where are you employed?

2 A At the Greenville County Sheriff's Office within the
3 communications division.

4 Q And what's your role in that division?

5 A 911 analyst.

6 Q And what do you do in that role?

7 A So my primary role is to pull calls for service, 911
8 calls, seven digit, radio traffic, and, also, access the
9 computer reports for dispatch calls.

10 Q And how long have you been employed in that role?

11 A Well, I've been at the sheriff's office for
12 approximately 20 years, and it's been the last 15.

13 Q And can you can explain to the jury the procedure for
14 when a 911 call comes in?

15 A So when a 911 call comes in -- all recordings are
16 digitally and simultaneously electronically recorded and
17 stored. And the first thing that a call taker would do is
18 to determine the location, make sure that's within the
19 sheriff's office jurisdiction, and what the incident is
20 that is taking place, so that we know whether it's just
21 sheriff's office response is needed, ambulance, or fire
22 service as well.

23 Q And when a call comes in, how is it stored?

24 A So it is stored electronically on a server and a
25 logger. And then those calls, once they're pulled, are,

1 also, burned to a CD, kept into property and evidence.

2 And then there is the digital recording that is backed up
3 and saved as well.

4 Q And the digital -- the digital copy, is that secured?

5 A Yes, it is.

6 Q And how do you know it's secured?

7 A It's only limited access. And none of those
8 recordings can be altered in any way.

9 Q How would you know to pull a 911 call?

10 A I'm sorry.

11 Q How would you know to pull a 911 call?

12 A So I receive requests either through Freedom of
13 Information Act, investigators, the solicitor's office,
14 subpoenas from defense attorneys as well, quality
15 assurance, and, in general, complaints.

16 Q And what is the procedure for pulling a call?

17 A So it would be going into the server or the logger by
18 using the case number that's been assigned to the call, or
19 searching by the time that I've been told to look. And
20 then just going through each individual location until I
21 find the call that matches up with the information.

22 Q And this process, is this the normal process that is
23 employed through all of 911 dispatch?

24 A It is.

25 Q And for access to the logger and the server -- how

1 many people have access to that logger and server?

2 A It is myself and one other person that we both are
3 responsible for pulling the calls and saving them. And
4 then we, also, have a 911 office, which supports and
5 maintains the system itself.

6 Q And no one else would have access to the server
7 outside of yourself and this other person?

8 A That's correct.

9 Q Ms. Johnson, I'm going to show you what's been marked
10 as State's Exhibit No. 3. Can you identify that?

11 A I can. This would be the 911 call.

12 Q And how can you identify it?

13 A It has my initials and today's date on it.

14 Q And did you have a chance to listen to this 911 phone
15 call?

16 A I did.

17 Q Is the phone call an accurate and fair representation
18 of the phone call that came in on the morning of November
19 19th, 2016?

20 A It is.

21 MR. MCCOLLUM: Your Honor, at this time, the State
22 would move to put State's Exhibit No. 3 into evidence.

23 THE COURT: Any objection?

24 MR. BANNISTER: No objection.

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

1 (WHEREUPON, State's Exhibit No. 3 was admitted into
2 evidence.)

3 MR. MCCOLLUM: Your Honor, at this time, the State
4 would request to publish the --

5 THE COURT: Certainly.

6 MR. MCCOLLUM: Thank you, Your Honor.

7 (WHEREUPON, State's Exhibit No. 3 was played in open
8 court.)

9 MR. MCCOLLUM: Thank you, Ms. Johnson.
10 Please answer any questions Defense Counsel has for
11 you.

12 MR. STALVEY: We don't have any questions for this
13 witness.

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

16 THE WITNESS: Thank you.

17 MR. MCCOLLUM: Your Honor, the State asks that this
18 witness be released from her subpoena.

19 THE COURT: Any objection?

20 MR. STALVEY: No objection, Your Honor.

21 THE COURT: Thank you.

22 MR. MCCOLLUM: Your Honor, at this time, the State
23 calls Seth Brandt from Greenville County EMS.

24 THE CLERK: Sir, if you'll, please, come forward.

25 And if you'd, please, pause at the end of the bench.

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

3 WHEREUPON,

4 SETH BRANDT,
5 after first having been duly sworn, testified as follows:

6 THE CLERK: Thank you.

7 Please be seated.

8 Please state your name for the record.

9 THE WITNESS: Seth Brandt.

10 THE CLERK: Thank you, sir.

11 DIRECT EXAMINATION

12 BY MR. MCCOLLUM:

13 Q Good morning, Mr. Brandt.

14 Where are you employed?

15 A Greenville County EMS.

16 Q And how long have you been employed there?

17 A A little over five years now.

18 Q And you are an EMT; correct?

19 A I'm a paramedic, yes, sir.

20 Q A Paramedic. Is there any specialized training?

21 A Yes, sir. There's EMT school for about six -- six
22 months. And then another year and a half of paramedic
23 school.

24 Q And then do you have any additional on-the-job
25 training?

1 A Yes, sir.

2 Q Are you required to maintain certifications?

3 A Yes, sir, we are. Advanced life support, advanced
4 cardiac life support, things of that nature.

5 Q So this is a continuous education to maintain --

6 A Yes, sir.

7 Q -- certification requirements?

8 Did you have occasion to respond to [REDACTED] 6 Colonial
9 Avenue on November 19th, 2016?

10 A Yes, sir.

11 Q Can you, please, tell the jury what happened?

12 A We were dispatched to a cardiac arrest call. The
13 dispatch came out at 4:50 in the morning. We were
14 going [inaudible] traffic, which is lights and sirens to
15 the call when we received orders from our dispatch to
16 stage.

17 So we got near the --

18 THE COURT: Can I stop you right there? I'm sorry.
19 Are you having a hard time hearing him?

20 THE COURT REPORTER: Yes.

21 THE COURT: Okay. If you would, take that microphone
22 and sort of put -- and just talk right into the top of it.

23 THE WITNESS: Is that better, ma'am?

24 THE COURT: That's much better.

25 Thank you.

1 THE WITNESS: Okay. Sorry about that.

2 We were en route to the cardiac arrest call. We
3 received orders to stage, which is to get close to the
4 call area, but hang back while police secured the scene.

5 After we received notification that the sheriff's
6 office had made the scene safe for us, we entered the
7 scene and found the patient.

8 Would you like me to keep going or --

9 BY MR. MCCOLLUM:

10 Q Yes.

11 A Okay.

12 Q So -- sorry, Mr. Brandt. When you mentioned
13 "staging," is that the standard procedure in these types
14 of calls?

15 A Yes, sir. Any type of call that has potential danger
16 or violence is one that we stage for.

17 Q And when you say "staging," you mean -- what do you
18 mean?

19 A That means when -- we get near the call area, but at
20 a safe distance while police secure the area.

21 Q All right. Continue on.

22 A When we arrived on scene, we found the patient lying
23 in a hospital-style bed. The patient was underneath
24 several blankets with a CPAP mask commonly used for sleep
25 apnea still securely on her face. The patient was

1 unresponsive. The patient was not breathing. And she did
2 not have a pulse. We noted a suspected gunshot wound to
3 the forehead and another one on the side of her head.
4 There was blood visible on the bed and the bedroom itself.

5 We immediately placed the patient on a cardiac
6 monitor. When we did that, we could see that she was in
7 what is called pulseless electrical activity.
8 Essentially, what that means is there was still some
9 electrical activity going on in her heart, but there was
10 no heart beat to go along with it. The rhythm itself was
11 disorganized and in the final stages of death. There's no
12 field intervention that we can do to correct that.

13 Q So what is the standard procedure at that time?
14 Would you -- what would you do to declare death in this
15 case?

16 A What we do is we try to get a little bit of medical
17 history, how long they'd been in cardiac arrest. Time of
18 cardiac arrest is important.

19 If it's longer than seven minutes, brain damage
20 starts. And after 10 minutes, there's just too much brain
21 damage to continue. And that's without any external
22 injury. From the time that we received the call until the
23 time we got on the scene was 10 minutes.

24 Also, if they have any injuries noncompatible with
25 life, which the injuries that the patient received that

1 night were noncompatible. After we do all that, we are
2 allowed to declare death.

3 Q And at that time, once that step was declared, did
4 you have any further involvement in this case?

5 A After we ensure that there is nothing that --
6 absolutely nothing that we can do to protect the patient,
7 we remove all of our gear and bag out of the crime
8 scene -- or back out of the scene. That way, we don't
9 interfere with the polices job.

10 MR. MCCOLLUM: I beg the Court's indulgence.

11 (Pause.)

12 MR. MCCOLLUM: Thank you, Mr. Brandt.

13 Please answer any questions Defense Counsel has for
14 you.

15 THE WITNESS: Yes, sir.

16 MR. STALVEY: No questions, Your Honor.

17 THE COURT: Okay. Sir, you can step down.

18 THE WITNESS: Thank you, ma'am.

19 THE COURT: Can he be excused?

20 MR. MCCOLLUM: Yes, Your Honor.

21 MR. STALVEY: Yes, ma'am, Your Honor.

22 THE COURT: All right. Thank you for being here.

23 MR. MCCOLLUM: Your Honor, at this time, the State
24 would call Lieutenant Eugene Goins with the Greenville
25 County Sheriff's Office.

1 THE CLERK: Sir, if you'll, please, come forward.

2 Please pause at the end of the bench.

3 Place your left hand on the Bible and raise your
4 right hand.

5 WHEREUPON,

6 EUGENE GOINS,

7 after first having been duly sworn, testified as follows:

8 THE CLERK: Thank you.

9 Please be seated.

10 And, please, state your name for the record.

11 THE WITNESS: Eugene Goins.

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION

14 BY MR. MCCOLLUM:

15 Q Good morning, Lieutenant Goins.

16 A Good morning.

17 Q Where are you employed?

18 A Greenville County Sheriff's Office.

19 Q What's your current role?

20 A Currently, I'm the lieutenant in judicial services.

21 Q On November 19th, 2016, what was your role?

22 A I was a sergeant assigned to uniform patrol.

23 Q And what is -- what were your duties in that role?

24 A Shift supervisor, coordinate services on -- on the
25 guys, give them leadership, show up to major crimes,

1 prepare things for roll call, advanced information
2 training, stuff of that nature.

3 Q On November 19th, 2016, did you respond to [REDACTED] 6
4 Colonial Avenue?

5 A I did.

6 Q And what county is that located in?

7 A Greenville County.

8 Q Can you tell the jury what happened?

9 A We received a call in reference to a gunshot victim.
10 As the supervisor, I cleared units signal one, which is
11 lights and siren. I, myself, responded lights and siren
12 as supervisor. That's one of the calls that I'm required
13 by policy to go to and give leadership guidance to the
14 deputies that are on scene.

15 Q And when you responded to the house, what -- what
16 happened?

17 A I was probably third on scene. I was advised by some
18 of my other deputies that we did have a gunshot victim.
19 And I entered the house. And I saw the victim lying in a
20 hospital bed.

21 Q How was the victim positioned?

22 A On her back. There was a lot of blood. And one of
23 the deputies kind of shook his head at me and told me
24 there was no signs of life. I told him we needed to make
25 sure the house was clear. So we had to perform a

1 protective sweep before we allowed EMS to enter the
2 residence just to make sure there was no other victims, or
3 that the suspect was not on scene.

4 Q Lieutenant Goins, I want to take you back a little
5 bit. What is the standard procedure of the sheriff's
6 office when they're responding to a crime scene?

7 A This -- in a case like this, the type of call it was,
8 a gunshot victim, we respond lights and sirens. We are to
9 secure the scene for investigations, preserve any evidence
10 that there might be that's inside and outside to make sure
11 nothing is disturbed as much as possible. We have to --
12 if there's any aid to be rendered, we have to render aid
13 until we can get medical personnel on scene to help out.

14 Q Lieutenant Goins, in this case, when you arrived, you
15 say that you were third up. Was the scene in the process
16 of being secured, or were you handling securing the scene?

17 A We were still in the process of securing the scene.
18 One of the deputies was talking, I believe, with the
19 victim's daughter. The other deputy was in the room where
20 the victim was found.

21 When I entered it -- the residence, I told the next
22 unit on scene, I believe, to go ahead and start putting up
23 some crime scene tape so that nothing would be disturbed.
24 And that's when I entered into the bedroom.

25 Q Lieutenant Goins, since you were the supervisor and

1 sergeant on the scene, did you get in contact with the
2 investigator in this case?

3 A I did. I notified communications that I was going to
4 need a violent crimes investigator and some additional
5 units on scene. But I tried to ascertain as much
6 information as I could so I could relay that to the
7 investigator that was on call that day.

8 Q And is that the standard procedure?

9 A That's standard procedure.

10 Q Lieutenant Goins, was there a K9 track done that day?

11 A We did do a K9 track. We had a K9 officer who was
12 about to secure. But I requested that he come over.
13 Because once we did a protective sweep of the house and
14 made sure there was no suspect on scene, I felt that since
15 we had a K9 available to make every effort to try to
16 find -- or locate a potential suspect.

17 So I requested that they come. And additional units
18 arrived on scene and accompanied him on a -- a K9 track.

19 Q Were there any results from that K9 track?

20 A No. The results, as we say, were negative. We
21 weren't able, at that time, to locate a suspect.

22 Q Lieutenant Goins, did you have any interaction with
23 the victim's family on scene?

24 A Initially, I believe it was the victim's daughter was
25 inside the residence in -- in the living room area. She

1 was visibly upset, crying, distraught, which is normal.
2 It was cold. So I told the deputy, let's get her a
3 jacket, and let's -- we're going to have to move her
4 outside the residence just so nothing would be tampered
5 with and to make sure it was secure for our investigators
6 once they arrived on scene.

7 Later, of course, in -- during the investigation,
8 other family members showed up. But they remained outside
9 on the street.

10 Q Lieutenant Goins, how long after you got the call did
11 you respond to the scene?

12 A How long did I remain on scene?

13 Q How long did you respond -- how long did it take you
14 to respond to the scene once you got the call
15 approximately?

16 A Maybe less than six minutes, maybe five or six
17 minutes, if that.

18 Q Lieutenant Goins, how long did you remain on scene?

19 A I remained on scene until our investigators arrived
20 on scene. That's normal procedure to remain on scene to
21 make sure the investigator or investigators have the
22 necessary resources that they may need to transport
23 witnesses, if they have to take statements, to transport
24 them to our law enforcement center, any additional crime
25 scene information they may need.

1 Because I turned the scene over to the investigator.
2 So, essentially, anything that they may need. And I
3 remained on scene this night probably an hour and 15, hour
4 and 20 minutes.

5 Q Lieutenant Goins, can you approximate how many law
6 enforcement personnel were on the scene that morning?

7 A From the uniform patrol division, we probably had
8 five or six, maybe seven. And then there was maybe three
9 or four of our investigators from our investigative
10 division.

11 Q Lieutenant Goins, once you cleared the scene and
12 turned it over to the investigators, did you have any
13 additional role after that in this case?

14 A No, I did not.

15 MR. MCCOLLUM: Thank you, Lieutenant Goins.

16 Please answer any questions Defense Counsel has for
17 you.

18 CROSS-EXAMINATION

19 BY MR. STALVEY:

20 Q Lieutenant Goins, was Lorenzo Pardlow at the scene
21 when you arrived?

22 A I do not recall a -- a male being there.

23 Q And were you, also, in charge, as your role of
24 sergeant for uniform patrol, in sending other deputies to
25 search the perimeter of the neighborhood? Was that

1 something you do, or is that an order given by somebody
2 else?

3 A That's -- that's an order that could be given by me
4 to do an exterior search of the area.

5 Q All right. And that happened in this case; correct?

6 A Yes.

7 Q Is it fair to say you had four to five officers doing
8 that search of the neighborhood?

9 A I'm not sure of the number. I know that I -- when I
10 requested the K9 unit, normally, we have, at least, two
11 what we call cover officers for the K9 unit. Because he's
12 busy running the K9 and following the leads from the K9.

13 MR. STALVEY: Thank you, sir.

14 No further questions.

15 THE COURT: Any other questions?

16 MR. MCCOLLUM: No, Your Honor.

17 THE COURT: Sir, you can step down.

18 THE WITNESS: Thank you.

19 MR. MCCOLLUM: Your Honor, may we release this
20 witness?

21 THE COURT: Any objection?

22 (WHEREUPON, there was no verbal response.)

23 THE COURT: Thank you, sir.

24 MR. WESTON: Excuse me, Your Honor. I think there
25 are -- there are a couple of matters we need to take up

1 (WHEREUPON, State's Exhibit No. 7 was marked for
2 identification only.)

3 (WHEREUPON, the jury came into open court at
4 approximately 1:26 p.m.)

5 THE COURT: All right. Ladies and gentlemen, I hope
6 you had a good lunch. We're ready to resume.

7 Yes, sir.

8 MR. MCCOLLUM: May it please the Court, Your Honor.

9 THE COURT: Yes.

10 MR. MCCOLLUM: The State calls Dr. Michael Ward.

11 THE CLERK: Sir, if you'll, please, place your left
12 hand on the Bible and raise your right hand.

13 WHEREUPON,

14 MICHAEL EUGENE WARD, M.D.,
15 after first having been duly sworn, testified as follows:

16 THE CLERK: Thank you.

17 Please be seated.

18 And, please, state your name for the record.

19 THE WITNESS: Michael Eugene Ward.

20 THE CLERK: Thank you, sir.

21 DIRECT EXAMINATION

22 BY MR. MCCOLLUM:

23 Q Good afternoon, Dr. Ward.

24 A Good afternoon.

25 Q Where are you employed?

1 A I'm employed by Pathology Associates of Greenville
2 here in -- in Greenville. And I'm, also, appointed as the
3 chief medical examiner for the county of Greenville.

4 Q What do you do in that role?

5 A My responsibilities are to investigate deaths that
6 occur in Greenville County to determine cause and manner
7 of death.

8 Q And, Dr. Ward, what formal education did you have to
9 have for your role?

10 A I have a Bachelor's Degree in Biology from the
11 University of Alabama. I have a Master's Degree in
12 Forensic Science from the University of Alabama in
13 Birmingham. I received my medical degree from the
14 University of South Alabama, which is in Mobile. I did a
15 four-year anatomic pathology residency at the Medical
16 University of South Carolina in Charleston, and a one-year
17 fellowship in forensic pathology at the University of New
18 Mexico.

19 I'm board certified by the American Board of
20 Pathology in both anatomic and forensic pathology.

21 Q Dr. Ward, do you have to take continuing education
22 classes to maintain any of your certifications?

23 A Yes, I do.

24 Q And what do you -- what do you -- what does that
25 entail each year?

1 A Well, to maintain my license, we're required to have
2 40 hours of continuing medical education. I am
3 grandfathered in as far as recertification. So I do not
4 have to re-sit for the boards.

5 MR. MCCOLLUM: Your Honor, at this time, we -- the
6 State would like to offer Dr. Michael Ward as an expert in
7 forensic pathology.

8 THE COURT: Any objection or further voir dire?

9 MR. BANNISTER: None, Your Honor.

10 THE COURT: Ladies and gentlemen, normally, a witness
11 cannot testify to his or her opinion. But an exception
12 exists for witnesses we call expert witnesses. And an
13 expert witness is someone who's qualified by the Court
14 based on their skill, education, training in some
15 particular field to give their -- their opinion in that
16 field. And they can, also, give the basis for that
17 opinion.

18 This witness is going to be qualified in the area of
19 forensic pathology. He can give his opinion in that area.
20 And you may use that opinion any way you see fit.

21 Yes, sir.

22 MR. MCCOLLUM: Thank you, Your Honor.

23 BY MR. MCCOLLUM:

24 Q Dr. Ward, you said as a part of your duties, you
25 perform autopsies?

1 A Yes, it is.

2 Q Can you, please, explain to the jury what an autopsy
3 is?

4 A An autopsy is a detailed physical examination that's
5 performed on someone who has passed away. That includes
6 an external examination with documentation of injuries
7 that may be present, as well as an internal examination to
8 include a -- a visualization of internal organs,
9 microscopic examination, and, in many cases, a
10 toxicological examination.

11 Q And, Dr. Ward, did you have a chance in this case to
12 perform an autopsy on Ms. Ruby Flamm?

13 A Yes, I did.

14 Q And can you --

15 MR. MCCOLLUM: I beg the Court's indulgence, Your
16 Honor.

17 THE COURT: Certainly.

18 MR. BANNISTER: No objection.

19 MR. MCCOLLUM: Your Honor, I'd like to move what's
20 State's Exhibit No. 6 into evidence.

21 THE COURT: All right. And without objection, it's
22 so admitted.

23 (WHEREUPON, State's Exhibit No. 6 was admitted into
24 evidence.)

25 MR. MCCOLLUM: Thank you, Your Honor.

1 BY MR. MCCOLLUM:

2 Q Dr. Ward, I'm going to hand you this laser pointer.

3 MR. MCCOLLUM: Your Honor, can we get the bailiff to
4 turn off one more light just to help --

5 THE COURT: Absolutely.

6 Is that helpful?

7 THE BAILIFF: Is that too much?

8 MR. MCCOLLUM: Too much.

9 BY MR. MCCOLLUM:

10 Q Dr. Ward, do you recognize what's been marked as
11 State's Exhibit No. 6?

12 A Yes, I do.

13 Q And what is it?

14 A This is a copy of the portion of the body diagram
15 that I performed -- or that I created on Ms. Ruby Flamm.

16 Q And can you, please, explain your findings using the
17 diagram to the jury, please?

18 A Yes, I can.

19 THE COURT: Dr. Ward, when you do that --

20 THE WITNESS: Yes, ma'am.

21 THE COURT: -- would a pointer be helpful?

22 THE WITNESS: I have one, a very small one.

23 THE COURT: Of course, you do.

24 All right. Thank you.

25 Go ahead.

1 THE WITNESS: I'm sorry.

2 BY MR. MCCOLLUM:

3 Q Can you, please, explain to the jury your findings
4 using this anatomical picture?

5 A Certainly. So this is a four view of the head. And
6 we use this to help us diagram our injuries that we may
7 find. Present on Ms. Flamm was a single gunshot wound to
8 the head. As you can see, it's located just to the left
9 of the midline. And it was just in front of what was her
10 hairline.

11 Centrally placed here is a circular defect, which is
12 the gunshot wound of entrance. That's a circular hole
13 that penetrates through the skin and the underlying bone.
14 Present on the skin surrounding this one -- it's difficult
15 to see -- but there's this sort of small dots that
16 represent the burned gunpowder or soot that's deposited on
17 the skin. And these larger dots represent the abrasions
18 that are caused by striking unburned gunpowder. So that's
19 called gun -- gunpowder stippling.

20 When you fire a weapon, not only does the bullet come
21 out of the muzzle of the gun, but hot gas, soot, and
22 unburned gunpowder, also, come out. And they will deposit
23 themselves on the skin if the muzzle of the gun is close
24 enough.

25 In this case, it was close enough for the unburned

1 gunpowder and the soot to deposit itself, but far enough
2 away so that the gas did not burn skin. So this would be
3 what we would call a close range gunshot wound, which
4 would be within the range of a few inches. So from, say,
5 two to six inches from the muzzle of the gun to
6 Ms. Flamm's forehead.

7 This wound then perforated the skin and the
8 underlying bone of her frontal bone, perforated her brain,
9 and was -- fragments were recovered from the termination
10 of wound tract near the back of her skull. We recovered a
11 jacket, a lead core, and multiple fragments of each of
12 those materials.

13 Q And, Dr. Ward, before you performed this autopsy, did
14 you have a chance to go over Ms. Flamm's medical history?

15 A Yes, I did.

16 Q Can you, please, explain to the jury what you found
17 in that medical history?

18 A So when -- when Ms. Flamm arrived at the autopsy
19 facility, she was wearing a continuous positive airway
20 pressure mask or a CPAP mask.

21 At the time of autopsy, we were able to demonstrate
22 that Ms. Flamm had severe coronary artery disease in that
23 she had a calcificate blockage of her coronary arteries.
24 She had had a previous heart attack because she had some
25 scarring in the wall muscle of her heart.

1 And she had chronic obstructive pulmonary disease or
2 emphysema, and, thus, the need for the CPAP and probably
3 oxygen use at home. So she had some significant natural
4 disease, including her lungs and her heart, as well as
5 that close-range gunshot wound to her forehead.

6 Q And, Dr. Ward, based on the autopsy that you
7 performed, what did you conclude the cause of death was?

8 A Ms. Flamm died as a result of a gunshot wound of the
9 head.

10 Q And, Dr. Ward, what is the manner of death?

11 A The manner of death in this case would be homicide.

12 Q And, Dr. Ward, to clarify, you stated earlier in your
13 testimony, how many gunshot wounds did Ms. Flamm receive?

14 A Ms. Flamm had one gunshot wound to the head.

15 Q Dr. Ward, while you were conducting the autopsy, were
16 there any other members present from law enforcement or
17 other departments?

18 A Yes, there were. There was Greenville County
19 Sheriff's Detective Antonio Bailey; Officer Tim Riley of
20 the Greenville County Criminal Justice Support Department;
21 and Deputy Coroner Michael Edmonds of the Greenville County
22 Coroner's Office.

23 Q And, Dr. Ward, let me take you back one moment.

24 Would there be a reason to think why -- would there be a
25 reason for anyone to think that there had been more than

1 one gunshot wound to Ms. Flamm?

2 A Well, certainly, if you were at the scene and looking
3 at this, you might -- so there's a gunshot wound here.
4 There's, certainly, going to be a great deal of blood.
5 And as -- if you're in this position, blood is going to go
6 this way, and this way, and could well pool within an ear
7 canal. Blood in an ear canal sometimes looks like a hole.
8 And it may have been misinterpreted as a separate gunshot
9 wound. That's a reasonable possibility.

10 Q Dr. Ward, can you, please, define for the jury what a
11 homicide is?

12 A Homicide is the death of an individual at the hands
13 of another person. We have natural -- natural death, an
14 accidental death where things are beyond our control.
15 Suicide where the death is at the hands of that person.
16 And then homicide, a death resulting from the actions of
17 another person.

18 Q And, Dr. Ward, let me take you back. You stated that
19 Antonio Bailey was present with you, along with the
20 forensics officer, Tim Riley?

21 A Yes, he was.

22 Q When you pulled the bullet from Ms. Flamm, what did
23 you do with it?

24 A So after we recovered the bullet and bullet fragments
25 from the wound tract, they were washed, photographed by

1 me, and then packaged by me by putting them into a sterile
2 container, sealed. A label with the decedent's name and
3 autopsy number was placed on it. And I initialled it to
4 confirm that I knew -- that that was sealed by me. After
5 that, it was receipted to Officer Tim Riley of the
6 Greenville County Criminal Justice Support Department.

7 Q And was Investigator Bailey present in the room?

8 A He was.

9 Q Dr. Ward, I'm going to show you -- show you what's
10 been marked as State's Exhibit No. 7. Would you, please,
11 open that bag under the desk?

12 A (Witness complied.)

13 Q Dr. Ward, do you know what that is?

14 A Yes, I do.

15 Q Okay. And how do you know that -- that item is what
16 it --

17 A State's Exhibit No. 7 is a container that we use at
18 the Greenville County Coroner's Office -- Coroner's and
19 Medical Examiner's Office. It has Ms. Flamm's unique
20 autopsy label on it. And it is initialled by me.

21 Q And, Dr. Ward, is that item in the same container
22 that it was in when you pulled it -- pulled the bullet
23 from Ms. Flamm and put it in that container?

24 A It's in the same container that I receipted it to
25 Officer Riley, yes.

1 Q And does it look like it's been tampered with?

2 A It has been opened, yes.

3 Q But it is -- is it in a heat-sealed bag?

4 A Yes, it is.

5 MR. MCCOLLUM: Thank you, Dr. Ward.

6 Please answer any questions the Defense attorney has
7 for you.

8 MR. BANNISTER: Just briefly.

9 CROSS-EXAMINATION

10 BY MR. BANNISTER:

11 Q Just two. Could you tell in your autopsy whether the
12 bullet went straight into Ruby Flamm's head, or was it at
13 an angle?

14 A The primary direction of this gunshot wound through
15 Ms. Flamm's head is from front to back. It goes very
16 slightly from her left -- it's just to the left of her
17 midline. So it goes very slightly from left to right as
18 it goes backward and it goes downward.

19 Q So the way you marked on your drawing, the bullet
20 would have gone, as I'm facing it, downward and to the
21 left?

22 A Downward and to the right.

23 Q To the right?

24 A Very slightly from left to right.

25 Q Okay. From her left ear to the right?

1 A That's correct.

2 Q And did -- as part of your autopsy, did you perform a
3 toxicology examination of her?

4 A Yes, we did.

5 Q And what did you find?

6 A Ms. Flamm had cocaine and its breakdown product
7 benzoylecgonine present in her blood.

8 Q When you say it's a breakdown product, what -- what
9 do you mean by that?

10 A Well, we usually think of an apparent drug being
11 metabolized. For some reason that I don't understand,
12 cocaine is not metabolized. It is broken down. So I try
13 to be very clear when I say that.

14 But benzoylecgonine -- after the ingestion of
15 cocaine, it is broken down in the bloodstream and in
16 our -- primarily, in our liver to benzoylecgonine. So
17 it's a marker that cocaine had been present.

18 MR. BANNISTER: Thank you, Doctor.

19 THE COURT: Anything else for this witness?

20 MR. MCCOLLUM: Your Honor, no further questions for
21 the witness.

22 But the State would ask permission to publish the
23 image to the jury due to the light.

24 THE COURT: Oh, certainly. Absolutely.

25 Thank you, Dr. Ward.

1 THE WITNESS: Thank you.

2 MR. MCCOLLUM: Your Honor, may this witness be
3 excused from his subpoena?

4 THE COURT: Any objection?

5 MR. STALVEY: No objection.

6 MR. MCCOLLUM: Your Honor, permission to publish to
7 the jury?

8 THE COURT: Oh, please.

9 MR. WESTON: Your Honor, the State would call
10 Investigator Antonio Bailey.

11 THE CLERK: Sir, if you'll, please, place your left
12 hand on the Bible and raise your right hand.

13 WHEREUPON,

14 ANTONIO BAILEY,
15 after first having been duly sworn, testified as follows:

16 THE CLERK: Thank you.

17 Please be seated.

18 And, please, state your name for the record.

19 THE WITNESS: Antonio Bailey.

20 THE CLERK: Thank you, sir.

21 DIRECT EXAMINATION

22 BY MR. WESTON:

23 Q Investigator Bailey, with whom are you employed?

24 A With the Greenville County Sheriff's Office.

25 Q And you said -- I said Investigator Bailey, I assume

1 your title is that of an investigator?

2 A Yes, sir.

3 Q And you're a homicide investigator?

4 A I am.

5 Q And how long have you been in that position?

6 A 18 years.

7 Q Now, just ballpark, about how many homicides have you
8 been the lead investigator -- or one of the primary
9 investigators on? Just ballparking it.

10 A More than 200.

11 Q All right. And I assume you've testified in court a
12 number of times?

13 A Yes, sir.

14 Q All right. Did you have an occasion to be the lead
15 investigator in the case that brings us to court today
16 involving Ms. Flamm?

17 A Yes, sir.

18 Q Let's get the bullet fragments out of the way first.
19 You heard the testimony of Dr. Ward. Did you, in fact,
20 attend the autopsy of Ms. Flamm?

21 A I did.

22 Q And was -- was that along with Mr. Riley?

23 A Yes.

24 Q And what is his job?

25 A Investigator -- I'm sorry. Mr. Riley is a forensics

1 tech with the sheriff -- with the -- Greenville County.
2 One of his primary responsibilities is, in addition to
3 processing scenes with us when we go out on calls, he --
4 they, also, attend autopsies. And when they go to the
5 autopsies, one of their responsibilities is to collect
6 evidence.

7 Q And Mr. -- Forensics Tech Riley and yourself were
8 both at the autopsy of Ms. Flamm; is that correct?

9 A That's correct.

10 Q And one of the reasons, I assume, you're there is to
11 review evidence; is that correct?

12 A Yes. That's one of them, yes, sir.

13 Q Did you have an occasion -- and would that include,
14 as in this case, projectiles that would be removed from --
15 from a deceased body?

16 A Yes, sir.

17 Q Did you have an occasion to review and -- excuse me,
18 examine -- not necessarily touching, and weighing, and
19 looking at, but to examine the projectiles that were
20 removed from Ms. Flamm's body?

21 A I did.

22 Q Is that part of your responsibilities?

23 A Yes, sir.

24 Q All right. Well, did you -- was anything noteworthy
25 about it that you would know, a non-ammunitions expert --

1 was anything noteworthy that you noted?

2 A No, sir.

3 Q All right. I'm going to show you what has been
4 marked as State's Exhibit No. 7. I'd ask you if you would
5 hold it down below the eye line of the witness counter
6 here. And I'd ask you to take -- open it up and take a
7 look at it.

8 A Okay.

9 Q Do you recognize what's in the contents?

10 A I do.

11 Q And what is the contents?

12 A Some metal -- some metal projectiles.

13 Q All right. And do you recognize the label that's on
14 there?

15 A It's a label that Dr. Ward would have signed and
16 sealed the container.

17 Q When you were at the autopsy with Dr. Ward and
18 Forensics Tech Riley, did you have an occasion to see
19 Dr. Ward remove the projectiles from Ms. Flamm's body?

20 A I did.

21 Q Did you see what he did with them?

22 A He basically -- once he removed the projectiles from
23 her body, there's a table right alongside the body. He --
24 along with a sink. He would, basically, wash the
25 projectiles. After they're washed, he would insert them

1 in a sterilized container, seal it with a -- along with
2 his initials and close it.

3 Q All right. And what does he then do with the
4 container?

5 A That container is then given to the forensics tech.
6 In this case, it was tech -- Forensics Tech Riley, I
7 believe.

8 Q And what does -- does the -- does the forensic
9 technician do anything as far as opening that container?

10 A No, sir.

11 Q All right. Now, it's -- you're saying it's sealed by
12 Dr. Ward?

13 A It's sealed by Dr. Ward, along with his initials.

14 Q All right. And did you -- do you remember Dr. Ward
15 following that procedure in this case, that being initial,
16 and itemizing, and notate what it was, as well as sealing
17 the item.

18 A As well as sealing the items and -- and producing
19 what we call a property and evidence sheet.

20 Q So Dr. Ward would have produced a property and
21 evidence sheet; is that correct?

22 A That's correct.

23 Q And once he produces that, he gives that to Forensics
24 Tech Riley?

25 A Yes, sir.

1 Q And what does Forensics Tech Riley do with it?

2 A Those items are then taken to our property and
3 evidence room where they're turned over and stored.

4 Q All right. And did you watch Dr. Ward give Forensics
5 Tech Riley the property and evidence sheet, as well as the
6 bullet fragments -- projectile fragments in the sealed
7 container in this particular case?

8 A Yes, sir.

9 Q And the -- and you were saying that would have been
10 turned in by Investigator Riley to property and evidence;
11 is that correct?

12 A That's correct.

13 Q All right. Assuming that the item was somehow opened
14 or what have you, would property and evidence accept it?

15 A They won't accept it, no, sir.

16 Q Okay. In your opinion, were the -- were the proper
17 protocols followed from Dr. Ward's office for -- for
18 preserving and passing along the potential evidence in
19 this case?

20 A Yes, sir.

21 MR. WESTON: Okay. If you'll just hold on for one
22 second.

23 Excuse me, Your Honor. One moment.

24 THE COURT: Certainly.

25 MR. WESTON: Thank you.

1 (Pause.)

2 BY MR. WESTON:

3 Q I'll take that from you.

4 Thank you, sir.

5 Now, just one more question about the chain -- about
6 the -- the items. When you looked at this just now, did
7 you -- is there any indication that this has been opened?

8 A Yes, sir.

9 MR. WESTON: Excuse me one second.

10 (Pause.)

11 BY MR. WESTON:

12 Q Was the -- is the container still in a heat-sealed
13 bag?

14 A Yes, sir. It's a sealed bag, correct.

15 Q Okay. Let's move on to your investigation in this
16 case, generally. Okay. When did you receive a call
17 regarding this case, about what time on the morning of
18 the -- I think the 19th of --

19 A Roughly -- roughly about 4:30, 5:00 that morning.

20 Q And what was the nature of the call?

21 A Generally, the sheriff's office has six homicide
22 investigators. We have a week on call. On call consists
23 of anything that comes in after normal business hours.

24 So this particular week, I was on call. And I got
25 the call from the -- you usually get it from the

1 supervisor on the scene. In this particular incident, I
2 got -- I received a call. And they indicated that he was
3 at ■■■ 6 Colonial Drive -- or Colonial Avenue in reference
4 to a gunshot victim.

5 Q All right. I'm going to hand you a -- a notebook.
6 Do you recognize this notebook? We're not going to put it
7 into evidence. I just wanted you to identify it for
8 everybody who's looking.

9 A That's my investigative notebook --

10 Q All right. And I'm going to leave it here in case
11 you need to refer to it. Is that your investigative
12 notebook from this particular case?

13 A Yes, sir.

14 Q All right. So when you arrived on scene, can you
15 tell the Court what was the first thing you did, or one of
16 the first things you did?

17 A One of the first things I do when I arrive on the
18 scene is, again, get with the supervisor on the scene, the
19 uniform supervisor. And he will, again, tell me,
20 basically, what he has.

21 In this particular incident, I met with then Sergeant
22 Goins. He indicated, again, that the sheriff's office had
23 received a 911 call. And it was in reference to a gunshot
24 victim. He indicated that there was a 75-year-old female
25 in the residence with a gunshot wound to the head.

1 Q And did you go into the residence, initially?

2 A Not initially. One of the things that we do as an
3 investigation proceeds, we have three entities that
4 usually arrive on the scene. One being the forensics
5 unit, another one being the coroner's office. We --
6 normally, the three of us would get together. And we
7 would walk -- conduct what we call a walk through. That
8 being all three of us getting together.

9 And in this particular incident, it was a home. So
10 all three of us would get together and walk in the home
11 just to get what we call a preliminary view of what we
12 saw.

13 Q And I'm going to jump sort of to the end. About how
14 long were you there that morning?

15 A I think I arrived somewhere like 5:00 that morning.
16 And I probably did not leave until maybe lunchtime.

17 Q So you were there during the daylight hours?

18 A Yes, sir.

19 Q At some point during the morning hours, did you have
20 the occasion to walk around the entire house just to see
21 what the outside looked like?

22 A I walked around the house several times, yes, sir.

23 Q All right. So you saw the video -- the crime scene
24 video that was shown earlier. That was, in fact, an
25 accurate depiction of what the outside looked like?

1 A Yes, sir.

2 Q Was it, also, an accurate depiction of what you found
3 when you first went there on the inside?

4 A Yes, sir.

5 Q Okay. Tell the jury what you found as far as the
6 victim and her -- in her bedroom.

7 A We walked inside the -- when you walk in the house,
8 the first bed -- the first room to your left was the
9 victim's bedroom. The victim was in a -- what we call a
10 supine position laying on her back in a hospital bed. And
11 you could see that she had some type of trauma to the
12 head.

13 The room was somewhat cluttered. There was a chair,
14 along with a little night stand, you know. And, of
15 course, with trauma to the head, there was a substantial
16 amount of blood.

17 Q Was there any other evidence -- was there any
18 evidence of a struggle?

19 A No, sir. She was in bed laying on her back with the
20 covers partially just -- just below her breast line.
21 She -- there was a CPAP machine with a full mask covering
22 her nose and mouth that was still on her -- still on her
23 face when I arrived. In addition, the machine was still
24 on.

25 Q All right. And were there any -- who were the

1 residents of the incident location that were there at the
2 time you arrived?

3 A When I arrived, there was an older female. Later --
4 I later found out that it was the victim's daughter. I
5 believe her name was --

6 Q Was that Ruby Smith?

7 A Ruby Smith.

8 Q Ruby Lynn Smith.

9 A Ruby was -- she was on the front steps of the home
10 crying, real shaken. The -- the other deputies told me
11 that there was -- in addition to Ms. Ruby being at the
12 house, there was another person, I believe, they
13 identified as a grandson who was there as well.

14 Q Would that be Mr. Lorenzo Pardlow?

15 A Yes, sir.

16 Q All right. Did you have occasion to speak briefly
17 with either one of them that morning?

18 A I spoke briefly with Ms. -- Ms. Ruby.

19 Q All right. And this was on scene?

20 A On scene.

21 Q Did she give you any indication as to who else might
22 have been in the home that evening?

23 A She indicated that there was a female only known to
24 her as Denise.

25 Q All right. And at that point, did -- well, did she

1 give you any indication there was anybody else that had
2 been in the home after everybody had gone to bed around
3 midnight, or whatever that evening?

4 A No, sir. It was -- like I said, she was -- she was
5 seated on the front steps of the home that particular
6 morning. It was real -- it was real cold. And we were
7 just beginning our investigation. So I really didn't
8 interview her in depth. It was just kind of, like,
9 cursory questions as far as, do you know what happened?
10 Can you tell me what happened? That type of stuff.

11 Q All right. Did she indicate what had happened to
12 this Denise -- or what'd -- what did she tell you about
13 the circumstances with regard to Denise?

14 MR. BANNISTER: Your Honor, I believe that's hearsay.
15 And we would object to that.

16 MR. WESTON: Your Honor, it's not offered for the
17 truth of the matter asserted. It's offered to explain
18 what he did next, which is what I'm getting ready to ask
19 him about.

20 THE COURT: All right. I'll allow that question.

21 BY MR. WESTON:

22 Q What did she tell you with regard to the
23 circumstances with regard to this Denise and her deceased
24 mother?

25 A She indicated that -- she talked about her mother

1 being on a breathing machine and that she had to get up to
2 put water in her mother's breathing machine. I think she
3 indicated that she got up maybe around 4:00 to put -- to
4 go in her mother's room to put water in this machine.

5 After she -- she said when she walked in the room, her mom
6 was there in the bed. She put water in the machine. And
7 there was -- Denise was sitting in a chair in her bedroom.

8 She said, you know, she left and came back about
9 maybe 30 or 45 minutes later. And she noticed that Denise
10 was gone and her mother was laying there with -- bleeding
11 from the head.

12 Q At that point, did -- did you try to determine who
13 this Denise was?

14 A Yes, sir.

15 Q I mean, among other things, I'm sure y'all were doing
16 a lot of different things, like, they mentioned dog
17 tracks, and what have you. But was that one of the things
18 that y'all decided to do?

19 A That was one of the things, one of the primary
20 things. I was -- by that time, we had -- I had two
21 additional investigators that had arrived on the scene.

22 Q And who were they?

23 A That's -- they were Investigator Chad Maltby, and
24 then it was lieutenant -- I'm sorry, Sergeant Weiner.

25 Q All right. And you were saying. I'm sorry.

1 A After I was -- I was going to be responsible for the
2 scene investigation, which, basically, meant I was going
3 to be there the entire time to oversee what, actually,
4 went on and what evidence that I wanted collected. Any
5 other additional interviews, I asked Investigator Maltby
6 and Weiner to conduct.

7 One of the things that we wanted to get started right
8 on was the fact that we had a name of this Denise. So
9 they were tasked with the responsibility of finding out as
10 much as they could about this person we knew only as
11 Denise.

12 Q Were you -- did you, subsequently, find out who
13 Denise was?

14 A Yes, we did.

15 Q And who was -- who was -- what was the full name of
16 Denise?

17 A Malette Denise Kimbrough.

18 Q Okay. And is that the Defendant seated in the
19 courtroom today?

20 A Yes, sir.

21 Q All right. Once y'all found out who she was, what
22 action did y'all take in terms of locating her?

23 A We went -- I, actually, sent a uniform car by her
24 residence. And, of course, they made -- they made contact
25 at the residence and she wasn't there. In addition to --

1 in addition to that, again, one of the basic -- basic
2 primary things at that particular time is we wanted to try
3 and find out where or who this Denise was. So after going
4 to the house and we couldn't find her, we were given some
5 other information. We followed up on it.

6 Q And I'm sorry. And I lost it. What house did you go
7 to to locate her?

8 A We went to the house, I believe, on Windsor, her --
9 her address --

10 Q Okay. That's fine. Was her -- was this -- did
11 anybody else live at that home?

12 A She lived there, along with her husband, I believe.

13 Q Okay. And did -- and don't say what they said. But
14 did -- did you or any officer speak with her husband that
15 morning?

16 A I believe they did, yes, sir.

17 Q Okay. And was she, in fact, found there?

18 A No, sir.

19 Q All right. So what was the next step in locating
20 her?

21 A The next step -- the information that they received
22 from her husband, which was -- do you want me to tell you
23 what information they received?

24 Q Well, they -- so let's do it another way. Did the
25 officers that you sent there have a conversation with her

1 husband concerning her -- her whereabouts?

2 A Yes, sir, they did.

3 Q As a result of the conversation, what was the next
4 place that y'all went to look for her?

5 A They went to her daughter's house.

6 Q All right. And do you know where -- do you remember
7 where -- what street her daughter lived on?

8 A If I can consult my notes.

9 Q Sure.

10 A [REDACTED] H Gantt Street.

11 Q [REDACTED] H what street?

12 A Gantt.

13 Q All right. And did you send -- direct officers or
14 investigators to go to that location looking for the
15 Defendant?

16 A I did.

17 Q And do you remember who went there?

18 A Investigator Chad Maltby and Sergeant Weiner.

19 Q All right. And as -- did you later learn whether
20 they had -- whether they located the Defendant there?

21 A No, sir, they did not.

22 Q And do you know whether they had a conversation with
23 anybody at that residence?

24 A They did.

25 Q And who was at the -- as far as your investigation

1 revealed, who was at that residence?

2 A Her daughter Malexes and a gentlemen known -- I
3 believe his name was Michael, who was identified as
4 Malexes' boyfriend.

5 Q All right. Would that be Malexes Dixon?

6 A Yes, sir.

7 Q And would it be Michael Argumenti?

8 A That's correct.

9 Q All right. And what did you later determine was
10 their relationship to the Defendant, Ms. Kimbrough?

11 A We found out that Malexes was Ms. Kimbrough's
12 daughter.

13 Q And what about Mr. Argumenti?

14 A Mr. Argumenti was Malexes' boyfriend.

15 Q All right. Did you determine where they lived -- I
16 mean, you had already determined where they lived. Were
17 they both living at this location?

18 A From my understanding, yes, sir.

19 Q All right. And did both Ms. Dixon, as well as
20 Mr. Argumenti, at some point, come to the -- well, did --
21 I think I may have already asked you this. Did one or
22 both of those investigators, as far as your investigation
23 revealed, talk to them?

24 A Yes, sir, they did, both of them.

25 Q Did both of them, that being Mr. Argumenti, the

1 boyfriend, and Ms. Dixon, the daughter of the Defendant,
2 both of them, did they, at some point, come to the law
3 enforcement center to give a statement concerning what
4 they may or may not have known about this incident?

5 A That's correct. Both of them were -- came to the law
6 enforcement center and, subsequently, gave a statement.

7 Q All right. And -- but you -- you never met with
8 either one of them; is that correct?

9 A That's correct.

10 Q All right. And that would have been Investigator
11 Maltby or -- and/or Investigator Weiner; is that correct?

12 A That's correct.

13 Q Okay. How long did this investigation go on before
14 you decided to make an arrest in this case?

15 A Probably five months.

16 Q All right. Did you explore Ms. Kimbrough as the only
17 possible option when you first heard her name mentioned by
18 the deceased's daughter?

19 A No, sir.

20 Q Was there a dog track used that night?

21 A I believe they used a -- it was a K -- K9 officer
22 that was working that morning. And that was one of the
23 things that they told me when I arrived at the scene.
24 They had, actually, deployed a dog to see if it could pick
25 up a scent or a trail.

1 Q And was that successful?

2 A No, sir.

3 Q All right. I'll assume forensics -- as part of the
4 forensics protocol, did forensics work on the house? Is
5 that correct?

6 A Forensics, yes, sir, they did.

7 Q Did that include collecting items that may or may not
8 have had -- may not -- may or may not -- may or may not
9 have had evidentiary value?

10 A Yes.

11 Q Did any of the items in the house turn out to have
12 any evidentiary value in terms of being able to move a
13 step closer toward locating the perpetrator of this crime?

14 A Not the perpetrator, no, sir.

15 Q Things like -- I think that there were things that --
16 that went into property and evidence like beer can bottles
17 with cigarettes in them, and things of that nature that
18 were found in the house?

19 A Yeah, things of that nature. I'm sorry. Yes.

20 Q Okay. But did -- did they assist in any way in
21 locating a suspect?

22 A No, sir.

23 Q All right. Were any -- was anybody else investigated
24 as possible suspects in this case?

25 A Yes, sir, several.

1 Q And did -- were they -- and did you lead those --
2 that part of the investigation as well?

3 A I did.

4 Q And did those -- did any of them come to fruition in
5 terms of developing a -- a serious suspect in this case?

6 A No, sir. I was -- most -- I was in every case able
7 to eliminate them or substantiate their alibis.

8 Q All right. Are you comfortable in saying,
9 Investigator Bailey, that you've appropriately and
10 thoroughly investigated this case?

11 A Absolutely.

12 Q And are you the person that signed the warrant
13 charging this -- Ms. Kimbrough with this crime?

14 A I'm the person that signed the warrants, the murder
15 warrant and the possession of a weapon during the
16 commission of a violent crime.

17 MR. WESTON: Thank you, sir.

18 CROSS-EXAMINATION

19 BY MR. STALVEY:

20 Q Investigator Bailey, you got a search warrant for
21 Colonial Avenue, which was the scene of this shooting;
22 correct?

23 A Yes, sir.

24 Q And you actually -- prior to going to the scene, you
25 went and secured that search warrant; correct?

1 A That is correct.

2 Q And as a result of that -- well, the search warrant
3 that you got, you indicated you were looking for several
4 different items of potential evidence, which would include
5 any firearms, ammunition, shell casings; is that -- is
6 that correct?

7 A That's correct.

8 Q And you just testified you were in charge -- let's
9 see, you said you were the scene investigator at ■ 6
10 Colonial; is that correct?

11 A That's correct.

12 Q So it's your responsibility to make sure that that
13 residence was thoroughly -- was thoroughly searched;
14 correct?

15 A That's one of our responsibilities, yes, sir.

16 Q Okay. And that included -- included the inside and
17 the outside of the residence; correct?

18 A That's correct.

19 Q And you did do a search of the inside of the
20 residence. And there were several items collected;
21 correct?

22 A Yes, sir.

23 Q There was a beer can or a soda bottle, some cigarette
24 butts, some other items that were collected for possible
25 DNA analysis; correct?

1 A That's correct.

2 Q And I think that's -- Mr. Weston had asked you if any
3 of those items helped you develop a suspect in the case.
4 Did they?

5 A No, sir.

6 Q And you, also, thoroughly searched the -- well, the
7 outside of the residence; correct?

8 A The outside was searched, yes, sir.

9 Q And I believe you testified you walked around the
10 residence several times; correct?

11 A That's correct.

12 Q And you were there during the daytime; correct?

13 A Yes, sir.

14 Q And did you do a thorough search for any firearms?

15 A We did.

16 Q You did a thorough search on the -- on the outside of
17 the residence?

18 A We did not locate the firearm.

19 Q But you did a good search; right?

20 A Yes, sir.

21 Q A thorough search; correct?

22 A A good search.

23 Q Did you -- do you remember on the video of the inside
24 of the house, there was an area close to the back door
25 that had some boxes in it; correct -- do you remember that?

1 A I do.

2 Q And were each and every one of those boxes searched
3 for drugs, or firearms, or ammunition?

4 A I didn't, personally, no, sir.

5 Q Are you aware of whether those boxes were ever
6 searched?

7 A No, sir.

8 Q Does anything in your investigative report indicate
9 whether any of those boxes were searched?

10 A Nothing in my report, no, sir.

11 Q And you'd have that information, considering you're
12 the lead investigator of this case; correct?

13 A That's correct.

14 Q And on the exterior of the home, I noticed there was
15 a -- there was a dog house out there shaped like an igloo.
16 Do you remember seeing that?

17 A From this morning, yes, sir.

18 Q Okay. Was that searched for any firearms, shell
19 casings, ammunition?

20 A I did not personally search it, no, sir.

21 Q Is there any information in your report, as lead
22 investigator, that indicates that -- that the dog house
23 was searched?

24 A No, sir, not in my report.

25 Q Is there any information in your report or did you

1 search the crawl space area underneath the house?

2 A I did not, personally, search the crawl space, no,
3 sir.

4 Q Was it searched?

5 A I'm not sure, sir.

6 Q Does your investigative report indicate that that
7 area was searched?

8 A No, sir.

9 Q So it's fair to say that was not searched?

10 A It's fair to say I did not search it, sir.

11 Q You'd know if it was searched; correct?

12 A I would have known. I can say without a doubt, I did
13 not search it, no, sir.

14 Q Who else would have been responsible for searching
15 the residence?

16 A Any and -- probably the uniform deputies that had
17 responded to the scene and the investigators -- the other
18 investigators.

19 Q And they -- and they all filed reports in this case;
20 correct?

21 A They did.

22 Q And none of their reports indicate that any of those
23 items were searched; correct?

24 A That's correct.

25 Q How about the next door neighbor's yard? I noticed

1 there was a chain link fence that separated the two
2 residences. Was -- was any of that area searched?

3 A We didn't have a search warrant for that home.

4 Q Well, I mean, you could see along the line of the
5 fence, couldn't you?

6 A We did not locate anything in plain view.

7 Q Was it searched?

8 A We did not -- no, sir. It was not searched.

9 Q Okay. Was a BB&T receipt recovered from the home?
10 And I'd -- I'd refer you to the return on the search
11 warrant you executed at [REDACTED] 6 Colonial.

12 A Yes, sir.

13 Q And just so we can educate the jury, a return is part
14 of a search warrant in which you list all the evidence
15 that was recovered after executing the search warrant;
16 correct?

17 A Yes. Any time we -- any time we execute a search
18 warrant, there's a sheet -- what we call the return. And
19 it lists any and all items that we, as police officers,
20 would have -- would have received.

21 Q Did you ever request any records from BB&T as to any
22 account information or other information that was included
23 on that receipt?

24 A I don't believe I did, no, sir.

25 Q So after searching [REDACTED] 6 Colonial, you'll agree no

1 shell casings, no firearm, and no ammunition was found
2 either inside or outside that house?

3 A None of those items were found.

4 Q There was, also, a search of Gantt Street; correct?
5 And that's -- and that's where Malexes and Michael lived.

6 A Was there a search warrant?

7 Q No, sir.

8 I'll refresh your recollection. It's in your file,
9 but it -- they gave consent to search their residence.

10 A Okay.

11 Q And I believe you testified that Investigator --
12 Investigator Weiner and Maltby responded to that location;
13 is that correct?

14 A That's correct.

15 Q Did you ever respond to that location?

16 A No, sir.

17 Q So you weren't involved in any search of the -- of
18 that residence?

19 A No, sir.

20 Q You did respond to John Gambrell's home; correct?

21 A I did.

22 Q And that was on -- at [REDACTED] Williams Street in
23 Greenville?

24 A Yes, sir.

25 Q And he agreed to let you and other investigators

1 search his home; correct?

2 A That's correct.

3 Q And is it fair to say that the same evidence that you
4 were looking for over at Colonial Avenue is what you were
5 looking for on Williams Street?

6 A Yes.

7 Q And that would be firearms; correct?

8 A That's correct.

9 Q Ammunition?

10 A That's correct.

11 Q Shell casings; correct?

12 A Yes.

13 Q Also, any type of DNA evidence; correct?

14 A Anything -- clothing -- clothing, anything like that
15 that would possibly give DNA evidence from, yes, sir.

16 Q Well -- I'll refer you -- you later got a search
17 warrant for that address; correct?

18 A I believe I did.

19 Q Okay. And I'll just refer you to your search warrant
20 affidavit. You indicate in that affidavit that you were
21 looking for possible evidence that would include blood,
22 DNA, blood splatter, bodily fluids, latent prints,
23 clothing, gloves, and blood-stained clothing; is that
24 accurate?

25 A Yes, sir.

1 Q And is that what you and other investigators were
2 searching for when you, initially, went to John Gambrell's
3 home on November 19th?

4 A That's one of the things, yes, sir.

5 Q Well, those are all the things; correct?

6 A All the things that you named, yes, sir.

7 Q You were looking for any of that stuff; right?

8 A Absolutely.

9 Q And after that search, were any firearms recovered?

10 A Not that I can recall.

11 Q Any ammunition recovered?

12 A Not that I can recall.

13 Q Shell casings?

14 A No, sir.

15 Q Any clothing?

16 A We didn't recover any clothing, no.

17 Q Was any clothing found?

18 A There was clothing found.

19 Q And where was that clothing found?

20 A I believe that clothing was in a trash bag.

21 Q And was this clothing the same clothing that Malette
22 Kimbrough had been described as wearing earlier that
23 night?

24 A I'm not sure. But I know there was some female
25 clothing.

1 Q Okay. You're not -- you're not aware of what the
2 articles of clothing were?

3 A Not that I can recall, no, sir.

4 Q All right. But there's no blood-stained clothing,
5 DNA, anything like that collected?

6 A I would think if there were items like that, we would
7 have collected it. And we did not collect.

8 Q Thank you, sir.

9 Mr. Weston asked you if Malette Kimbrough was the
10 only suspect that was developed during your five-month
11 investigation. Do you remember his question asking you
12 that?

13 A Something to that degree about whether or not she was
14 the only person investigated, I believe.

15 Q Okay. But there were other -- there was, at least,
16 one other suspect that was developed during your
17 investigation; correct?

18 A Absolutely.

19 Q And that was Portia Rogers; correct?

20 A Yes, sir.

21 Q Did -- do you remember when you first made contact
22 with Portia Rogers?

23 A I'll have to refer to my notes.

24 Q I'd refer you to Page 18 of your 22-page initial
25 report. It looks like the third paragraph.

1 A The last paragraph, November 30th, 2016.

2 Q And is one of the reasons that Portia Rogers was a
3 suspect -- well, first, she was at the house earlier that
4 night; correct?

5 A That's correct.

6 Q And it was your understanding that she was the only
7 person at that house the night of the shooting that had a
8 gun; correct?

9 A That's the only person, yes, sir.

10 Q And not only was she the sole person that was
11 observed to have a gun that night, she was the only person
12 that was out there shooting that night; right?

13 A That's correct.

14 Q And it was your understanding that she had fired her
15 weapon twice at the residence; correct?

16 A No, sir. Fired twice up in the air at the residence.
17 That's correct.

18 Q Okay. And that was after she had some argument with
19 Lynn Smith; correct?

20 A That's correct.

21 Q So based on the fact that you had one individual
22 there that was in possession of a firearm, that was the
23 reason that Portia Rogers was, initially, determined to be
24 a suspect, in your opinion; correct?

25 A That was one of the reasons.

1 Q Did -- well, when you spoke to her on November 30th,
2 that was over the phone; correct?

3 A Yes, sir.

4 Q And you asked all the other witnesses and individuals
5 that had been in the house to come in for an interview at
6 the law enforcement center during your investigation;
7 correct?

8 A That's correct.

9 Q And everybody did; correct?

10 A Everyone that was asked, yes, sir.

11 Q Okay. Portia was asked to come in, too; correct?

12 A She was asked to come in, but she indicated that she
13 had outstanding warrants.

14 Q Okay. So she -- she did not come in for an
15 interview?

16 A Not at that time, no, sir.

17 Q And when you spoke with her on November 30th, she
18 gave you some information about being there that night;
19 correct?

20 A She did.

21 Q But she left out the part about her having a gun;
22 correct?

23 A I believe she did.

24 Q She never mentioned that in your first conversation
25 with her on November 30th, did she?

1 A No, sir.

2 Q She never mentioned firing her weapon at the house
3 that night during your first conversation; correct?

4 A That's correct.

5 Q And so she never came in for an interview because she
6 said she had some warrants; correct?

7 A That's not totally correct. She did, eventually,
8 come in for an interview --

9 Q Well, we'll -- we'll get to that --

10 MR. WESTON: Objection, Your Honor.

11 BY MR. STALVEY:

12 Q We'll get to that --

13 MR. WESTON: I object, Your Honor.

14 THE COURT: I'm sorry.

15 MR. WESTON: He needs to let him finish his answer
16 before he asks another question. He was going to explain
17 why she didn't come in.

18 THE COURT: All right. I'll -- if you have any more
19 to explain in that answer, please, go ahead.

20 THE WITNESS: What was the question? I'm sorry.

21 BY MR. STALVEY:

22 Q Well, I asked -- I asked the reason that she didn't
23 come in was because she had bench warrants. And you
24 stated that that was not the only reason. And I think
25 Mr. Weston -- I may have cut you off before. You

1 didn't --

2 MR. WESTON: That's not quite accurate, Your Honor.

3 MR. STALVEY: Okay. Well, then --

4 THE COURT: I think -- I think we can all -- this is
5 probably not a super contentious point. Let's just let
6 him answer the question.

7 THE WITNESS: I take it the -- if I'm understanding
8 you correctly, when I spoke with her on November the 30th
9 over the phone, she indicated that she would not come in
10 because she had some outstanding warrants. But she,
11 eventually, came in. And she was, eventually,
12 interviewed.

13 BY MR. STALVEY:

14 Q Okay. But we're just talking about November 30th;
15 correct?

16 A That's correct.

17 Q All right. Do you remember when she was, actually,
18 interviewed at the law enforcement center? And I'd refer
19 you to Page 2 of your 16-page report, third paragraph.

20 A January 31st, 2017.

21 Q And she was already over at the law enforcement
22 center in custody; correct?

23 A That's correct.

24 Q And she was being held on unrelated charges; correct?

25 A That's correct.

1 Q And do you have any information on what the reason
2 was that she was being held -- or why she had been taken
3 into custody?

4 MR. WESTON: Your Honor, I'm going to object on
5 relevancy grounds. It's unrelated to this case.

6 THE COURT: Let's approach.

7 (WHEREUPON, a bench conference was held.)

8 THE COURT: And let me just say, if at any point if
9 y'all need to take a break, you just let me know. Okay.
10 I hope I've impressed that upon you.

11 Yes, sir.

12 MR. STALVEY: Thank you, Your Honor

13 BY MR. STALVEY:

14 Q Portia Rogers had been taken into custody maybe five
15 or six days prior to your interview with her; correct?

16 A That's probably correct.

17 Q Okay. And is it true that she was involved in a
18 stand off with the Greenville County Sheriff's Office --

19 MR. WESTON: Objection, Your Honor.

20 THE COURT: Sustained.

21 BY MR. STALVEY:

22 Q Well, is it true that when she was taken into
23 custody, she was found to be in possession of a 22-caliber
24 pistol?

25 A Yes, sir.

1 Q And as part of your investigation into the Ruby Flamm
2 shooting, you had that 22-caliber pistol that Portia was
3 in possession with -- of compared to the bullet fragments
4 and jacket that was recovered from Ruby Flamm; correct?

5 A Yes, sir.

6 Q And you sent that to James Armstrong to do the
7 analysis; correct?

8 A That's correct.

9 Q And who is James Armstrong?

10 A James Armstrong is a bullets -- a ballistics analyst
11 employed with Greenville County.

12 Q And -- and the reason you did that was to rule out
13 that pistol, the 22 being the murder weapon in Ruby
14 Flamm's death; correct?

15 A Yes. That's correct.

16 Q And what were the -- the results of Mr. Armstrong's
17 analysis?

18 A I think they were inconclusive, but I'm not sure,
19 unless I have seen a copy of that report.

20 Q Okay. Are you aware that Portia Rogers was, again,
21 found to be in possession of a firearm in 2019 by the
22 Greenville County Sheriff's Office?

23 A No, sir. I'm not aware of that.

24 Q All right. I'm going to show you some records and
25 let you take a look.

1 MR. WESTON: Your Honor, may we approach?

2 THE COURT: Sure.

3 (WHEREUPON, a bench conference was held.)

4 BY MR. STALVEY:

5 Q Investigator Bailey, after reviewing that record, was
6 Portia Rogers found to be in possession of a different
7 pistol on February 21st of 2019, by the Greenville County
8 Sheriff's Office?

9 MR. WESTON: Same objection, Your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: Yes, sir.

12 BY MR. STALVEY:

13 Q And based on those records, was she charged with a
14 crime?

15 MR. WESTON: Objection, Your Honor.

16 THE COURT: I'll allow that question.

17 THE WITNESS: Yes, sir.

18 BY MR. STALVEY:

19 Q And what was that?

20 A Possession of stolen goods less than 2,000.

21 Q All right. And what were -- what was the -- what was
22 stolen that she was found to be in possession of?

23 MR. WESTON: Your Honor, I'm -- objection, Your
24 Honor.

25 THE COURT: We're going a little far.

1 Sustained.

2 BY MR. STALVEY:

3 Q Well, she was found to be in -- in possession of a
4 pistol on that date; correct? You've already testified to
5 that.

6 THE COURT: You can answer that question.

7 THE WITNESS: Yes, sir.

8 BY MR. STALVEY:

9 Q All right. A different pistol than the 22; correct?

10 A Yes, sir.

11 Q Was that pistol ever compared to the bullet jacket
12 recovered from Ruby Flamm?

13 A No, sir.

14 Q Did you search -- or get a search warrant for some
15 phone records in this case?

16 A Yes, sir.

17 Q And were those phone records related to the phones
18 that were owned by Lynn Smith, the victim, and Portia
19 Rogers?

20 A I believe they were.

21 Q And was -- the reason that you sought to obtain those
22 phone records -- was the reason to substantiate some of
23 the time frames that were being given to you by several
24 witnesses?

25 A Yes, sir.

1 Q And did you ever get any information as a result of
2 requesting those phone records?

3 A No, sir.

4 Q And was a search warrant issued for Ms. Kimbrough's
5 residence at [REDACTED] Windsor Parkway?

6 A I'll have to check.

7 Q Well, let me ask you this, was -- was that residence
8 ever searched that you're aware of?

9 A Not that I'm aware of, no, sir.

10 Q All right. And are you aware of any firearms,
11 ammunition, shell casings, or any other evidence collected
12 from [REDACTED] Windsor Parkway?

13 A Not that I'm aware of.

14 Q And you, also, went and -- and visited a cash loan
15 business that was on Pleasantburg Drive as part of your
16 investigation; correct?

17 A That's correct.

18 Q And the reason you went there was to determine -- you
19 had information that Ms. Kimbrough had gotten a loan on
20 November 17th for about \$850; correct?

21 A That's correct.

22 Q And did you confirm that she, in fact, did get a loan
23 for that amount?

24 A She did, in fact, get a loan for that amount.

25 MR. STALVEY: I don't have any further questions.

1 THE COURT: Any follow-up?

2 MR. WESTON: Yes, ma'am, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. WESTON:

5 Q Let's work backwards, Investigator Bailey. The cash
6 loan investigation. How did you get information about a
7 cash loan that the Defendant had made? Where did you get
8 you it from?

9 A I believe I got it from her.

10 Q Was it her or her husband?

11 A Husband. I'm sorry.

12 Q And why did that come up about an \$850 loan? I mean,
13 why was that something that you were looking into? Was
14 her husband concerned?

15 A Yes, sir.

16 Q What was his concern?

17 A During the course of the investigation, it came out
18 that Ms. Kimbrough had spent a lot of money -- a lot of
19 money to the extent that she had been going to ATM
20 machines and withdrawing sums of money --

21 MR. STALVEY: Judge, I'm going to object. It's
22 hearsay.

23 THE COURT: Yes, sir.

24 MR. WESTON: He raised it. He brought it up, Your
25 Honor.

1 MR. STALVEY: Well, if they want to introduce some
2 testimony, then they need to call a witness.

3 THE COURT: All right. Y'all approach for just a
4 second.

5 (WHEREUPON, a bench conference was held.)

6 BY MR. WESTON:

7 Q Now, just to -- to be clear, Investigator Bailey.
8 The reason you were looking this was -- looking at this
9 was from information you received from Ms. Kimbrough's
10 husband?

11 A Yes, sir.

12 Q Okay. Regarding the phone records Counsel asked you
13 about with regard to Portia. What was the -- were [sic]
14 the reason you were getting those records to -- to,
15 basically, spot the phones -- where the phone were at
16 certain times?

17 A I was, basically, trying to substantiate all the
18 information that I had been receiving.

19 Q From -- with regard to where Portia was at the time
20 of the shooting?

21 A Yes, sir.

22 Q Were you, otherwise, able to substantiate where
23 Portia was at the time of the shooting without the phone
24 records?

25 A Yes, sir.

1 Q Was she anywhere near this house at the time of the
2 shooting?

3 A Not based on the information, no.

4 Q Was she, in fact, cleared totally as a suspect as a
5 result of information and alibi --

6 MR. STALVEY: Judge, I'm going to object. It's
7 hearsay.

8 THE COURT: I'm going to allow him to answer that
9 question, whether or not she was cleared as a suspect.

10 BY MR. WESTON:

11 Q Did -- did you, in fact, clear her absolutely as a
12 suspect as a result of that information about phones, as
13 well as alibi witnesses?

14 A She was automatic -- she was absolutely cleared.

15 Q Do you believe today that Portia Rogers had anything
16 to do with killing her grandmother?

17 A None whatsoever.

18 Q Now, you went to John Gambrell's home that Counsel
19 asked you about. Who is John Gambrell?

20 A John Gambrell -- John Gambrell is a person that was
21 identified to me as being Ms. Malette's boyfriend.

22 Q Did y'all go to another man's home with the
23 relationship -- is this the same person with regard to the
24 loan that you just were talking about that had concerns?

25 A Yes, sir.

1 Q John Gambrell?

2 A No, sir. That's a totally different individual.

3 Q Who is that individual?

4 A The individual that inquired about the loan?

5 Q Is that Mr. Stokes?

6 A That's her husband.

7 Q And he's different from John Gambrell?

8 A Yes, sir.

9 Q About this DNA stuff. Do y'all test DNA and check
10 DNA if you have a known suspect, or is DNA used when you
11 don't have a known suspect?

12 A DNA is used for -- when you don't have a suspect.
13 It's -- the best way to -- my understanding of DNA is it's
14 just like a fingerprint. A fingerprint -- it's good to
15 have a fingerprint, but it does you no good if you don't
16 have someone to compare that fingerprint to.

17 MR. WESTON: Thank you, sir.

18 That's all I have.

19 THE COURT: Yes, sir.

20 RECROSS-EXAMINATION

21 BY MR. STALVEY:

22 Q Investigator Bailey, you were asked about a -- a ping
23 for phone records. Do you remember that?

24 A I don't think I was asked about a ping.

25 Q Okay. Well, are you familiar with what a ping is?

1 A Yes, sir.

2 Q Okay. And that's just -- the ping is for a phone;
3 right?

4 A For the device, yes, sir.

5 Q Not for an individual; correct?

6 A That's correct.

7 THE COURT: All right. Anything else -- oh, I'm
8 sorry.

9 MR. STALVEY: Nothing further.

10 THE COURT: Okay. Anything else?

11 (WHEREUPON, there was no response.)

12 THE COURT: Investigator, you can step down.

13 Ladies and gentlemen, we've been going for -- for a
14 little bit now. Let's take a break. I'm going to ask you
15 to step to your jury deliberation room for about 10 minutes.

16 All right. Thank you.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 2:35 p.m.)

19 THE COURT: All right. I'll tell you what my concern
20 was, if anybody noticed that I was motioning to some
21 people. Since we closed the door, the traffic has greatly
22 reduced and that's been fantastic. But then we had two
23 and as many as three faces pressed up against that window
24 during the -- during testimony. I don't know if the jury
25 found it distracting, but I did, so.

1 THE CLERK: Thank you.

2 Please be seated.

3 And, please, state your name for the record.

4 THE WITNESS: Kara Bennick.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MR. MCCOLLUM:

8 Q Good afternoon, Ms. Bennick.

9 Where are you employed?

10 A Greenville County Department of Public Safety, the
11 forensics unit.

12 Q And how long have you been employed there?

13 A 21 years.

14 Q And what's your current role?

15 A I'm a supervisor of the evidence section.

16 Q And what does -- what does that role entail?

17 A In addition to the administrative duties, I, also,
18 perform as a -- as -- I take in the evidence and process
19 it, stuff like that.

20 Q Please explain the standard procedure for taking in
21 evidence.

22 A It depends. There's two different ways it can come
23 in. It can come in during business hours, which would
24 come across the counter and one of us would sign directly
25 for it. Or it can come in after hours through secured

1 lockers and drop box.

2 Q And what happens once that evidence is entered either
3 by lockbox or during daytime hours?

4 A One of -- one of us would take it out of the lockers
5 or the drop box. We would check it into the computer
6 system. And we would then put it in its secure holding.

7 Q Is there documentation that is provided when evidence
8 is checked into property and evidence?

9 A Yes. It comes in with a property and evidence sheet.

10 Q Ms. Bennick, I'm going to show you what's been marked
11 as State's Exhibit No. 8. Do you recognize it?

12 A I do.

13 Q Can you, please, tell the jury what it is?

14 A It's a property and evidence report.

15 Q And how do you know it's a property and evidence
16 report?

17 A It's a chain of custody that is printed out for our
18 bar code system.

19 Q And that is the standard form used for all evidence
20 coming into property and evidence?

21 A This is the digital form that is used, yes.

22 MR. MCCOLLUM: Your Honor, at this time, the State
23 would move State's Exhibit No. 8 into evidence.

24 THE COURT: Any objection?

25 MR. BANNISTER: No objection.

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

2 (WHEREUPON, State's Exhibit No. 8 was admitted into
3 evidence.)

4 MR. MCCOLLUM: Your Honor, at this time, we'd ask to
5 publish it to the jury.

6 THE COURT: Certainly.

7 BY MR. MCCOLLUM:

8 Q Ms. Bennick, can you kind of make out that sheet?

9 A A little bit, yeah.

10 Q Ms. Bennick, I'm going to have you go line by line on
11 this property and evidence sheet. Can you explain what
12 the first line means?

13 A On this particular sheet, the crime scene technician
14 entered this evidence. So Mr. Riley entered it into the
15 computer system. And that's showing his generating the
16 chain of custody.

17 Q And what happens next?

18 A It was then placed into a locker by Tim Riley. And
19 then it was checked out of the locker by one of my staff,
20 Cindy Witherspoon.

21 THE COURT: Ms. Bennick, would it help if you had a
22 pointer?

23 THE WITNESS: I have one. I'm sorry. I'm sitting
24 here holding it. I'm so sorry.

25 Okay. So right here is where Cindy takes it in. And

1 then she moves it to a secure holding.

2 MR. MCCOLLUM: Your Honor, may I have the Clerk make
3 a copy of this sheet for Ms. Bennick to read?

4 THE COURT: Oh, sure.

5 MR. MCCOLLUM: Thank you.

6 I beg the Court's indulgence.

7 THE COURT: Absolutely.

8 (Pause.)

9 BY MR. MCCOLLUM:

10 Q Ms. Bennick, I'll give you a copy of the property and
11 evidence sheet.

12 Ms. Bennick, can we go back up a line to the -- the
13 third line. What does that mean?

14 A The third line on the P&E sheet?

15 Q Yes.

16 A Are you talking about who accepted it?

17 Q Yes.

18 A Okay. So it was Cindy Witherspoon. She removed it
19 from the locker it was secured in.

20 Q And then the next two lines -- once it's in the
21 locker?

22 A She then moves it to holding, its -- its actual
23 location. And then somebody came and put a request in.
24 And so it was pulled and moved to a staging location to go
25 to the firearms lab.

1 Q Okay. And what happens when the -- the ballistics
2 technician comes in to retrieve the bullet?

3 A He comes down to the counter and he requests the
4 cases. And he checks them out.

5 Q Okay. And does he have to sign for the --

6 A He does.

7 Q And is his signature located on that P&E sheet?

8 A It is.

9 Q And then what happens next, Ms. Bennick?

10 A And then it was checked back in by myself and went
11 back to a secure holding.

12 Q And when you receive items for P&E and after they've
13 been checked out, will you accept any items if they've
14 been tampered with -- or look like they've been tampered
15 with?

16 A No.

17 Q And in this case, when you received the bullet
18 fragments from Investigator Riley, were they -- did they
19 appear to be tampered with based on the property and
20 evidence sheet, based on it being accepted?

21 A I can only say that Cindy accepted them. So she must
22 have been okay with that.

23 Q I'll ask you another way. Would Ms. Witherspoon have
24 accepted the bullet fragments if they'd been tampered
25 with?

1 A No.

2 Q Is that possible?

3 A No.

4 Q Ms. Bennick, when Mr. Armstrong brings the bullet
5 fragments back into property and evidence, does he have to
6 sign them back in?

7 A I check them in from him.

8 Q And that's evidence on the property and evidence
9 sheet?

10 A It is.

11 MR. MCCOLLUM: Thank you, Ms. Bennick.

12 Your Honor, may I publish the property and evidence
13 sheet to the jury?

14 THE COURT: Please.

15 MR. MCCOLLUM: Ms. Bennick, please answer any
16 questions Defense Counsel has for you.

17 THE COURT: Any questions for this witness?

18 MR. BANNISTER: No, Your Honor.

19 THE COURT: Ma'am, you can step down.

20 Thank you.

21 MR. MCCOLLUM: Your Honor, may Ms. Bennick be
22 released from her subpoena?

23 THE COURT: Any objection?

24 MR. BANNISTER: No, Your Honor.

25 THE COURT: Thanks for being here.

1 MR. WESTON: Your Honor, the State would call
2 Mr. James Armstrong.

3 THE CLERK: Sir, if you'll, please, place your left
4 hand on the Bible and raise your right hand.
5 WHEREUPON,

6 JAMES WILLIAM ARMSTRONG,
7 after first having been duly sworn, testified as follows:

8 THE CLERK: Thank you.

9 Please be seated.

10 And, please, state your name for the record.

11 THE WITNESS: James William Armstrong.

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION

14 BY MR. WESTON:

15 Q Mr. Armstrong, with whom are you employed?

16 A I'm employed with the Greenville County Department of
17 Public Safety Forensics Division Crime Laboratory.

18 Q That's a mouthful. What is -- what is the Greenville
19 County Forensics Division Crime Laboratory? Is that,
20 like, a part of the sheriff's office, or the Greenville
21 City Police, or is it an independent agency?

22 A We're an independent agency that does support work
23 for any agency within Greenville County.

24 Q So that would include Mauldin, Fountain Inn,
25 Simpsonville, and what have you?

1 A Yes, sir.

2 Q And when you say "support work," what kind of stuff
3 do y'all do?

4 A I -- I currently work in the -- as a supervisor of
5 the drug section and the firearms section. We do drug
6 analysis testing, the firearm identification testing. We,
7 also, have a group that does DNA testing and the crime
8 scene evidence collection.

9 Q All right. And let's -- we're going to talk about
10 just firearms today. Did you have an occasion -- well,
11 let me step back. How long have you worked in the unit
12 that you're in?

13 A I've been employed with Greenville County for a
14 little over 23 years.

15 Q And how long have you been a supervisor in the
16 firearms division?

17 A Well, I've been the only full-time employee of the
18 firearms division for about 20 years.

19 Q And what kind of training did you have when you --
20 prior to taking that position in the area of firearms?

21 A In order to become a firearms examiner, I have a
22 Bachelor's Degree in Chemistry from Erskine College. I've
23 trained in the area of firearm identification
24 approximately two years doing an apprenticeship-style
25 training under a retired firearms examiner from the

1 Philadelphia PD.

2 I've attended numerous schools sponsored by the
3 Bureau of Alcohol, Tobacco, and Firearms in firearms
4 identification and serial number restoration. I'm a
5 member of the Association of Firearm and Tool Mark
6 Examiners.

7 And I have testified in federal and state courts, at
8 least, 68 times as an expert in the field of firearm
9 identification.

10 MR. WESTON: Your Honor, the State would offer
11 Mr. Armstrong as an expert in the area of firearms
12 examination and identification.

13 MR. STALVEY: No objection.

14 THE COURT: Any objection -- all right.

15 Ladies and gentlemen, I previously explained an
16 expert witness to you. This witness is qualified to give
17 his opinion in the area of firearms -- firearms
18 examination and identification. That opinion is for you
19 to use any way you see fit.

20 Yes, sir. Solicitor

21 BY MR. WESTON:

22 Q All right. Mr. Armstrong, did you have an occasion
23 to examine either firearms or projectiles in the State's
24 case in the Greenville County case number 20093 --
25 2016-200933?

1 A Yes, sir, I did.

2 Q Did you bring your documentation from that -- your
3 reports from that case?

4 A Yes, sir, I did.

5 Q And would you tell the Court what you were asked to
6 do?

7 A I was asked to examine a fired bullet specimen
8 recovered for examination. And when I opened it up, I had
9 three items to, actually, examine. They're my items
10 MW-1A, MW-1B, and MW-1C. MW-1A was a caliber
11 38/nine-millimeter fired bullet jacket. And MW-1B was a
12 38/nine-millimeter fired lead core. And MW-1C were two
13 metal fragments which were not suitable for microscopic
14 comparisons.

15 Q And where would you have gotten these items from?

16 A From the property and evidence room.

17 Q And when you went to property and evidence, would you
18 have had to sign them out?

19 A Yes, sir, I would.

20 Q Okay. And you then take them -- once you sign them
21 out, you take them back to your laboratory for testing?

22 A Yes, sir, I do.

23 Q And after you complete it, do you bring them back to
24 property and evidence and put them in?

25 A Yes, sir.

1 Q And when you get them, are they sealed?

2 A The majority of the time, they are sealed.

3 Q All right. I'm going to show you what's been
4 pre-marked as State's Exhibit No. 7, and ask if you would
5 hold it below the eye level of the witness box and just
6 take a look at it. You can take the item out of there and
7 take a look at it and see if you recognize it, based on
8 the markings and the case number and what have -- and
9 initials on that item.

10 A Yes, sir, I do.

11 Q What is that?

12 A This is the evidence for county case 2016-20093.
13 This is the item MW-1. It has a -- a plastic cup or
14 bottle type that is containing the items.

15 Q Is that the items that you just referred to prior to
16 me showing you that? You can leave them out.

17 A Yes, sir, it is.

18 Q Okay. And did you have an occasion -- are those the
19 items that you examined with regard to this particular
20 case?

21 A Yes, sir, it is.

22 MR. WESTON: All right. Your Honor, the State would
23 offer these as State's Exhibit No. 7.

24 THE COURT: Any objection?

25 MR. STALVEY: No objection.

1 THE COURT: All right. So admitted.

2 (WHEREUPON, State's Exhibit No. 7 was admitted into
3 evidence.)

4 MR. WESTON: And we don't have any intention of
5 taking them out of the plastic --

6 BY MR. WESTON:

7 Q That's not necessary for purposes of your testimony
8 today, is it?

9 A No, sir.

10 Q All right. I'm just going to lay it right here for
11 the moment.

12 Could you in sort of layman's terms tell the jury
13 what you just said, or what these items are?

14 A The first item I mentioned was item MW-1A. It's a
15 caliber 38 -- or nine-millimeter fired bullet jacket.
16 The --

17 Q Excuse me. I'm sorry. And I'm -- I'm sorry to
18 interrupt you. But I want to make sure you -- that --
19 because some of them may have the same questions I do.
20 When you say "fired bullet jacket," what is that?

21 A That -- that's what I was about to say. What it is
22 is the -- it's the jacketing or the covering of a
23 projectile that is called a full metal jacket or a hollow
24 point-style projectile. It has a metal jacket that covers
25 what we call the lead core. And that is what is like a

1 copper, sometimes aluminum metal that is made for that
2 that covers the lead that's on that projectile. And
3 occasionally when a projectile fired, then the hidden
4 object in the jacket and the core separate.

5 So it's just a jacket -- kind of like you put a
6 jacket on. It's just a metal covering over the lead.

7 Q So this is -- that is different from the item that is
8 expelled from the gun?

9 A No, sir. This is still expelled from the firearm.

10 Q I mean, that -- well, this is expelled through the --
11 the muzzle?

12 A Yes, sir.

13 Q And there's another item that's expelled through
14 the --

15 A That's the -- that's a fired cartridge case if it is
16 a semiautomatic handgun.

17 Q So this is not a cartridge casing. This is the
18 jacket that goes on the actual projectile itself?

19 A Yes, sir.

20 Q And then you said, sometimes, they separate --

21 A Yes, sir.

22 Q -- when they strike an object?

23 A Yes, sir.

24 Q All right. So what else is in the bag?

25 A Then inside there's another item labeled as MW-1B,

1 which is a caliber 38-nine millimeter fired bullet core.
2 That's the lead component that is inside or covered by
3 that jacket. And it is not suitable for microscopic
4 comparisons.

5 Q And was -- how many pieces were there?

6 A Well, the lead core is just the one lead core. The
7 item MW-1C was two metal fragments. And I couldn't tell
8 anything about those, except they were not suitable for
9 comparison purposes.

10 Q All right. And are those the two items that -- are
11 those the items that, it's your understanding, was
12 recovered as a result of the autopsy performed in this
13 case?

14 A Yes, sir, it is.

15 Q All right. And before we begin on what you can't
16 tell us, let's tell us -- let's talk about what you can
17 tell us. You said -- you said a couple of times, I think,
18 nine-millimeter 38?

19 A Yes, sir.

20 Q What is that -- what are you referring to when you --
21 tell the jury what you're referring to when you say those
22 numbers?

23 A Well, normally, with a nine millimeter and a 38,
24 we're going by the diameter of the projectile. And that's
25 the type of firearm that may have fired that -- that

1 projectile just by the measurements.

2 Q All right. So based on the measurements, these
3 projectiles were fired by either a nine-millimeter handgun
4 or a 38-caliber handgun?

5 A Most consistently, yes, sir.

6 Q All right. Is there any way that these could have
7 been fired by a 22-caliber handgun?

8 A Impossible.

9 Q Why is that, sir?

10 A It's definitely the wrong caliber. A 22 is much
11 smaller than the nine millimeter.

12 Q All right. The jacket would not have been that big?

13 A The 22 is -- is extremely small. It's like
14 .22 inches. The 38-nine millimeter is, actually, 357
15 inches.

16 MR. WESTON: All right. Your Honor, we have the
17 exhibit number on the envelope. And I didn't necessarily
18 want to put this back in the envelope. But I -- I guess
19 I'll just put it in there and we'll put the envelope into
20 evidence, or we can just attach the two.

21 THE COURT: You can just attach it.

22 MR. WESTON: Thank you, Your Honor.

23 THE COURT: Thank you.

24 MR. WESTON: And I believe I've already offered these
25 into evidence -- evidence without objection, Your Honor.

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

2 MR. WESTON: And answer any questions Counsel may
3 have for you.

4 CROSS-EXAMINATION

5 BY MR. STALVEY:

6 Q Mr. Armstrong, you mentioned that a semi --
7 semi-automatic pistol is --

8 A Yes.

9 Q Can you tell me as far as what happens with shell
10 casings -- or can you tell the jury what -- what the
11 difference is between a semiautomatic and a revolver?

12 A Yes, sir. The revolver is a firearm that has --
13 in lack of better terms is saying the magazine or the
14 ammunition holding that [inaudible] for that firearm is
15 contained inside. And it just revolves around. The
16 casing never relieves that -- or comes from that firearm
17 until the person opens up the cylinder and removes the
18 fired cartridge casings.

19 A semiautomatic handgun, when the -- when the person
20 pulls the trigger, the firearm then will actually -- you
21 hear what is known as the explosion or the firearm being
22 fired. The casing expands, pressure builds up, and the
23 fired casing then is ejected from that firearm as the
24 slide goes back forward and picks up another round.

25 Q And based on your experience, does the Alcohol,

1 Tobacco, and Firearms Agency of the federal government
2 keep records of all firearm purchases?

3 A They do of new purchases, yes, sir.

4 Q Do they, also, keep records of new purchases of
5 ammunition?

6 A Not of ammunition, no, sir.

7 Q All right. Do they keep any records of ammunition
8 bought?

9 A Not that I know of, no, sir.

10 MR. STALVEY: Okay. No further questions.

11 THE COURT: Any other questions for this witness?

12 MR. WESTON: One moment, Your Honor.

13 THE COURT: Certainly.

14 (Pause.)

15 REDIRECT EXAMINATION

16 BY MR. WESTON:

17 Q Just to follow-up on the gun registration issue. In
18 South Carolina, as you understand the gun laws, if I were
19 to buy a brand new gun, it is registered, so to speak.
20 There's forms I fill out and send to the ATF up in
21 Washington, and what have you; is that correct?

22 A That's correct.

23 Q Once I have the gun in South Carolina, if I were to
24 sell it to you, is there any registration required for
25 that sale?

1 A No, sir.

2 Q So guns, basically, move freely in South Carolina
3 after the initial sale from owner to owner legally?

4 A Yes, sir.

5 Q And there's no record of that -- there's -- there's
6 no official record kept of that by the State, or the
7 county, or any cities; is that correct?

8 A That's correct.

9 MR. WESTON: Thank you, sir.

10 RECROSS-EXAMINATION

11 BY MR. STALVEY:

12 Q But in our state, pawnshops are required to keep
13 records; correct, of firearm purchases?

14 A Yes, sir. Any person that is a -- what we call an
15 FFL or a federally firearm license holder, they must
16 maintain records for any firearm that is transferred in
17 their custody.

18 MR. STALVEY: Thank you, sir.

19 MR. WESTON: No -- no redirect, Your Honor.

20 THE COURT: All right.

21 MR. WESTON: We'd ask that the witness be allowed to
22 be excused, Your Honor.

23 THE COURT: Any objection?

24 MR. STALVEY: No objection.

25 THE COURT: Thank you so much for being here.

1 THE WITNESS: Thank you.

2 MR. WESTON: Your Honor, the State would call Mr. --
3 and just -- Your Honor, may we approach before we call
4 this next witness just to kind of update you?

5 THE COURT: Absolutely.

6 (WHEREUPON, a bench conference was held.)

7 MR. WESTON: Your Honor, the State would call
8 Mr. Michael Argumenti.

9 THE CLERK: Sir, if you'll, please, pause at the end
10 of the bench.

11 Place your left hand on the Bible and raise your
12 right hand.

13 WHEREUPON,

14 MICHAEL ARGUMENTI,
15 after first having been duly sworn, testified as follows:

16 THE CLERK: Thank you.

17 Please be seated.

18 Sir, would you, please, state your name for the
19 record?

20 THE WITNESS: Michael Argumenti.

21 THE CLERK: Thank you, sir.

22 DIRECT EXAMINATION

23 BY MR. WESTON:

24 Q Is it Argumenti?

25 A Argumenti.

1 Q Okay. Mr. Argumenti, how old are you?

2 A 27.

3 Q And where do you live, sir?

4 A [REDACTED] Windsor Parkway.

5 Q All right. And were you living there back in
6 November of 2016?

7 A No.

8 Q Where were you living at that time?

9 A [REDACTED] A Gantt Street in an apartment building.

10 Q 98 or [REDACTED] A?

11 A [REDACTED] A.

12 Q All right, sir. And were you living there alone?

13 A No.

14 Q Who'd you live there with?

15 A Me and my girlfriend.

16 Q And what is her name?

17 A Malexes Dixon.

18 Q Malexes Dixon?

19 A Yes.

20 Q And do you know the Defendant, Ms. Kimbrough?

21 A Yes.

22 Q How do you know her?

23 A My mother-in-law.

24 Q All right. And so Ms. Malexes Dixon is
25 Ms. Kimbrough's daughter?

1 A Yes.

2 Q Okay. Now, you said -- and I'm not trying to be
3 argumentative. But you said your "mother-in-law," but
4 previously you said your girlfriend. Are you and
5 Ms. Dixon married?

6 A Well, me and my girlfriend, yes.

7 Q She's -- she's your girlfriend's mother?

8 A Yes.

9 Q Okay. And I'm not trying to be argumentative. I
10 just was a little confused.

11 All right. Are you employed, sir?

12 A Yes.

13 Q Where do you work?

14 A Magna over in Piedmont, South Carolina.

15 Q All right, sir. And about how long have you been
16 there?

17 A A year.

18 Q All right, sir. Now, are you familiar with the
19 incident that brings us here today?

20 A (There was no response.)

21 Q Do you remember the incident that brings us here
22 today?

23 A Yes.

24 Q All right. That being the death of Ms. Flamm; is
25 that correct?

1 A Yes.

2 Q And just to get some preliminaries out of the way.

3 Did you know Ms. Flamm?

4 A No.

5 Q You never saw her?

6 A Huh-uh.

7 Q All right. Have you ever been to her house as far as
8 you know?

9 A No.

10 Q Okay. And you remember on November 20 -- the morning
11 of November 19th of 2016, the Defendant coming to your
12 home?

13 A Yes.

14 Q And what was the weather like that morning?

15 A Well, it was 4:30.

16 Q It was in November. Was it cold?

17 A It was cold, yeah.

18 Q All right. And where were -- what were you doing
19 when she got there?

20 A I was asleep.

21 Q About what time was it?

22 A It was about 4:30, 5:00.

23 Q All right. And how did she announce herself? Was
24 there a doorbell?

25 A No. She knocked.

1 Q Did she knock or did she bam on the door?

2 A Well, banging.

3 Q Was she, also, slapping it with her hand?

4 A No. She was banging.

5 Q Was she banging loudly?

6 A Yes.

7 Q Was she saying anything outside regarding why the
8 door should be opened, or anything like that?

9 A No. She was wanting to come in.

10 Q She didn't say anything about it being an emergency
11 and let me in, that it was urgent?

12 A No.

13 Q Okay. Let me -- before we go any further, do you
14 remember coming to the law enforcement center later and
15 having a conversation and giving a statement to
16 Investigator Maltby?

17 A Yes.

18 (Pause.)

19 MR. WESTON: That's good enough.

20 BY MR. WESTON:

21 Q Can you see that man back there?

22 A Yes.

23 Q Do you know who he is?

24 A Yes.

25 Q Who is he?

1 A He's a detective that questioned us in the --
2 downtown that day.

3 Q Investigator Maltby?

4 A Yes.

5 Q And do you remember coming to the law enforcement
6 center and giving him a videotaped statement?

7 A Yes.

8 Q Where they took down everything you said on
9 videotape?

10 A Yes.

11 Q And that -- at that --

12 MR. WESTON: You can go back out.

13 BY MR. WESTON:

14 Q And at that time, the events -- this was the same day
15 this happened; right?

16 A Yes.

17 Q And, at that time, the events, you would agree, would
18 have been fresher in your mind than they are today?

19 A Yes.

20 Q Okay. And you don't remember telling him that the
21 Defendant was slapping and banging on your door and
22 yelling, emergency, let me in, it's urgent? You don't
23 remember using those words to him?

24 A No.

25 Q Was that -- would it be fair to say that that was

1 what was happening then?

2 A Yes.

3 Q Was that the way she -- was she -- did she say things
4 to that effect?

5 A I can't remember that far.

6 Q But you wouldn't deny that you said that to him that
7 morning?

8 A (There was no verbal response.)

9 Q You have to say "yes" or "no" so she can --

10 A Yes, yes.

11 Q Thank you, sir.

12 Do you remember telling him that she was talking real
13 fast?

14 A Yes.

15 Q What would you -- how would you characterize her
16 demeanor? Was she calm?

17 A She was tired. She was -- she was walking a long
18 way. She was tired.

19 Q All right. Tell the jury what she was wearing.

20 A She was wearing blue jeans and a shirt.

21 Q I beg your pardon?

22 A Blue jeans and a T-shirt.

23 Q You don't remember telling Investigator Maltby that
24 she showed up at your girlfriend and your door wearing
25 blue jeans and a bra?

1 A Well, she came in and took her shirt off when she was
2 coming in.

3 Q Let me repeat my question because I want to make sure
4 you understand exactly what I'm asking you. You don't
5 remember telling Investigator Maltby that your
6 girlfriend's mother showed up at 5:00 in the morning at
7 the door wearing a blue jean -- wearing blue jeans and a
8 bra at the door?

9 A Yeah.

10 Q You don't remember saying that?

11 A (There was no verbal response.)

12 Q You have to say "yes" or "no."

13 A No.

14 Q You understand the penalty of perjury, don't you,
15 sir?

16 A Yes.

17 Q All right. And you're telling the truth today is
18 what you're telling us?

19 A Yes.

20 Q So if we showed a video of you saying something
21 different, that was a lie?

22 A Like I said, I don't remember.

23 Q So you -- so she could have been just -- wearing just
24 the bra?

25 A She was wearing jeans and a -- and a bra.

1 Q So she didn't have a T-shirt on when she came to the
2 door, did she, sir?

3 A No.

4 Q Well, why did you lie?

5 A Like I said, I don't remember.

6 Q We're not suggesting that you killed anybody, sir.
7 All we're asking you to do is to tell the truth. Okay.

8 A Yes.

9 Q Please --

10 A Like I said, I don't remember.

11 Q No. You just said she was wearing blue jeans and a
12 bra.

13 A Yes. Blue jeans and a bra.

14 Q So I'm going to try to get this straight and move on.

15 A Okay.

16 MR. WESTON: Your Honor, permission to treat this
17 witness as hostile.

18 THE COURT: Permission granted.

19 MR. STALVEY: No objection.

20 MR. WESTON: Thank you, Your Honor.

21 BY MR. WESTON:

22 Q Isn't it true that when that woman arrived at you and
23 your girlfriend's house at 5:00 in the morning, she was
24 banging on the door?

25 A Yes.

1 Q And isn't it true that that woman, when she arrived
2 at you and your girlfriend's house at 5:00 in the morning
3 banging on the door, was she wearing only -- nothing but a
4 bra and some blue jeans?

5 A Yes.

6 Q Didn't y'all ask her what was going on, why --
7 what's -- what's happening?

8 A I didn't.

9 Q Did your girlfriend ask her?

10 A Yes.

11 Q And what did she say?

12 A She said she couldn't tell us.

13 Q She couldn't tell you. When she first came in the
14 house, what did she want to do?

15 A Take a shower.

16 Q Was that the first thing she wanted to do?

17 A Yes.

18 Q Did that not seem odd to you at 5:00 in the morning?

19 A No. I was -- I'd just got woken up. She said she
20 was walking a long way and she wanted to take a shower
21 because she was tired and sweaty.

22 Q So she came. She was tired and sweaty wearing
23 nothing but a bra and panties at 5:00 in the morning in
24 the middle of November?

25 MR. BANNISTER: Judge, that's -- I believe he said

1 panties.

2 MR. WESTON: I'm sorry. I'm sorry. I apologize.

3 I'm sorry. I misspoke. I did not mean to say that.

4 BY MR. WESTON:

5 Q Bra and blue jean pants?

6 A Yes.

7 Q And I don't mean to suggest that -- I'm not trying to

8 put words in your mouth or trying to trick you. That was

9 my mistake. I am truly sorry, sir. All right.

10 A Yes.

11 Q She was wearing a bra and some pants?

12 A Yes.

13 Q And you said she was tired and sweaty?

14 A Yes.

15 Q And the first thing she wanted to do was take a

16 shower?

17 A Yes.

18 Q Did she have any clothes with her?

19 A No. She just had a -- a black bag purse.

20 Q Was it a bag or a purse?

21 A It was a purse. It was a small purse with a strap on
22 it.

23 Q Show the jury how big the purse was.

24 A Like that.

25 Q So she just had --

1 A It was -- it was around her -- it was that big. It
2 was around her shoulder.

3 Q Did she have any money with her?

4 A Not that I could tell. I don't know.

5 Q Let me do it again. Do you remember telling
6 Investigator Maltby that she had "a stack of money, 20s,
7 and hundreds, and a Visa card"? Do you remember telling
8 him that?

9 A Yes.

10 Q So she did have a good bit of money with her?

11 A Yes, yes.

12 Q Tell the jury how much money she had.

13 A 20s and a hundred --

14 Q Why do you keep lying, sir?

15 A I don't -- I can't remember that far back.

16 Q Okay. So I'm just refreshing your recollection?

17 A (There was no verbal response.)

18 Q Okay. And you said -- do you remember telling him
19 that she had a bag like a grocery bag?

20 A Yes.

21 Q And that's a lot bigger than this; right?

22 A Yes. But she had that, also, with that black small
23 bag.

24 Q So she had two bags. Remember -- sir, you've got to
25 remember what you said before now.

1 A Yeah. She had a grocery bag and a black small bag.

2 Q When you're doing this here, I don't understand what
3 that means.

4 A It had a strap that she had around her shoulder.

5 Q That's the small bag?

6 A Yes.

7 Q The grocery bag, was it a -- like a Bi-lo plastic
8 bag?

9 A Yes.

10 Q Or was it a black bag?

11 A It was a black bag she put her clothes in when she
12 got out of the shower.

13 Q Okay. Did she have stuff in it when she got there,
14 or was it an empty bag that she was carrying?

15 A I -- I don't remember.

16 Q Okay. But she did show up in a bra and pants?

17 A Yes.

18 Q She was upset or excited, and tired?

19 A Yes.

20 Q She did have a wad of money, including 20s and
21 hundreds?

22 A Yes.

23 Q And she couldn't tell y'all what had happened? She
24 refused to tell y'all what had happened?

25 A She said -- all she said -- she said she couldn't

1 tell us what happened.

2 Q She couldn't tell you what happened?

3 A She was just walking a long way.

4 Q But she could speak English, couldn't she?

5 A Yes.

6 Q So she could tell you?

7 A Yes.

8 Q She just refused to tell you, like I can't tell
9 y'all. I'm sorry. I just can't tell you?

10 A Yes.

11 Q Not that I can't tell you because I don't know. I
12 can't tell you because I refuse to tell you?

13 A Yes.

14 Q Okay. So after she took a shower, then what?

15 A She asked my girlfriend to get her a change of shirt
16 and a towel to dry off with.

17 Q But you said she had clothes in the bag, you thought?

18 A No. She changed into them.

19 Q Into your girlfriend's clothes?

20 A Yeah. And she put them in the -- the clothes she had
21 on into the bag.

22 Q So what clothes did your girlfriend give her?

23 A A T-shirt and -- no. It was -- it was a T-shirt and
24 a towel to dry off with.

25 Q Okay. But the towel, you dry and you put it down.

1 So, now, all she's got on is a T-shirt?

2 A Yes.

3 Q So what about her blue jeans that she had on?

4 A I don't remember.

5 Q So what did she put in the bag, sir?

6 A Her clothes that she took off.

7 Q The blue jeans?

8 A Yes.

9 Q Okay. So what kind of pants did she put on if the
10 blue jeans are in the bag and all she got from your
11 girlfriend was a T-shirt?

12 A I didn't watch her change.

13 Q Well, you saw her after -- before she left, didn't
14 you?

15 A Yes.

16 Q What was she wearing?

17 A Jeans.

18 Q Another pair of jeans?

19 A Yes.

20 Q Are your daughter and her about the same size -- I
21 mean her daughter and her about the same size?

22 A I -- I don't --

23 Q You know. Don't say I don't know to that, sir. You
24 know what size they are. Come on.

25 Are they about the same size or not?

1 A Yes.

2 Q So they -- she was putting on her daughter's blue
3 jeans?

4 A Yes.

5 Q That's the story?

6 A Yes.

7 Q All right. And so then what'd she do after she
8 got -- she got some fresh clothes?

9 A She caught a ride. She wanted us to call her a
10 ride --

11 Q Whoa, whoa. What -- she caught a ride?

12 A She wanted us to call her a ride.

13 Q Okay. And who did she want y'all to call?

14 A A friend of hers.

15 Q Who is that, sir?

16 A Johnny.

17 Q Johnny who?

18 A Marshall.

19 Q And who is he?

20 A A friend of hers.

21 Q Is he her boyfriend?

22 A No. It was a --

23 Q You know Mr. Marshall is out here?

24 A Yes.

25 Q He wouldn't -- you would not characterize him as her

1 boyfriend and you know that?

2 A Yes.

3 Q You don't know very much, but you know that?

4 A Yes.

5 Q How do you know she's not -- he's not her boyfriend?

6 A He isn't.

7 Q How do you know that? Did she tell you?

8 A No.

9 Q Well, then how do you know that, sir?

10 A He just helps her out and stuff. He helps her do
11 stuff, get stuff done.

12 Q But you know they're not romantic?

13 A No.

14 Q How do you know? You are very -- you're not sure of
15 anything. You don't remember half of the other stuff.
16 But you're sure of that?

17 A Yes.

18 Q So you called the boyfriend at 5:00, 5:30 in the
19 morning. Did y'all call him or did she call him?

20 A I called him.

21 Q And did she give you the number or did you have the
22 number?

23 A I already had it in my phone.

24 Q So he's a friend of yours?

25 A Yeah. You can say that.

1 Q No. I want you to say that.

2 A Yes.

3 Q Is he a friend of yours?

4 A Yes.

5 Q How close are y'all?

6 A Not very close. I just -- I just know him. I know
7 of him.

8 Q But you've got his phone number in your phone. You
9 just said that.

10 A Yeah, just in case I need something.

11 Q Like what? What do you need from somebody that you
12 hardly know? You just said, I hardly know him.

13 A Like a ride, or something.

14 Q Some what?

15 A Like a ride to go somewhere.

16 Q Does he have, like, an Uber or some sort of taxi
17 service?

18 A He drives a truck.

19 Q So you called him. And did he -- you talked to him?

20 A No. My girlfriend talked to him.

21 Q But you called him?

22 A I called him so she could talk to him.

23 Q And so -- just to make sure the jury has the
24 logistics of this. You dialed the number and handed her
25 the phone, or did you talk to him and then give her the

1 phone?

2 A I handed her the phone.

3 Q So you didn't talk to him at all?

4 A No.

5 Q All right. So after she talked to him and you heard
6 the conversation -- you heard her end of the conversation.

7 And did he come and get her mother?

8 A Yes.

9 Q Did you have any conversation with him when he got
10 there?

11 A No.

12 Q Did he come into the house?

13 A No.

14 Q How long did it take him to get there?

15 A Like, 30 minutes.

16 Q So for that 30 minutes, what did the Defendant do at
17 y'all's house?

18 A Laid on the couch in order to go to sleep.

19 Q And so y'all didn't have any other conversations with
20 her while on the couch?

21 A No. She was asleep.

22 Q And y'all were never -- never able to get out of her
23 what had happened and why she showed up there at that time
24 of the morning that way?

25 A No.

1 Q And you never were able to get out from her where she
2 got that money from?

3 A No.

4 Q She couldn't tell you that?

5 A No.

6 Q Or wouldn't tell you that?

7 A No. She didn't tell us anything.

8 Q I'm sorry?

9 A No.

10 Q I didn't hear what else you said. She what?

11 A She didn't tell us nothing.

12 MR. WESTON: Okay. Nothing further, Your Honor.

13 THE COURT: All right.

14 CROSS-EXAMINATION

15 BY MR. BANNISTER:

16 Q Mr. Argumenti, when she arrived, did you check to see
17 exactly what time it was?

18 A I looked at my phone and it said it was 4:30.

19 Q Okay. And she had on -- it was 4:30?

20 A Yes.

21 Q And you looked at your phone, you're sure of that?

22 A Yes --

23 MR. WESTON: I'm sorry, Your Honor. I apologize. I
24 can't hear what he's saying.

25 THE WITNESS: Yes.

1 MR. WESTON: No. I'm talking about the attorney,
2 Your Honor. I'm apologize. I can't hear what he's
3 saying.

4 THE COURT: Okay. I'm going to turn up the -- I'm
5 going to turn down the lawyer mics and turn up the podium
6 and witness mics.

7 MR. BANNISTER: Can you hear me now?

8 MR. WESTON: That's fine.

9 Thank you, sir.

10 MR. BANNISTER: Okay. Can y'all hear me?

11 (WHEREUPON, the jury indicated in the affirmative.)

12 BY MR. BANNISTER:

13 Q All right. She had a small pocketbook on a strap; is
14 that correct?

15 A Yes.

16 Q And you got an opportunity to look at it --

17 A Yes.

18 Q -- as she came in?

19 A Yes.

20 Q And she had a garbage bag -- a black garbage bag with
21 something in it, clothes or whatever?

22 A Yes.

23 Q Is that -- is that what she arrived with?

24 A Yes.

25 Q Did you see a firearm in either the pocketbook or the

1 garbage bag?

2 A No.

3 Q Now, did she have any clothes in the garbage bag that
4 she took out and put on after she had a shower?

5 A No.

6 Q So the garbage bag, whatever was in there, she just
7 added the clothes that she had on when she got there?

8 A Yes.

9 Q And you don't know any more about the garbage bag
10 than that?

11 A No.

12 Q Is that -- is that fair?

13 A (There was no verbal response.)

14 Q Okay. Now, you never saw any firearm?

15 A No.

16 Q Subsequently, the police came to your house?

17 A Yes.

18 Q Later that morning; is that correct?

19 A Yes.

20 Q And when they came, did they search your house?

21 A Yes.

22 Q They went all through it with your permission?

23 A Yes.

24 Q Do you recall if they took anything?

25 A Yes.

1 Q What did they take?

2 A I had some -- I had some marijuana on my stool that
3 they took.

4 Q They did not charge you with that, though?

5 A No.

6 Q Okay. Do you recall whether the garbage bag that
7 Malette Kimbrough took was tied up in any way?

8 A No. It was just -- she just grabbed it.

9 Q She just grabbed it and left?

10 A Yes.

11 Q With a small bag?

12 A Yes.

13 Q Okay. One minute.

14 Now, I want to make sure you -- you were -- you were
15 asleep when Ms. Kimbrough got there?

16 A Yes.

17 Q And you did not have a door bell?

18 A No.

19 Q So are you a pretty sound sleeper?

20 A Yes.

21 Q So in order to get somebody awake, it would take a
22 loud noise?

23 A Yes.

24 Q And that would be Ms. Kimbrough or anybody else?

25 A Yes.

1 MR. BANNISTER: Thank you.

2 That's all I have.

3 THE COURT: Mr. Weston.

4 MR. WESTON: Just a couple questions on redirect,
5 Your Honor.

6 THE COURT: Certainly.

7 REDIRECT EXAMINATION

8 BY MR. WESTON:

9 Q Counsel asked you about did you see any guns or see
10 any guns that she had. Were you aware whether -- whether
11 she -- were you aware -- or excuse me. Let me do it
12 another way because it will save us some time.

13 Do you remember telling Investigator Maltby that you
14 knew she had two guns?

15 A Yes.

16 Q And you knew she had two guns?

17 A Yes.

18 Q That was the truth?

19 A Yes.

20 MR. WESTON: Thank you, sir.

21 THE COURT: Anything else?

22 RECROSS-EXAMINATION

23 BY MR. BANNISTER:

24 Q And when did she have two guns?

25 A (There was no response.)

1 Q When did she -- Ms. Kimbrough have two guns?

2 A It was a long time ago.

3 Q A year?

4 A Yes.

5 Q Where did you see these guns?

6 A At her house at one point.

7 Q At her house?

8 A Yes.

9 Q I'm sorry. At her house?

10 A Yes.

11 Q Is that with her husband?

12 A Yes.

13 Q And what's his name? Do you recall?

14 A Thomas -- I call him Thomas.

15 Q Thomas. So there were guns in the house at that
16 time?

17 A Yes.

18 Q Do you recall what kind of guns they were?

19 A No.

20 Q Are you familiar with firearms to know?

21 A No.

22 Q The difference between a revolver or whatever --

23 A No. I'm not familiar.

24 Q Did she have them on her, or were they just in the
25 house?

1 A It was just in the house.

2 Q Just in the house. More than a year ago?

3 A Yes.

4 MR. BANNISTER: Okay. Thank you.

5 THE COURT: Anything else for this witness?

6 MR. WESTON: No -- no further redirect, Your Honor.

7 THE COURT: Sir, you can step down.

8 MR. WESTON: Your Honor, we'd ask that the witness be
9 allowed to be excused from subpoena, if he chooses.

10 THE COURT: Any objection?

11 MR. BANNISTER: No objection.

12 THE COURT: All right. Thank you for being here.

13 You're released from your subpoena.

14 MR. WESTON: Your Honor, the State would call
15 Ms. Malexes Dixon.

16 THE CLERK: Ms. Dixon, if you'll, please, pause at
17 the end of the bench.

18 Please place your left hand on the Bible and raise
19 your right hand. Left hand on the Bible. There you go.
20 Raise your right hand.

21 WHEREUPON,

22 MALEXES DIXON,
23 after first having been duly sworn, testified as follows:

24 THE CLERK: Thank you.

25 Please be seated.

1 THE COURT: Ms. Dixon, I think you've got a very soft
2 voice. So I want you to speak right into the end of that
3 microphone. All right.

4 THE CLERK: And, ma'am, if you would, please, state
5 your name for the record.

6 THE WITNESS: Malexes Dixon.

7 THE CLERK: Thank you very much.

8 DIRECT EXAMINATION

9 BY MR. WESTON:

10 Q Ms. Dixon, how old are you?

11 A 28.

12 Q And where do you live, ma'am?

13 A [REDACTED] Windsor Parkway.

14 Q And do you live with Mr. Argumenti?

15 A No. I live with my grandpa. I live with my
16 grandfather right now.

17 Q And what's the address again?

18 A [REDACTED] Windsor Parkway.

19 Q So Mr. Argumenti wouldn't have said that he lived at
20 [REDACTED] Windsor Parkway a few minutes ago?

21 A I'm not sure what he said.

22 Q But he doesn't live there; right? You're saying you
23 live with your grandfather?

24 A Uh-huh.

25 Q So Mr. Argumenti doesn't live there?

1 A No, he does. He lives -- he lives with me.

2 Q Well, that's what I just asked you. Do you live with
3 Mr. Argumenti. And you said, No, I live with my
4 grandfather.

5 A Well, I didn't -- I didn't understand the question.

6 Q And I apologize. And if you don't understand my
7 question, ma'am, please, ask me to repeat it. I -- the
8 one thing I don't want to do is appear to be trying to
9 trick you. Because I want to be very clear about what my
10 questions are. Okay. So, please, feel free to ask me to
11 repeat it, or speak louder, or rephrase it. I'll be happy
12 to.

13 So you and Mr. Argumenti live together?

14 A Yes, sir.

15 Q And your grandfather lives there, too?

16 A Yes, sir.

17 Q What is his name?

18 A Isaac Stokes.

19 Q And you are the daughter of Ms. Kimbrough; is that
20 correct?

21 A Yes, sir.

22 Q And is Mr. Stokes -- Mr. Stokes is your father?

23 A No. He's my step --

24 Q He's -- wait. I'm sorry. You said he was your
25 grandfather?

1 A Yes.

2 Q Okay. Let's see if I can figure this out. He --
3 what's his relationship to Ms. Kimbrough?

4 A Well, they're husband and wife.

5 Q Okay. Well, how can he be your grandfather?

6 A (There was no response.)

7 Q I mean, you said it. I'm just trying to get --
8 trying -- we're just trying to make some sense out of it.

9 A Well, we're not really related. We're not...

10 Q Is he your stepfather?

11 A Yes.

12 Q Okay. But he's not your grandfather?

13 A No. He's -- he's my stepfather.

14 Q Okay. And that's -- that's fine. Okay.

15 And do you work?

16 A No.

17 Q All right. When was the last time you worked
18 somewhere?

19 A It was years ago.

20 Q How many years ago?

21 A It was a really long time.

22 Q You're 28 now. Let's subtract. Were you working
23 when you were 25?

24 A No.

25 Q Were you working when you were 20?

1 A No.

2 Q Okay. Let's move on. Who else lives there, other
3 than your stepfather and Mr. Argumenti?

4 A Well, I have sisters and nieces.

5 Q And they sometimes stay there?

6 A No. They live there.

7 Q How many people live there?

8 A (There was no response.)

9 Q Take your time and just count them out in your head.

10 A About three people.

11 Q Three?

12 A Three -- three or four.

13 Q Okay. Let's just move on.

14 And just to get this out of the way. You did not
15 know Ms. Ruby Flamm, did you?

16 A (There was no response.)

17 Q The lady that was killed?

18 A No.

19 Q Did you know her?

20 A No.

21 Q All right. And as far as you know, have you ever
22 been to her house?

23 A No.

24 Q Okay. And so you had no interaction with her
25 whatsoever?

1 A No.

2 Q Okay. And I don't mean to suggest that you did. I
3 just wanted to make sure we -- I wanted to get that out of
4 the way, so to speak.

5 And before we go any further, do you remember the --
6 the night that your mother showed up to your house -- or
7 that early morning when your mother showed up at your
8 house?

9 A Yes, sir.

10 Q All right. And the police came to your house later
11 that day?

12 A Yes, sir.

13 Q And you went down to the law enforcement center and
14 gave a statement?

15 A Uh-huh.

16 Q And Mr. Argumenti went down and gave a statement as
17 well?

18 A Yes.

19 Q Do you remember talking to Investigator Maltby?

20 A Yes.

21 Q And giving him a videotaped statement where
22 everything you said was taken down on a videotape and is
23 still available to be seen. Do you remember that?

24 A Yes, sir.

25 Q And that was a voluntary statement on your part. You

1 voluntarily gave the statement?

2 A Voluntarily, yes.

3 Q I mean, they didn't make you -- they didn't beat you?

4 A I mean, I was kind of forced. I was --

5 Q Tell the jury how you was forced, ma'am.

6 MR. BANNISTER: Your Honor, he's got to let her
7 answer.

8 THE COURT: Allow her to finish her answer.

9 MR. WESTON: I apologize, Your Honor.

10 BY MR. WESTON:

11 Q You were forced?

12 A I was threatened.

13 Q Okay. Who threatened you, ma'am?

14 A One of -- one of the detectives.

15 Q One of the investigators threatened you?

16 A Yes, sir.

17 Q How did he threaten you, ma'am?

18 A He said if I didn't tell him something, I was
19 threatened -- threatened to take me down to the jail.

20 Q Well, you went to the law enforcement center?

21 A Yeah. And I didn't do anything wrong.

22 Q But you -- but you said he -- if you didn't tell him
23 something, they would take you, but you went?

24 A Uh-huh.

25 Q Do you recognize that gentleman standing right there?

1 A Yes, sir.

2 Q That's Investigator Maltby. Do you remember talking
3 to him?

4 A Yes, sir.

5 Q Is he the one that said -- that threatened you and
6 said if you didn't tell him something, they were going to
7 take you to jail?

8 A Yes.

9 Q He told you that?

10 A Yes.

11 MR. WESTON: You can go back out.

12 BY MR. WESTON:

13 Q Are you sure, ma'am?

14 A Yes, sir.

15 Q What were they going to take -- what did he say he
16 was going to take you to jail for, ma'am?

17 A For lying.

18 Q But if you didn't say anything, how could you be
19 lying, ma'am?

20 A He thought I was lying because I did not look him in
21 the eyes.

22 Q No, ma'am. No, no, no. At the beginning before you
23 said a word, I asked you did you go down to them and give
24 them a voluntary statement before you gave anything --
25 before they asked you any questions. You said, yeah, but

1 I -- the only reason I went was because I was threatened;
2 is that right?

3 A Yes, sir.

4 Q And you said, I was threatened by if I didn't give
5 them a -- tell them something, they were going to put me
6 in jail. Is that what you said?

7 A Yes.

8 Q So I'm asking you, ma'am, what could they threaten
9 you with if you didn't say anything? They could put you
10 in jail for what? You couldn't have lied yet. You hadn't
11 said anything.

12 A For saying -- for saying something that was not true.

13 Q But, ma'am, you're not listening to my question. You
14 had not said anything. So how could they put you in jail
15 for lying if you didn't say anything, ma'am?

16 MR. BANNISTER: Judge, I believe that's an
17 argumentative question. And I would object to it.

18 THE COURT: Overruled.

19 MR. WESTON: Thank you, Your Honor.

20 THE COURT: I'm going to direct you -- I'm going to
21 direct the witness, answer his question.

22 BY MR. WESTON:

23 Q How could they put you in jail for lying if you
24 hadn't said anything, ma'am?

25 A Well, to be honest --

1 Q I would love that.

2 A That, basically, I was just not -- I was not in -- in
3 my state of mind.

4 Q All right. Let's go with that. What was wrong with
5 you, ma'am?

6 A I was smoking -- I was smoking at the time.

7 Q You was messed up?

8 A Yes.

9 Q What time was this, ma'am?

10 A It was sometime -- it was sometime in -- in the
11 morning --

12 Q Like 10:00, or 11:00, or so?

13 A Yes, sir.

14 Q And they came to your house and you were smoking.
15 Let's assume you were smoking right before they got there
16 and you put the joint out just as they knocked on the
17 door. Okay.

18 A Uh-huh.

19 Q So you're high. And they talked to you and
20 identified themselves. And you -- they found out who you
21 were. That took a few minutes; right?

22 A (There was no verbal response.)

23 Q You have to say "yes" or "no" so she can take it
24 down, ma'am.

25 A Yes.

1 Q After they talked to you a little while, you agreed
2 to go to the law enforcement center, whether threatened or
3 not. But you agreed to go?

4 A Yes, sir. I -- yes.

5 Q And you're still high?

6 A Yes.

7 Q All right. And so did you have to change clothes, or
8 anything?

9 A No.

10 Q So you just went and got -- you -- and you rolled
11 with them?

12 A Yes.

13 Q And you got in their car and rolled with them. It
14 took 20, 30 minutes to get there, didn't it, ma'am?

15 A Yes.

16 Q When you got there, they did not rush you straight
17 into a room. They had to, basically, get some information
18 from you, where you live, your name, address, that kind of
19 thing; is that correct?

20 A Yes, sir.

21 Q In fact, they asked you for some identification,
22 didn't they, ma'am?

23 A Yes.

24 Q And you gave it to them. You were sober enough to
25 give them identification, weren't you, ma'am?

1 A No. No, sir.

2 Q You didn't give them identification. Is that what
3 you're telling us?

4 A No, sir.

5 Q They stole it from you. Ma'am, you gave them
6 identification, didn't you?

7 A I was not sober, sir.

8 Q But didn't you give them identification is what I'm
9 asking you, ma'am?

10 A I was scared, sir.

11 THE COURT: Ma'am, I'm going to direct you to answer
12 the question he asks you.

13 BY MR. WESTON:

14 Q Did you give them identification or not, ma'am? If
15 you're on the video shown giving them identification, you
16 wouldn't contest that, would you?

17 A (There was no response.)

18 Q You would -- didn't you give them identification,
19 ma'am?

20 A Yes.

21 Q So we're talking about an hour, hour and a half later
22 after you last smoked marijuana. You're still stoned so
23 much that you're out of your right mind. Is that what
24 you're saying?

25 A Yes.

1 Q But you remember talking to them?

2 A Yes, sir.

3 Q Do you remember what you told them?

4 A I only remember a little bit, sir.

5 Q All right. Let's -- let's cut through to -- to why
6 we -- where we are right now, ma'am. You love your momma,
7 don't you, ma'am?

8 A Yes.

9 Q You don't want to see nothing bad happen to your
10 momma, do you?

11 A No, sir.

12 Q You don't want to be helping to be the cause of your
13 momma getting into more trouble, do you?

14 A No, sir.

15 Q And you'll say whatever it takes to help her, like I
16 was out of my mind, I don't remember, they threatened me?

17 A (There was no response.)

18 Q You'll do whatever it takes to help your momma,
19 wouldn't you, ma'am?

20 A Yes, sir.

21 Q Including lie, wouldn't you, ma'am?

22 A I would tell the truth, sir.

23 Q You wouldn't lie to help your momma?

24 A No.

25 Q You didn't lie when you said that Mr. Stokes was your

1 granddaddy?

2 A (There was no response.)

3 Q That wasn't a lie?

4 A Well, that was a lie, yes.

5 Q So you would lie to help your momma, wouldn't you,
6 under oath? That doesn't mean anything to you, does it,
7 ma'am?

8 A It does, sir.

9 Q Well, let me just go on and get through this, ma'am.
10 I don't want to waste anybody -- any more time of anybody.
11 Isn't it true that you told Investigator Maltby that at
12 about 5:30 in the morning before they got there that your
13 momma was banging on the door?

14 A Yes, sir.

15 Q I'm sorry?

16 A Yes, sir.

17 Q Isn't it true that you told them that when you opened
18 the door, your momma was standing there in a bra and blue
19 jeans?

20 A That is incorrect, sir.

21 Q What did you tell them she was wearing?

22 A When she got to my door, she had took her shirt off.

23 Q Well, so she was standing there in a bra and blue
24 jeans?

25 A Yes, sir.

1 Q Where was her shirt?

2 A In her hands.

3 Q So if Mr. Argumenti didn't see a shirt in her hands,
4 he'd be wrong?

5 MR. BANNISTER: Now, Your Honor, you can't pit one
6 witness against another.

7 THE COURT: Sustained.

8 MR. WESTON: My apologies, Your Honor.

9 BY MR. WESTON:

10 Q So you're saying she had a shirt in her hands?

11 A Yes, sir.

12 Q Did you ask her why, momma, are you standing here at
13 5:00 in the morning in the middle of November in
14 Greenville, South Carolina, with a shirt in your hands and
15 nothing on but a bra?

16 A Yes, sir.

17 Q And what did she say?

18 A She didn't say a thing. She didn't say a word, not a
19 word.

20 Q Did she not tell you, I can't tell you, I don't want
21 to talk about it?

22 A She didn't -- she didn't -- she didn't say that, sir.

23 Q She didn't say anything?

24 A Nothing.

25 Q And you didn't press her?

1 A I -- I tried questioning her. I kept asking her.
2 She didn't say not a word.

3 Q Not a mumbling word, as my momma used to say. Not a
4 mumbling word?

5 A Not a word, sir.

6 Q Isn't it true that she had a garbage bag with her
7 that had some stuff in it?

8 A Yes, sir.

9 Q And you never saw what was in that bag, did you?

10 A No, sir.

11 Q And that she was acting very nervous?

12 A Yes, sir.

13 Q I'm sorry?

14 A Yes, sir.

15 Q Did you ask her -- in fact, isn't it true that you
16 told Investigator Maltby that you asked her, "What the
17 hell is going on, momma"?

18 A Yes, sir.

19 Q And isn't it true that you told him that she said, I
20 can't tell you anything?

21 A Yes, sir.

22 Q And, now, let's get down to it, ma'am. Isn't it true
23 that your momma told you, I think I hurt somebody tonight?

24 A No, sir.

25 Q You don't remember telling Investigator Maltby that

1 on the video?

2 A (There was no response.)

3 Q "Yes" or "no," ma'am?

4 A Could you repeat -- could you repeat the question
5 again?

6 Q Isn't it true that you were videotaped telling
7 Investigator Maltby that your momma told you that morning,
8 I think I hurt somebody tonight? Didn't you tell him
9 that?

10 A No, sir.

11 Q So if there's a video that shows that, it's been
12 edited in some kind of way to make it sound like you said
13 that?

14 A (There was no response.)

15 Q Come on, ma'am. Didn't you tell him that?

16 A Yes, I said that.

17 Q Why did you say that if she didn't say it then,
18 ma'am?

19 A She didn't say it.

20 Q You made it up?

21 A Yes. It was a lie.

22 Q But --

23 A Because I was scared, sir.

24 Q So -- but you didn't even know what they said your
25 momma had done at that point, did you?

1 A No.

2 Q So why would you make up coincidentally after
3 somebody has gotten shot where she was sitting next to
4 them, I think I hurt somebody tonight? Why would you just
5 make that up?

6 A Because I was threatened.

7 Q So, now, we're back to that again. I thought you
8 said, I was scared?

9 A I was.

10 Q Well, which one is it? Were you scared or were you
11 threatened?

12 A I was threatened and scared.

13 Q Of Maltby?

14 A Yes.

15 Q And the police?

16 A Yes.

17 Q You wasn't scared about what your momma said she had
18 just done? That didn't scare you, ma'am? That didn't
19 scare the heck out of you that your momma might have hurt
20 somebody that night and she told you that?

21 A She did not.

22 Q But you did tell him that? You admit that?

23 A (There was no response.)

24 Q Didn't you? You just said you did.

25 A Yes. But that -- that's a lie. That's not true.

1 Q Okay. That's fine. You can say that to this jury
2 all you want, ma'am. But that's what you told him. You
3 admit that's what you told him on the morning two hours
4 after your momma said it -- or after your momma left your
5 house. Isn't that true?

6 A Yes, sir.

7 Q And you said she had a whole bunch of hundreds and
8 \$20 bills in her hand, didn't you?

9 A In her bra.

10 Q In her bra?

11 A Yes.

12 Q And she didn't tell you where it came from, did she?

13 A No.

14 Q So your momma asked you -- is that -- why is she at
15 your house? What does she want?

16 A I kept asking her. She just -- she -- I don't know
17 where she came from. She never told me where she came
18 from.

19 Q What did she want at your house? What did she want?
20 When she first got there, what was the first thing she
21 wanted to do?

22 A She just needed -- she just needed somewhere to take
23 a shower.

24 Q She said, I need somewhere to take a shower?

25 A Yes.

1 Q Didn't she have a house?

2 A Sir?

3 Q Didn't she have a house?

4 A Yes.

5 Q And doesn't her house have a shower?

6 A Yes.

7 Q So you let her take a shower?

8 A Uh-huh.

9 Q And the shirt she said she had in her hands, did she
10 put that back on after her shower?

11 A No.

12 Q What did she put on?

13 A I had to grab -- I had to grab her something of mine
14 for her to wear.

15 Q What was wrong with the shirt she had in her hands
16 that you said she was holding in her hands?

17 A There was bed bugs on it, sir.

18 Q I'm sorry?

19 A Bed bugs.

20 Q Bed bugs?

21 A Yes.

22 Q So after she took a shower and put on your clothes --

23 A Yes.

24 Q -- what did she want to do then?

25 A She -- she had asked me to call for a ride.

1 Q Who did she ask you to call, ma'am?

2 A At first, she asked me to call her husband.

3 Q What's her husband's name?

4 A Isaac Stokes.

5 Q Did you call Mr. Stokes?

6 A Yes, I did.

7 Q And what happened with that?

8 A He did not answer.

9 Q So what happened then? What'd she say to do then?

10 A Then she asked me to call Mr. -- she asked me to call
11 Mr. Jay.

12 Q Mr. who?

13 A Mr. Jay as in [inaudible].

14 Q What's his last name, ma'am?

15 A Marshall.

16 Q James Marshall. And who is he, ma'am, in
17 relationship to your mother?

18 A A friend.

19 Q Is he -- isn't he her boyfriend, ma'am?

20 A No.

21 Q Okay. Excuse me.

22 And did he come and get her?

23 A Yes.

24 Q But she never did tell you where she had been?

25 A No.

1 Q She didn't tell you where she was coming from?

2 A No.

3 Q She didn't tell you why she didn't have her shirt on?

4 A No, no.

5 Q And you told Investigator Maltby that she told you, I
6 think I hurt somebody tonight, even though you now say
7 that that was a lie that you told them?

8 A Yes. It's a lie.

9 Q But you did tell him that that morning?

10 A Yeah. She didn't say that, but I did. She didn't
11 say it.

12 Q And you just made it up, ma'am?

13 A Yes, sir.

14 MR. WESTON: Thank you, ma'am.

15 That's all I have.

16 THE COURT: Mr. Bannister.

17 CROSS-EXAMINATION

18 BY MR. BANNISTER:

19 Q You're aware that your mother was in an accident a
20 couple of years ago?

21 A Yes, sir.

22 Q And that she has a -- had a broken neck?

23 A Yes, sir.

24 Q And wears a brace --

25 A Yes.

1 Q -- because of that for relief?

2 A Yes.

3 Q And she's in a great deal of pain from time to time?

4 A Yes.

5 Q Now, you're, also, aware she's had operations on that
6 neck --

7 A Yes.

8 Q -- from time to time to straighten it out?

9 And were you aware that your mother had a drug
10 problem?

11 A She never had a drug problem, sir.

12 Q She never had a drug problem that you're aware of?

13 A No. No, sir.

14 Q You were not aware that she went to Ms. Flamm's house
15 and used cocaine?

16 A No, sir.

17 Q All right. Now, the night that this happened, were
18 you, also, asleep when your mother got there?

19 A Yes, sir.

20 Q And there's no doorbell on -- on your apartment at
21 that place at Gantt Street?

22 A Sir?

23 Q There was no doorbell there?

24 A No.

25 Q So you were asleep and your boyfriend was asleep?

1 A Yes.

2 Q So your mother was banging on the door to wake you up
3 to let her in. Is that fair to say?

4 A Yes.

5 Q Now, when she came in, what did she have with her?

6 A She had her -- she had her black purse, sir.

7 Q Had what? I'm sorry.

8 A She had a black purse.

9 Q A black purse. Describe it for the jury, what the
10 black purse was.

11 A She -- it was like a -- it was a black -- it was a
12 black purse this size. It had a strap to it.

13 Q Was it fairly flat?

14 A Sir?

15 Q Was it flat?

16 A Yes.

17 Q When she came in, where did she put the purse?

18 A She had took it into the bathroom with her.

19 Q Okay. And did she have anything else in her hands?

20 A No, sir.

21 Q She did not have a black garbage bag?

22 A No.

23 Q You don't recall a black garbage bag?

24 A No, sir.

25 Q Do you recall her ever getting a black garbage bag?

1 A From me. From -- from me, sir.

2 Q I'm sorry.

3 A I gave her a black bag, sir.

4 Q You gave her the black -- a black bag?

5 A Yes, to put her dirty clothes --

6 Q To put her dirty clothes in?

7 A Yes, sir.

8 Q And did you see her put those clothes in the bag?

9 A Yes.

10 Q Could she have had, from the appearance and the
11 weight, a pistol in that pocketbook?

12 A No.

13 MR. WESTON: Objection, Your Honor. Calls for
14 speculation.

15 THE COURT: Overruled.

16 BY MR. BANNISTER:

17 Q Was the bag -- the black bag she had flat -- a very
18 flat female bag, a woman's bag?

19 A Yes, sir.

20 Q You would have noticed if there was a heavy weight or
21 a gun in there?

22 A Yes, I would have. Yes, sir.

23 Q Okay. Now, you never looked in the pocketbook,
24 though?

25 A I did. I did.

1 Q And did you -- what did you see in the pocketbook?

2 A Cigarettes, candy, change, just regular stuff I would
3 see.

4 Q And no gun?

5 A No.

6 Q Did you see any bullets in there?

7 A No.

8 Q All right. Now, he's asked you about the police
9 coming. When the police came to your apartment, and you
10 and your boyfriend were there, about what time was that?
11 Do you recall?

12 A Sir?

13 Q Do you recall about what time the police got there?

14 A About 10:00 -- like 10:30 or 11:00, sir.

15 Q Okay. And how many were there?

16 A There was three.

17 Q Three policemen?

18 A No. It was two detectives and the one police
19 officer.

20 Q Okay. When they got there, did they question you and
21 your boyfriend about seeing your mother?

22 A Yes, sir.

23 Q And did they then take you separate from your
24 boyfriend outside?

25 A They did.

1 Q Now, did they, also, look in your apartment, the
2 police?

3 A Yes.

4 Q Did they go through there?

5 A Yes, sir.

6 Q They found some marijuana?

7 A Yes.

8 Q Did they threaten you with arrest over the marijuana?

9 A They -- well, actually, no.

10 Q They did not?

11 A No. They said it was not --

12 Q That was not what they were looking for?

13 A They was -- they was looking for a gun.

14 Q They were looking for a gun?

15 A Yes.

16 Q And they didn't find one?

17 A No.

18 Q So they took you by yourself?

19 A Yes, sir.

20 Q And what did the officer say to you?

21 A They questioned me. I told them whatever they needed
22 to know. That she had showed up around my house around
23 4:30 in the morning, woke me up banging on the door.

24 I asked her repeatedly, What are you doing here so
25 late. And she said she could not say anything, not a

1 word. And then she asked me could she take a shower. So
2 she took a shower. Then after she asked me, Could I get a
3 change of clothes? So I got her a change of my clothes
4 for her.

5 Then after that, I gave her the clothes. She got
6 out, changed into them. And then she asked me to call for
7 a ride.

8 Then I told him that I had called her husband --
9 husband first. I had called him two times and that he did
10 not answer.

11 So then I had to call her friend, which is Johnny.
12 Then he answered. And then maybe around 5:00, somewhere,
13 then he shows up, comes and picks her up.

14 Q And she left?

15 A Yes, sir.

16 Q Now, she carried with her the clothes in the bag and,
17 also, the pocketbook?

18 A Yes.

19 Q And you were not aware that your mother had been at
20 Ruby Flamm's house using cocaine for several days. You
21 were not aware of that?

22 A No, sir. I was not aware.

23 Q She didn't tell you that?

24 A No, sir.

25 Q She didn't tell you she left Ruby Flamm's house to

1 get away from cocaine?

2 A No, sir. She never told me anything.

3 Q All right. I believe the police searched your
4 apartment while they were there?

5 A Yes, sir.

6 Q And they left with no gun, no nothing?

7 A That's correct.

8 Q Did you ever see a black leather jacket from your --
9 when your mother was there?

10 A No.

11 Q Did you ever see a pair of capri pants?

12 A No.

13 Q Did you see any other items that your mother brought
14 with her?

15 A No.

16 MR. BANNISTER: All right. Give me one minute.

17 THE COURT: Certainly.

18 (Pause.)

19 MR. BANNISTER: That's all I have, Your Honor.

20 THE COURT: Yes, sir.

21 MR. WESTON: Nothing on redirect, Your Honor.

22 I would ask that the witness be allowed to be
23 excused.

24 THE COURT: Any objection to her being excused?

25 MR. BANNISTER: No, Your Honor.

1 THE COURT: Thank you.

2 You're released from your subpoena.

3 MR. WESTON: Your Honor, the State would call
4 Investigator Maltby.

5 THE COURT: All right.

6 THE CLERK: Sir, if you'll, please, come forward.

7 Would you, please, pause at the end of the bench?

8 Place your left hand on the Bible and raise your
9 right hand.

10 WHEREUPON,

11 CHAD MALTBY,

12 after first having been duly sworn, testified as follows:

13 THE CLERK: Thank you.

14 Please be seated.

15 Would you, please, state your name for the record?

16 THE WITNESS: Chad Maltby.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. WESTON:

20 Q Investigator Maltby, with whom are you employed?

21 A With the Greenville County Sheriff's Office.

22 Q Were you employed in that position as an investigator
23 back in 2016?

24 A Yes, sir, I was.

25 Q And did you have an occasion to assist in the

1 investigation of the death of Ms. Ruby Flamm?

2 A I did.

3 Q And was one of your responsibilities to interview the
4 Defendant's, Malette Kimbrough, daughter as well as her
5 daughter's boyfriend?

6 A Yes, sir, it was.

7 Q And would that be Ms. Dixon and Mr. Argumenti?

8 A Yes.

9 Q And how did you come in -- come in contact with them
10 the first time?

11 A Sergeant Weiner at the time, Lieutenant, now, Weiner
12 went to that location at [REDACTED] A Gantt Street to attempt to
13 make contact with Ms. Kimbrough.

14 Q All right. And you -- you -- did you know her
15 daughter lived there?

16 A Yes. We had received information that her daughter
17 may live there.

18 Q And was Ms. Kimbrough there?

19 A She was not.

20 Q Okay. And was Ms. Dixon and Mr. Argumenti there?

21 A Yes, they were there.

22 Q And did you talk to them there?

23 A We did.

24 Q All right. And let's just get to the heart of this.

25 At some point, they came down to the law enforcement

1 center and gave a video statement; is that correct?

2 A Correct. Yes, sir, they did.

3 Q And did you transport either or both of them to the
4 law enforcement center?

5 A I don't believe I did. I believe it was a uniform
6 patrol deputy.

7 Q All right. But you had -- did you have interaction
8 with either one or both of them at their home?

9 A Yes, I did.

10 Q And would you -- were you and -- and/or Detective --
11 Investigator Weiner the ones that interviewed them at the
12 law enforcement center?

13 A Yes, we were.

14 Q At any time during those interviews, did you threaten
15 them?

16 A Absolutely not.

17 Q Did you have anything to threaten them with?

18 A No, sir.

19 Q Was -- aside from a small amount of marijuana that
20 was found at the house, were there any other charges that
21 were outstanding against either of them as far as you
22 knew?

23 A No, sir. And I don't -- I don't believe the
24 marijuana even came up.

25 Q All right. And did they agree to come down to the

1 law enforcement center voluntarily to give statements?

2 A Yes. They agreed immediately and voluntarily came
3 with us.

4 Q And you didn't threaten them?

5 A I didn't threaten them. They offered no resistance
6 whatsoever.

7 Q You didn't -- didn't coerce them?

8 A No, sir.

9 Q You didn't use any kind of strong-arm tactics on
10 them?

11 A No, sir.

12 Q All right. With regard to Ms. Dixon, did she appear
13 to be high?

14 A I -- I didn't note that. And I don't recall that --

15 Q And I think you didn't have any context from, like,
16 having known her before that?

17 A No, sir.

18 Q I assume you didn't know her before that?

19 A No, sir.

20 Q And you'd never had any action -- any interaction
21 with either one of them before that?

22 A No, sir.

23 Q So you -- did you have any grudge against either one
24 of them?

25 A I didn't even know them, sir.

1 Q And let me just be clear. At the time y'all
2 interviewed them, had it been determined yet exactly what
3 had happened back at the Flamm's home?

4 A No, sir. This was very early on.

5 Q And when y'all were looking for her mother, was she,
6 at that point, under -- had an arrest warrant been issued
7 against her, or anything like that?

8 A No, sir.

9 Q Did y'all have any idea exactly what had happened?

10 A I had no idea. I can speak for myself. No, sir.

11 Q But you're sure y'all didn't threaten her?

12 A Absolutely.

13 Q And you're sure, as far as you could tell, that
14 she -- did Ms. Dixon appear to be high to the point that
15 she didn't know what she was doing?

16 A I didn't -- I didn't note -- or I don't recall her
17 being high, or intoxicated.

18 Q And would you have taken a statement from her if that
19 were the case, if you found -- if you suspected that were
20 the case?

21 A No, sir. I would not.

22 Q All right. And was her statement to you voluntary?

23 A Absolutely, yes, sir.

24 Q All right. Did you tell her any -- did you put any
25 words in her mouth -- excuse me. Did you even know what

1 words to put in her mouth, at that point, with regard to
2 the early nature of this investigation?

3 A I did not, sir. I had no idea.

4 Q All right. Were they just witnesses at this point?
5 Possible?

6 A Strictly possible witnesses at that time.

7 MR. WESTON: All right. Thank you, sir.

8 THE COURT: Any questions for this witness?

9 CROSS-EXAMINATION

10 BY MR. BANNISTER:

11 Q While you were at Ms. Dixon's house, did you go
12 through the apartment there on Gantt Street?

13 A Yes, sir. When we got there, we were -- we were
14 looking for Ms. Kimbrough. And we asked for permission to
15 walk through the house and to look for Ms. Kimbrough. We
16 were allowed -- were given consent to do that.

17 So we did do a walk through of the house just looking
18 for Ms. Kimbrough.

19 Q No mention ever made that you were looking to see if
20 there was a firearm there?

21 A I never -- I don't recall looking or searching for
22 the firearm -- for a firearm.

23 Q You were not looking for a firearm. Is that your
24 testimony?

25 A I walked through the house. I can testify to what I

1 did. I walked through the house with consent to look for
2 Ms. Kimbrough.

3 Q Now, you say this house -- describe it for the jury.

4 A living room?

5 A A small -- small apartment, maybe I'm estimating 900
6 to a thousand square feet. When you enter the front door,
7 you walk into what I can recall as being just a living
8 room. I recall a kitchen. And, I think, one bedroom.

9 Q Is it your testimony today that no officer there was
10 looking for a firearm?

11 A I can't testify to no officer looked for a firearm.
12 We were investigating a homicide where a firearm was used.
13 So had we have come across the firearm and after being
14 told from Ms. Dixon how her mother arrived at the house
15 shortly after the incident, had we seen a firearm, then we
16 would have definitely looked into that as being part of
17 the evidence of the crime that we were knocking on her
18 door to begin with.

19 Q Okay. So the impression that you gave when you
20 arrived at Ms. Dixon's apartment, three officers armed;
21 correct?

22 A I'm a deputy sheriff. At any time I'm tasked with my
23 duties, I am armed, yes.

24 Q So the answer to that is yes. Three deputies and
25 they're armed. Police cars arrive at Ms. Dixon's house.

1 That's fairly intimidating, isn't it?

2 A Not to a law-abiding citizen. I wouldn't be
3 intimidated, personally.

4 Q That wouldn't intimidate most people?

5 MR. WESTON: Objection, Your Honor. Calls for
6 speculation.

7 MR. BANNISTER: Okay.

8 BY MR. BANNISTER:

9 Q So it wouldn't intimidate you. But it, certainly,
10 would raise some curiosity as to why you were there;
11 correct?

12 A I don't understand what you're asking. Would it --
13 would -- would three patrol cars pulling up --

14 Q Let me withdraw that.

15 During the morning, Ms. Dixon is there with her
16 boyfriend. They've got some marijuana in the house.
17 Three police cars arrive, armed police officers that want
18 to look through the house. That's what you asked?

19 A We explained to her the situation as --

20 Q And just answer my question. That's what happened.
21 You arrived at Ms. Dixon's house, her and her boyfriend.
22 There was marijuana there, three police officers, and a
23 car --

24 MR. WESTON: Objection, Your Honor.

25 BY MR. BANNISTER:

1 Q Is that correct?

2 THE COURT: What's your objection?

3 MR. WESTON: Your Honor, they arrived at the house in
4 three police cars. There's no marijuana there when they
5 arrive there. The marijuana was apparently found, at some
6 point, as they walked through the house. He's throwing
7 that in as that was part of the arrival.

8 THE COURT: All right. I'll allow you to -- to
9 correct that on reexamination.

10 But go ahead and answer the question.

11 BY MR. BANNISTER:

12 Q Well, that was the situation, wasn't it?

13 A We are police officers. We're deputy sheriffs. We
14 did arrive in county-issued vehicles. During our
15 encounter, we did see marijuana, yes.

16 MR. BANNISTER: Okay. Thank you.

17 THE COURT: Anything -- anything else from the State?

18 MR. WESTON: Oh, no redirect, Your Honor.

19 We'd ask that the witness be allowed to be excused.

20 THE COURT: All right. Any objection?

21 MR. BANNISTER: No objection.

22 THE COURT: Thank you, sir, for being here.

23 Yes, sir.

24 MR. MCCOLLUM: Your Honor, at this time, the State
25 rests.

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1 evidence upon which a jury could base a verdict.

2 And, therefore, your motion is respectfully denied.

3 MR. STALVEY: Thank you, Your Honor.

4 THE COURT: Thank you.

5 Ms. Kimbrough, I'm not ready to question you yet
6 about whether or not --

7 MR. STALVEY: Stand up.

8 DEFENDANT KIMBROUGH: I'm sorry.

9 THE COURT: No. That's okay. That's fine.

10 I'm not ready to question you yet as to whether or
11 not you intend to testify in the trial of this case.

12 DEFENDANT KIMBROUGH: Yes, ma'am.

13 THE COURT: But I do want to let you know that it
14 seems like tomorrow morning I'm going to be questioning
15 you on whether or not you -- you intend to testify in the
16 trial of this case.

17 You have got two of the most outstanding attorneys
18 that practice in South Carolina as your attorneys. I know
19 you will listen to their wise counsel and advice in this
20 regard.

21 But I need for you to understand that this is going
22 to be your decision and your decision alone. You've got
23 to be the one to make the decision. You know that you
24 have a right to remain silent. And I'm going to instruct
25 the jury that they cannot even consider the fact that you

1 and with regard to convictions, as I said, we would check
2 and confirm just to be sure that -- there is a --
3 potentially a breach of trust from 15 years ago that
4 probably would not be admissible.

5 THE COURT: Okay.

6 MR. WESTON: But barring anything else that is found,
7 we would -- there would not be any convictions or
8 impeachments. I will have the specifics first thing in
9 the morning.

10 MR. STALVEY: Judge, we've got a NCIC report that was
11 in the discovery.

12 If it's different than what y'all provided, if you
13 would just let us know.

14 MR. WESTON: No. It's the same.

15 THE COURT: Absolutely. And we've really not come to
16 the point -- because we don't know what's going to happen
17 next to have any kind of a charging conference in any way.

18 So we'll just -- we'll just save that for tomorrow.

19 MR. WESTON: Yes, ma'am.

20 THE COURT: All right. I've got a -- I've got an
21 initial charge on the law. I'm happy to send it to -- to
22 both sides if y'all want to take a look at it this
23 evening. But the only thing it -- the only thing that it
24 has in there is, you know, just the indictment as charged
25 for murder and possession of a weapon during the

1 commission of a crime. Certainly, no defenses to it at
2 this point. No lesser included. And -- but if you just
3 want to know what I charge on something like that, I'm
4 happy to send it to you.

5 MR. STALVEY: We'd like to see it, Judge.

6 THE COURT: Sure. I'll send it to you.

7 And I'll bet, Mr. Weston, you want Mr. McCollum to
8 take a look at it.

9 MR. WESTON: Yes, ma'am, Your Honor. He will
10 probably be the one taking a look at it.

11 THE COURT: All right. Well, then in that case,
12 Mr. Bannister, I hope you won't take offense from
13 Mr. Weston if I send it to Mr. Stalvey and Mr. McCollum.

14 All right. I'll see y'all tomorrow morning at 9:30.

15 (WHEREUPON, the proceedings were concluded at
16 approximately 4:26 p.m., to be reconvened on
17 Wednesday, June 11, 2019.)

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1 WEDNESDAY, JUNE 12, 2019

2 THE COURT: All right. Did y'all have an opportunity
3 to take a look at the jury charge last night?

4 MR. MCCOLLUM: Yes, Your Honor.

5 MR. STALVEY: Judge, I did.

6 The only thing that we're going to ask is for a
7 charge on circumstantial evidence consistent with State v.
8 Logan. I e-mailed you the -- the charge language. And
9 I've got the -- our request.

10 THE COURT: Okay.

11 MR. STALVEY: And I'd like that to be made a Court's
12 Exhibit, please.

13 So that would be our only request as far as the
14 charge.

15 (Pause.)

16 MR. STALVEY: And, Judge, this is that Logan case
17 that's cited in that request.

18 THE COURT: All right. Yes, sir.

19 MR. MCCOLLUM: Your Honor, we'd ask that you just
20 stay with the standard charge that you sent over in this
21 case. The language -- I guess if you're looking at the
22 proposed charge sent by Mr. Stalvey in the second -- or
23 third paragraph, If these circumstances merely portray the
24 Defendant's behavior as suspicious, the proof has failed.
25 That language is not necessary and would make it more

1 burdensome to the State given the facts of this case.

2 THE COURT: All right. I'm not exactly sure exactly
3 what part of this I'll charge. I definitely will charge
4 the final -- the final paragraph of this.

5 MR. MCCOLLUM: Of the proposed?

6 THE COURT: Of the proposed request to charge. I'll
7 add that in there.

8 And I think to a certain extent, that's consistent
9 with the other even more recent cases. And I'm happy to
10 do that.

11 I'll take a look at that middle paragraph and see if
12 I might add something from there. But it won't -- nothing
13 I'll add will be inconsistent with what I've already --
14 you know, I've already provided to y'all.

15 MR. MCCOLLUM: Thank you, Your Honor.

16 THE COURT: All right. Yes, sir.

17 MR. WESTON: Your Honor, there are two other matters.

18 THE COURT: Sure.

19 MR. WESTON: One is -- and I have not reviewed all of
20 your charges because they were sent to Mr. McCollum --
21 appropriately sent to him. We wanted to know if you were
22 going to charge in this case that the jury can infer
23 malice from the use of a deadly weapon given the -- the
24 case law.

25 There's no indication that there's -- that the --

1 that there was a deadly weapon used to mitigate or defend
2 against. That is not even an issue in this case. So we
3 think that the use of deadly weapon to infer malice is an
4 appropriate charge.

5 The second thing, Your Honor, is that I just need to
6 know whether you're going to charge something to the
7 effect that the State is not required to prove motive.
8 And if you're not, that's fine. I just need to know
9 before I do my closing argument.

10 THE COURT: I'm not going to charge about motive.
11 But I'm going to allow -- but I certainly -- you can argue
12 that all you want to.

13 MR. WESTON: All right.

14 THE COURT: But I don't want to -- I almost feel like
15 I'm beginning to comment on the facts if I say that.

16 So as far as malice can be inferred from the use of a
17 deadly weapon, anything from the Defense on that?

18 MR. STALVEY: We'd object to that, Your Honor.

19 And I'd -- I'd need to look back through your charge
20 and see exactly what the language -- I didn't see that --

21 MR. MCCOLLUM: It's Page -- Page 16.

22 THE COURT: Is that someone knocking on the courtroom
23 door?

24 This has been the craziest thing I've ever seen in my
25 life.

1 (Pause.)

2 THE COURT: I don't allow children in my courtroom.
3 Children are not allowed in my courtroom.

4 MR. STALVEY: Judge --

5 THE COURT: If one of y'all wants to step out and be
6 with the child, that's fine. But I -- my -- but a
7 courtroom, especially something like this, is not
8 appropriate for a child.

9 All right. We're on the record.

10 Yes, sir.

11 MR. STALVEY: Were we not on the record earlier?

12 THE COURT: We were. But I needed to tell everybody
13 who's sitting in the audience that it's time for court to
14 start.

15 Go ahead.

16 MR. STALVEY: Thank you, Your Honor.

17 May it please the Court.

18 Judge, we believe there's some case law on this
19 malice charge. I'd like the opportunity to look into it,
20 which I'll be ready to do -- to argue once these closing
21 arguments are done.

22 And I'd, also, like to -- if we're going to have some
23 argument on the circumstantial evidence charge -- I know
24 Mr. McCollum was able to make his point on that. I mean,
25 I --

1 THE COURT: Well, the thing about the use of a deadly
2 weapon, I mean, there doesn't seem to be any defense
3 that's -- that is inconsistent with -- with the charge
4 that malice can be inferred from the use of a deadly
5 weapon. I don't -- y'all -- it doesn't look like y'all
6 have -- or have argued or plan to put up any evidence of
7 self-defense or anything along those lines, even a lesser
8 included in this case. And so I think the case law allows
9 for -- that malice can be inferred from the use of a
10 deadly weapon.

11 So as far as the circumstantial evidence, I don't
12 have any problem charging substantially what you've given
13 me. I don't have any problem with that at all. I don't
14 see anything that's inconsistent with the charge -- with
15 the -- my standard charge on circumstantial evidence. And
16 I, certainly, will add the additional language.

17 So I don't know that we need a lot of argument on
18 either one of them. But I'd be happy to hear from you, if
19 you want to do a little bit of research on the deadly
20 weapon issue.

21 MR. STALVEY: I -- I will. And I appreciate Your
22 Honor allowing me to do so. I can assure you I'm just
23 going to give you some cases. So I will not delay. And I
24 can e-mail that to you.

25 Your Honor, as far as circumstantial evidence, I

1 mean, I -- it's pretty clear in this Logan case, South
2 Carolina Supreme Court 2013. And I just refer you to --

3 THE COURT: Like I said, I -- I don't think there's
4 anything inconsistent there. And I probably will charge
5 pretty much what you've given me.

6 MR. STALVEY: Okay. Thank you, Your Honor.

7 MR. MCCOLLUM: Your Honor, just with respect to the
8 proposed charges that Mr. Stalvey's passed up to you, I
9 understand that you will charge substantially what he has
10 given to you. I would just have a question -- the State
11 has a question about, If these circumstances merely
12 portray the Defendant's behavior as suspicious, the proof
13 has failed, the last sentence in the third paragraph. Did
14 you intend to charge that one as well, or just
15 substantially what circumstantial evidence is based on the
16 proposed charge you sent to us?

17 THE COURT: I'm going to --

18 MR. STALVEY: And, Judge, I --

19 THE COURT: Yes, sir.

20 MR. STALVEY: I -- I'm getting, you know -- you know,
21 on Page 6 of that Logan opinion under the 99 citation,
22 which is the last paragraph on that page going to -- about
23 halfway down, the language is -- the Court says, Thus, we
24 hold that trial courts should provide the following
25 language as a circumstantial evidence charge in addition

1 to a proper reasonable doubt instruction when so requested
2 by a Defendant.

3 THE COURT: All right.

4 MR. STALVEY: And then the language is there listed.
5 I just cut and pasted what was right there.

6 THE COURT: All right.

7 MR. MCCOLLUM: Your Honor, that language is fine.
8 It's just that -- that one sentence. We have no issue
9 with the language presented in that paragraph that
10 Mr. Stalvey's talking about.

11 THE COURT: That -- that sentence itself is included
12 in -- in the charge that it appears under the Logan case,
13 and I'm constrained to charge it if the Defense requests
14 it. Okay. So I'm -- all right.

15 Now, on to our next matter.

16 Ms. Kimbrough, I --

17 Is this a good time? Have y'all had enough time to
18 speak with your client about this?

19 MR. BANNISTER: Yes.

20 THE COURT: Ms. Kimbrough, will you raise your right
21 hand for me?

22 WHEREUPON,

23 MALETTE DENISE KIMBROUGH,
24 after first having been duly sworn, testified as follows:

25 THE COURT: All right. You can put your hand down,

1 All right. Anything else?

2 MR. WESTON: Just two matters, Your Honor --

3 THE COURT: Yes, sir.

4 MR. WESTON: -- if we could approach briefly.

5 THE COURT: Please.

6 (WHEREUPON, a bench conference was held.)

7 THE COURT: I don't think I got the e-mail with this
8 request to charge circumstantial evidence. But you know
9 what, I can pull up this case.

10 MR. STALVEY: I -- I just forwarded it --

11 THE COURT: It's LVerdinJ. It might have gone to
12 LVerdinLC. I'm sorry.

13 MR. STALVEY: That's okay, Judge. I'll --

14 THE COURT: But I can, also, pull up the case, if
15 need be.

16 MR. STALVEY: I just wanted to -- so you -- if you
17 wanted to print it or do something like that. But I'll
18 send it to you again.

19 THE COURT: No. That's great. Because you know I'm
20 probably going to copy and paste that.

21 All right. Let's be in recess for five minutes. Let
22 everybody kind of gather their thoughts.

23 And, Mr. McCollum, it's my understanding that the
24 Defense in this case is not -- has been careful not to
25 enter not even one piece of evidence, and so.

1 MR. MCCOLLUM: Yes, Your Honor.

2 MR. BANNISTER: That's correct.

3 THE COURT: Okay. And so they would be entitled to
4 last argument.

5 MR. MCCOLLUM: Yes, Your Honor.

6 THE COURT: All right. Then let's take a five-minute
7 break.

8 (WHEREUPON, Court's Exhibit No. 1 was marked for
9 identification and admitted into evidence.)

10 (WHEREUPON, a break was taken.)

11 THE COURT: Yes, sir.

12 MR. STALVEY: Judge, can I just put something on the
13 record?

14 THE COURT: Absolutely.

15 MOTIONS

16 MR. STALVEY: Your Honor, I know we made our motion
17 for a directed verdict yesterday. But now that we're not
18 going to present a defense, the Defendant's not
19 testified -- or is not going to testify, we would renew
20 our motion for a directed verdict and ask that the case be
21 dismissed considering the information we -- the
22 information I gave you yesterday.

23 THE COURT: Well, I appreciate it. And -- and I will
24 respectfully deny the motion.

25 Are y'all ready to bring the jury back?

1 MR. STALVEY: Yes, ma'am.

2 MR. WESTON: Yes, Your Honor.

3 MR. STALVEY: And I don't have any more argument or
4 anything else to add as far as the charge, so.

5 THE COURT: Okay.

6 MR. WESTON: Nothing further from the State, Your
7 Honor.

8 THE COURT: I'll -- I'll add that portion -- that
9 portion in. And, certainly, it'll be fair game to argue
10 it during closing about malice may be inferred from the
11 use of a deadly weapon.

12 All right. Bring the jury in.

13 Just for the record, I -- Defendant's Request to
14 Charge, we've marked it as Court's Exhibit No. 1.

15 And I'll also -- and I'll mark my written charge on
16 the law as Court's Exhibit No. 2. And, unfortunately, I
17 took some notes on this exhibit. So it's not -- doesn't
18 look all that great. I apologize.

19 (WHEREUPON, the jury came into open court at
20 approximately 9:53 a.m.)

21 THE COURT: Good morning, ladies and gentlemen.

22 When we broke yesterday, the State had rested. And,
23 now, we're ready to turn to the Defense.

24 Anything from the Defense?

25 MR. BANNISTER: No, ma'am. The Defense rests.

1 THE COURT: All right. Very well.

2 Ladies and gentlemen, we are now ready to go to
3 closing arguments by the attorneys and then my final
4 charge on the law. The case will be in your hands after
5 that.

6 We may take a break. We'll sort of see about the
7 length of things. But we may take a break and allow you
8 to fill out your lunch form for the jury, so to get -- to
9 get your lunch delivered here while you're deliberating.

10 All right. But if anybody needs to take a break at
11 any point in time, please, let me know.

12 All right. Is the State -- is the State ready to
13 proceed?

14 MR. WESTON: Yes, ma'am, Your Honor.

15 THE COURT: Yes, sir.

16 MR. WESTON: Thank you, Your Honor.

17 May it please the Court.

18 THE COURT: Yes, sir.

19 CLOSING ARGUMENTS

20 MR. WESTON: Ladies and gentlemen, you've heard all
21 the evidence. And in a few moments, the case will be
22 yours to consider.

23 At the conclusion of the remarks -- my remarks and
24 Mr. Bannister's remarks, Judge Verdin will instruct you on
25 the law. And you should take the law as she gives it to

1 you. As she has told you at the outset and what she'll --
2 she'll probably tell you again in her instructions is that
3 what I say and what Mr. Bannister says is not the law.
4 And y'all have heard us objecting and kind of getting a
5 little spun up with each other during the trial. You see
6 why that's not the law and why you should take it from
7 her. We are both just, basically, representing the
8 interest of our side of the case.

9 But we do not present evidence. We do not intend to
10 try to speak for the evidence. The evidence speaks for
11 itself. It is what you've seen from the evidence that was
12 admitted -- things that were -- items that were admitted
13 into evidence and from what came from this witness stand.
14 That is the evidence you have to consider in determining
15 whether or not the Defendant is guilty of murder, and
16 whether she's guilty of possession of a weapon during the
17 commission of a violent crime.

18 The Judge is going to instruct you on a number of
19 things. And we would ask that you, obviously, pay close
20 attention to what she says. She's going to tell you a lot
21 of stuff. She's going to tell you about the burden of
22 proof. She's going to tell you that the State has the
23 burden of proof.

24 And that the Defendant sits here right now innocent
25 of the charges. She's presumed innocent, unless and until

1 the State proves beyond a reasonable doubt each and every
2 element of each and every offense.

3 She is going to tell you about reasonable doubt, and
4 what is reasonable doubt. And, once again, take it from
5 what she says, not what I'm getting ready to tell you. I
6 have my own interpretation and understanding of what it
7 is.

8 I believe she's going to tell you something along the
9 lines of it is clear that nothing can be proven with
10 absolute certainty. We can't say with absolute certainty
11 that the sun is going to come up tomorrow morning. But we
12 can say without a -- beyond a reasonable doubt that it
13 will because it has come up for thousands of years every
14 morning. Nothing is absolute.

15 Reasonable doubt, as I -- as I think His -- Her Honor
16 will tell you, is a doubt that would cause a person firmly
17 convinced in their belief to hesitate to act. In short,
18 if you are firmly convinced that the Defendant committed
19 the crime of murder and the crime of possession of a
20 weapon during the commission of a violent crime, then you
21 are required under your oath to find her guilty. If you
22 are not firmly convinced, however, then you have to find
23 her not guilty. And once again, that burden is on the
24 State, not on her.

25 She is going to tell you the elements of murder are

1 the killing of another with malice aforethought.

2 Obviously, the killing of another speaks for itself. It
3 has to be an intentional act.

4 And malice -- there's no real good definition of
5 malice. She will give you a definition of what malice is.
6 But I would suggest that it, basically, means someone with
7 an evil heart, someone intending or determined to do bad,
8 to do something bad. But in this case, that's not
9 problematic.

10 Because one of the things she's going to tell you --
11 and I would ask that you listen carefully for this -- is
12 that you, as jurors, can infer malice from the use of a
13 deadly weapon. And she's then further going to tell you
14 that a hand -- that a gun is a deadly weapon. She doesn't
15 need to tell you that. You know that. But if you find
16 that the Defendant committed this act, then you have found
17 malice because it means that she shot her with a deadly
18 weapon. And that -- she will tell you that you can infer
19 malice just from that.

20 And it makes sense. Nobody shoots somebody
21 intentionally and it not be malicious. If you shoot
22 somebody, you're trying to kill them. And that's exactly
23 what the Defendant did in this case.

24 With regard to possession of a weapon during the
25 commission of a -- of a violent crime. That's a mouthful.

1 But it, basically, means this, if you commit a violent
2 crime -- and she will tell you what violent crimes there
3 are listed in South Carolina. Murder is one of them. She
4 will tell you that murder is a violent crime.

5 So knowing that, if Mr. McCollum and I commit a
6 murder, but I'm the one who had the gun and he did not
7 have a weapon, but he is with me and we conspired to kill
8 Investigator Bailey. And we went to his home and I shot
9 him and we left together, then he is just as guilty as me.
10 He is not guilty of possession of a weapon during a
11 violent crime because he didn't have a gun, I did.

12 In this case, we're talking about a singular person
13 who killed another person with a gun. So after you find
14 that she is guilty of murder, then you have to find she is
15 guilty of possession of a weapon during the commission of
16 that violent crime because she used the gun.

17 If you find that she's not guilty of murder, then you
18 can't find her guilty of possession of a weapon during the
19 commission of a violent crime. Because you didn't find
20 she was guilty of the underlying charge. They go hand in
21 hand.

22 She's, also, going to tell you, I think, about the
23 most important thing in this case, and that is the
24 credibility of witnesses. And she is going to tell you
25 that y'all are the triers of fact. And y'all are the ones

1 that decide what, if anything, you believe with regard to
2 a witnesses testimony.

3 The Judge is going to tell you that you can believe
4 all of the witnesses testimony. You can believe part of
5 the witnesses testimony, or you can believe none of a
6 witnesses testimony. You can believe one witness versus
7 five. You can believe two versus three. You can believe
8 two and a half versus two and a half by -- by believing
9 some of one -- one witnesses testimony and not some of the
10 other -- of the other part of it. But that is entirely
11 within y'all's purview to determine the credibility of a
12 witness.

13 In determining the credibility of a witness, you have
14 to decide what motivates this witness to lie or tell the
15 truth. In this case, there's some obvious bias and
16 credibility issues with -- especially with regard to the
17 Defendant's daughter and her boyfriend. I'm not going to
18 get into what y'all -- the travesty y'all saw coming from
19 this witness stand here after these people had taken an
20 oath yesterday -- yesterday afternoon, the things that
21 they said. I'm not going to go back and rehash all of
22 those things. Y'all have to decide whether they were
23 telling the truth or not.

24 There's no question they were lying. There's no
25 question Malexes Dixon wants to protect her mother. She

1 doesn't want to see anything bad happen to her mother.
2 That's understandable. None of us can say exactly how we
3 would act if our parent were charged with such a heinous
4 crime as murder and we had to give testimony against her.

5 I'd like to think I'd do the right thing and I'd
6 honor my oath to tell the truth that I just swore to. But
7 I can't say for sure. I love my momma as we all did -- or
8 do. So I'm not going to blame her. I understand. I get
9 it. But, doggone it, you don't have to believe her.

10 Look for what the motive was. What motive did Ruby
11 Lynn Smith have to lie when she got on this witness stand
12 and told y'all the facts of this case? What motive did
13 Lorenzo Pardlow have to lie when he got on this witness
14 stand and told you the facts of the case as he knew them
15 with regard to the death of his grandmother?

16 The officers involved in this case just did their
17 job. They just, basically, told you what happened.
18 There's no contest or conflict about what -- how the
19 investigation went when this happened, how it happened,
20 when it happened, where it happened, what the
21 circumstances were.

22 Then there's Mr. Ramsey, the neighbor. He's an
23 interesting sort. And he's got no ties, no friends to
24 reward, no enemies to punish -- excuse me, to punish. He
25 just told you what he knew.

1 She is going to talk to you -- one of the things that
2 she is not going to tell you that you're not going to hear
3 from the Judge -- and you can listen for it, but you won't
4 hear it. She's not going to tell you about motive.
5 Because motive is not an element of this crime. And the
6 State does not have to prove motive, thank goodness.
7 Because can you imagine how difficult it is to get in
8 somebody's mind as to why they did certain things.

9 Every one of us in this room who's been involved in
10 this case from day one, including yourself, including the
11 Judge, including the court reporter, including the clerk,
12 including the bailiffs will leave here no matter what
13 y'all find, guilty or not guilty, and spend the rest of
14 their lives not dwelling on it, but from time to time
15 wondering, why was that woman killed? We'll probably
16 never know.

17 But if all you need is to commit a crime in the dark
18 where nobody sees you and get rid of the weapon that you
19 did it with and don't tell anybody why you did it to be
20 found not guilty, well, then this country and this world
21 is in a world of hurt, which is why the State does not
22 have to prove motive. And you won't hear the Judge tell
23 you that we're required to do that.

24 So you don't have to find out what the motive is.
25 We'd like to know. Gosh, I know this victim's family

1 would like to know why their grandmother was killed. But
2 it's not something that you, as jurors, are required to
3 find in order to find that woman guilty.

4 Now, having said all that, let's talk about the
5 evidence for a moment. On the morning of November 19,
6 2016, at about 3:00 in the morning, Ms. Smith told you
7 that she went into the room that her mother was sleeping
8 in in their home and checked on her mother who was asleep
9 and was using the breathing machine. She saw her mother
10 lying in bed asleep.

11 That woman, her purported friend, who had been -- as
12 y'all have heard later on had been getting high on a
13 binder, a crack binder for three, four, five days, along
14 with the victim, Ms. -- Ms. Flamm, she was asleep. This
15 woman is sitting in the chair asleep next to her.

16 There are four people in this house, Ms. Smith; her
17 mother, Ms. Flamm; Lorenzo Pardlow, who is asleep in the
18 back bedroom; and that woman. She said she checked on her
19 mother's breathing machine and checked -- put some water
20 in it. She went back to bed.

21 A few minutes later, her mother called out to her and
22 said the machine was not working properly. So she went
23 back in there and fixed it, adjusted something, and fixed
24 it.

25 Once again, the Defendant is sitting within three or

1 four feet of her mother, the only other person in that
2 room. And one of the only -- the four people in this
3 house that had all the doors bolt locked from the inside
4 at 4:00 in the morning.

5 She went back to bed. After a while, she heard what
6 she thought was a door opening, or slamming, or something
7 like that. It could have been the door. It could have
8 been a gunshot. We don't know. We'll probably never
9 know.

10 She goes back into that room, less than 20 feet from
11 her bedroom, and finds her mother in the same position she
12 was in when she just left her a few minutes before that
13 with the sleep mask still on and operating and a bullet
14 hole in her head. Her nephew, Lorenzo Pardlow, is still
15 asleep in the back bedroom. And that woman is gone. And
16 the door is wide open. It's unlocked from the inside bolt
17 locked. And the door is ajar at 4:00, 4:30 in the
18 morning. That's what she found.

19 Lorenzo Pardlow testified -- she then called 911.
20 And you heard the 911 call. You heard how upset she was.
21 You saw how upset she got up here trying to tell y'all
22 about it three years later. Is there any doubt in y'all's
23 mind that she was telling the truth?

24 And I'm going to come back to this later. But is
25 there any doubt in y'all's mind that she didn't kill her

1 momma. That didn't happen. Is there any doubt that that
2 happened? So let's take her off the table.

3 Lorenzo Pardlow got on this witness stand and told
4 y'all pretty much the same story about timing, and
5 everything. He said that his aunt, Ms. Smith, came back.
6 And she -- he heard her yelling and did not hear his
7 grandmother responding. And he gets up and goes in there
8 and finds his grandmother with a bullet hole in her head.

9 The last time he checked when he went to bed around
10 12:30, 1:00, or so, Ms. Smith is getting into bed. His
11 grandmother, Ms. Flamm, Ruby Flamm, is in bed with her
12 breathing mask on. That woman is sitting in a chair next
13 to her headed off to sleep.

14 He goes to bed. When he wakes up because of this
15 disturbance by his aunt and everything going on and he
16 finds his mother [sic] that way, he corroborates, that
17 woman is gone at 4:00 in the morning. She just up and
18 left and left the door wide open. And that's what he
19 found.

20 You had a chance to judge his credibility, his hurt.
21 He said, I could not stay in the house because I saw my
22 grandmomma with a hole in her head. I don't know how I'd
23 react under those circumstances. I'd like to think I'd be
24 strong, be strong for my aunt, if nothing else, who is,
25 also, very upset. But I can't say. He said the house was

1 closing in on him. I -- I can't say I wouldn't have felt
2 the same way. Nobody knows how you'd react under those
3 terrible circumstances and that terrible discovery.

4 But he got up on this witness stand and told y'all
5 what happened. His story was lined up exactly with
6 Ms. Smith's. The time may have been five minutes off.
7 But, basically, they told y'all the same story. There
8 should be no doubt in your mind, Lorenzo Pardlow didn't
9 kill his grandmother. Neither one of them are shown to
10 have had any problems with her that night, or any problems
11 with her at all. They loved her.

12 Y'all -- you got a chance to see how he testified up
13 here and how he -- how he hurt when he was testifying.
14 There should be no doubt in your mind, he didn't kill his
15 grandmother. So let's take him off the table.

16 Let's talk about the only other person in that house
17 that night, this Defendant. According to the evidence
18 from -- that you've heard so far that I've talked about,
19 this Defendant had been there for three or four days with
20 her friend, the victim. And that they both used crack.
21 And that they'd been using crack. They were on what --
22 what a lot of people call a binder, or a binge. That's
23 what they were doing. Neither one of them were working.
24 Her daughter later testified she didn't know where she was
25 during that period of time.

1 And she's -- and she's -- not to -- to paint her as
2 the devil, she -- admittedly from Ms. Smith and
3 Mr. Pardlow, she helped do her hair. She helped the
4 victim get around. She cooked her food from time to time
5 during that period of time. But they were get-high
6 buddies. That's what they did. And that's what they were
7 doing for three to four to five days.

8 She was going to be there the day before, two days
9 before, three days before, an hour before, 12:00 that
10 evening, and then an hour before Ms. Flamm was killed.
11 She was going to be there. Ms. Smith and Mr. Pardlow
12 expected her to be there the next morning when they woke
13 up.

14 Who just decides at 3:00, 4:00 in the morning I think
15 I'm just going to get up and leave, screw the people who
16 are in the back sleeping. I'm not even going to tell them
17 I'm leaving. And I'm going to open the dead bolt lock,
18 leave, walk away, and leave the door wide open. Because I
19 can't lock it from the outside because it's a dead bolt.

20 Who does that without telling anybody? Somebody
21 who's on a crack binge does that, someone who's been
22 smoking cocaine for the last four or five days does that.
23 All the sudden, just freak, I'm going to do something else
24 and just leaves. And I'm going to tie this back into how
25 you leave after you kill somebody for sure. But this --

1 that is -- those are the actions of somebody who's out of
2 their mind on crack, not a reasonable person.

3 Mr. Ramsey said -- and, ladies and gentlemen, this
4 gives y'all all you need in terms of timing. Because
5 Mr. Ramsey has nothing -- he doesn't know what's going on
6 in that house. He's come home from work. He's getting in
7 his bed. He said he hears a gunshot around 4:00, or maybe
8 a little bit after 4:00. He hears a gunshot from his
9 house in the direction of Ms. Flamm's house. He doesn't
10 know where it's coming from, whether it's inside or
11 outside. He just hears it down there.

12 So he gets up, goes and puts on his pants, gets his
13 gun, turns off his porch light so that whoever's shooting
14 won't be able to see him. And what does he see? A black
15 female jogging down the street right after the gunshot
16 wearing some kind of a dark top.

17 Go back. Mr. Pardlow and Ms. Flamm [sic] said she
18 was wearing a dark jacket or a dark hoodie. What are the
19 odds there's another black female running that -- leaving
20 that house at that time in the morning and that it wasn't
21 her? There's no doubt. It was her running away from the
22 crime scene.

23 Then we get to the other end, her daughter and her
24 daughter's boyfriend. I'm not going to berate them about
25 what I feel, how inconsistent and how untruthful their

1 testimony was. But they, finally, admitted that at 5:00
2 in the morning, that woman shows up at their house banging
3 on the door. That's what they told the police officer.
4 Open up. It's an emergency. Help.

5 They open the door. And she is standing there in
6 blue jeans and a bra at 5:00 in the morning in
7 mid-November here in Greenville. This ain't Chicago with
8 the -- the wind where it's ice cold, but it's November.
9 There is no explanation for somebody standing there coming
10 to your door dressed like that in mid-November here in
11 Greenville.

12 She was out of breath. She was tired. She was
13 upset, they said. And, once again, I had to drag this out
14 of them by reminding them of what they had told the police
15 two hours after this happened.

16 Now, three years later, after they've gotten the
17 chance to get their story together, they don't remember
18 any of this. I don't remember what she said. I don't
19 remember what she was wearing. How do you forgot your
20 momma shows up in a bra? How would you ever get that out
21 of your mind? I don't remember what she was wearing.
22 Really?

23 Ladies and gentlemen, you don't leave your common
24 sense home when you come to serve on a jury. You bring
25 that with you. Your common sense tells you that woman was

1 lying. And that what she told the police officer that
2 morning was the truth.

3 Because, at that point, the police, remember, didn't
4 know what had happened. They were just looking for this
5 Defendant to talk to her to find out exactly what she knew
6 about this. She'd not been arrested. She was clearly a
7 person of interest. But they didn't go in there and say,
8 hey, we want to arrest your momma for murder so you better
9 start telling us some lies. They just said, we want to
10 talk to your momma. We're trying to find her.

11 And so they told the police what happened. And they
12 told the truth back then. They lied yesterday. And I had
13 to drag it out of them by bringing in the officer to show
14 them the officer and say, he can come in here and tell
15 what y'all said. At which point, they then said, well,
16 okay, yeah. She did have on a bra and pants. That's all
17 she was wearing. Yeah, she was out of breath. Yes, she
18 did say she did not want to tell us what had happened or
19 where she'd been after we -- we stayed on her. But,
20 momma, what the -- what the -- and I quoted when I said
21 this, Momma, what the hell is going on is what her
22 daughter said -- told the police that she said to her.

23 And she said, I don't want to talk about it. I can't
24 tell you, except I think I hurt somebody tonight. And I
25 quoted that. Because I -- and I read it. So I wanted to

1 make sure I got it exactly right as to what she told
2 Investigator Maltby on the morning two hours after the
3 murder. I think I hurt somebody tonight. She was talking
4 to her daughter. Is there any better confession of a
5 crime than that? Is there any more convincing credible
6 confession to a crime than that?

7 She's talking to her daughter. I can't tell you what
8 happened. I don't want to -- I think I -- I think I hurt
9 somebody tonight. Yeah, she hurt somebody tonight. She
10 just killed a woman. She told her daughter that. And her
11 daughter tried to tiptoe around it a million ways until
12 she, finally, had to admit, Yeah, that's what she said to
13 me. Then her daughter said, But I just made that up when
14 I told the officer that. Really?

15 Ladies and gentlemen, she told the truth then. She
16 lied yesterday. Why would you make up something that
17 incriminates your mother in a murder? Why would you -- my
18 momma used to tell me when I was a kid when I'd do
19 something wrong, the problem with lying, son, is you've
20 got to remember the lie. The truth is always the truth.
21 And if you tell it tomorrow, it's going to be the same.
22 If you tell it next year, it's going to be the same. But
23 once you tell a lie, you've got to remember what lie you
24 told. So when you're telling it again six weeks later,
25 it's like, well, wait a minute, what did I say?

1 Neither her or her boyfriend could remember the lie.
2 And they just -- were just tripping all over each other
3 with stuff -- stuff that didn't matter, like how many
4 people lived in that house. That doesn't matter about
5 this case. I was just trying to find out who all lived
6 there. But she couldn't even tell the truth about that.
7 She started with two people, then three people, then four
8 or five children living there. And I just let y'all -- I
9 just let it go because it didn't matter.

10 But it showed you what kind of person you're dealing
11 with. Not a bad person. But a person who was determined
12 to protect her momma to the point that she would come in
13 here and just lie and attack the credibility of a decent
14 investigator, who was just doing his job, and call him a
15 liar and say he threatened her.

16 I said, Well, threatened you with what? You weren't
17 charged with any crimes.

18 Oh, well, he just threatened me.

19 Ladies and gentlemen, I want to tell you two more
20 things and I'm going to sit down. This case is about
21 Malette Kimbrough and whether or not she is guilty or
22 innocent of these crimes.

23 And I'm sure Counsel is going to tell you about
24 proven or not proven. And we do have the burden of proof.
25 And we have to prove to your satisfaction beyond a

1 reasonable doubt that she did this. However, you don't
2 look at that proof in a vacuum. They tell me there's
3 about eight -- eight billion people on this planet. I
4 don't know. But that's what they say. But we can rule
5 out seven billion 999,999,996 people because there's only
6 four people involved in this case, only three of them
7 could have killed Ruby Flamm, her daughter, her grandson,
8 or that woman.

9 So I'm asking you, don't just look at the evidence in
10 the context of, well, she's one of eight billion people
11 that could have done it. Has the State proven this? No,
12 we didn't prove somebody in mainland China didn't -- could
13 have been the one that did it. Because common sense tells
14 you they didn't, they couldn't.

15 We didn't prove that Portia Rogers didn't do it.
16 You're going to hear that name. Portia Rogers was not in
17 that house at 4:00 in the morning. She was on the other
18 side of town, according to the investigator, with an
19 alibi. And that was consistent with what the people --
20 her cousin and her aunt said. She wasn't there.

21 There was testimony about her having a gun and having
22 a police -- an incident with the police two or three years
23 ago before that. What has that got to do with this case?
24 I'm not saying that Portia Rogers is not a handful. She
25 probably is. But she ain't got nothing to do with this.

1 She went and had an argument with her grandmother -- I
2 mean with her aunt earlier that evening. Her aunt
3 admitted that. Mr. Pardlow admitted that.

4 She went outside and she shot a 22 up in the air a
5 couple of times and left with her boyfriend, and was gone,
6 and that was it. She never came back. From the -- her
7 family said, no, she was not there. She did not have a
8 key to this place. The only person that had a key,
9 according to Ms. Smith, was Ms. Smith.

10 Portia Rogers was not in that house. And when you
11 hear her name, that's what we call in the legal profession
12 a red herring. They want you to look over here, look over
13 here, look over here, Portia Rogers, Portia Rogers. She
14 fired a gun three years ago so she must have killed her
15 own grandmomma. Forget about the fact that our client
16 admitted to her daughter, I just hurt somebody tonight.
17 It's -- it's the old misdirection that magicians use.

18 So when you hear the name Portia Rogers, wait until
19 you hear something that says she could have been in that
20 house and killed her and got away with it and nobody would
21 know. Portia Rogers ain't got nothing to do with this
22 case. It's just a red herring.

23 But you've got to look at this case in the context of
24 who could have killed this woman? Three people. And all
25 the evidence, everything points to that woman, which

1 brings me to the last thing I want to tell you about the
2 13 things. There are 13 things that that woman did that's
3 uncontroverted that make absolutely no sense. And I'm
4 going to read them because I'm old and I forget stuff.
5 And I apologize for having to read this, but I don't want
6 to leave out anything.

7 First of all, she left the home at 4:00 in the
8 morning and just got up and just left. That makes no
9 sense. She left the home without telling anybody.
10 There's people sleeping in this house. And she just gets
11 up at 4:00 and just leaves. It makes no sense. She left
12 the front door wide open and the house unsecured. It
13 makes no sense.

14 She ran off to her daughter's house, even though
15 there was a phone in the bedroom, according to Ms. Smith.
16 She could have called her daughter, called her boyfriend,
17 called her husband, called somebody to come get her. She
18 ran off at 4:00 in the morning. It makes no sense. She
19 walked all the way to her daughter's house at 4:00 in the
20 morning. That makes no sense.

21 She removed and discarded her top somewhere between
22 the time she left there and the time she arrived at her
23 daughter's house, her top, leaving her with nothing but a
24 bra on walking the streets. So she walked through the
25 streets of Greenville with no top on, nothing but a bra.

1 That makes no sense.

2 She arrived at her daughter's home at 5:00 in the
3 morning, unannounced and uninvited. It makes no sense.
4 She's banging on the door, Let me in, it's an emergency,
5 as opposed to just knocking and saying, hey, anybody home?
6 Anybody up? She's banging on the door. That makes no
7 sense.

8 She refused to explain to her daughter and her
9 daughter's boyfriend what was going on, what was wrong.
10 She had no explanation, I can't tell you, I can't tell, I
11 can't tell you. I don't want to talk about it. It makes
12 no sense.

13 The first thing she had to do when she got in there
14 was take a shower at 5:00 in the morning. It makes no
15 sense. She wanted them to call her boyfriend, not her
16 husband, but her boyfriend to come and get her. It makes
17 to sense.

18 And, finally, ladies and gentlemen, the most damming
19 for her, she said to her daughter, I think I hurt somebody
20 tonight. That makes no sense. But if you turn it inside
21 out or flip it over, everything I told you makes perfect
22 sense if you just killed somebody.

23 If you just killed somebody, you are getting out of
24 that house without telling anybody. You're not going to
25 say goodbye. If you just killed somebody, you're not

1 going to take time to try to lock the door or say, hey,
2 somebody come lock the door behind me. You're going to
3 leave the door wide open and you're going to get out of
4 there if you just killed somebody.

5 If you just killed somebody, you're going to run away
6 or, as Mr. Ramsey said, at least, you're going to be
7 trotting down the street at 5:00 -- 4:00 in the morning if
8 you just left a dead body behind you that you just killed.
9 If you just killed somebody and you've got blood on your
10 outfit -- because everybody testified there was blood all
11 around there. And that this was a close -- the medical
12 examiner said this was a close injury -- a close shooting.

13 If you've got blood on your top, you're going to take
14 it off and, at some point, you're going to leave it before
15 you get to your daughter's house. That makes perfect
16 sense if you've got blood all over it. If you just killed
17 somebody, you are going to go to somebody's house who can
18 help you, that you think will cover for you, that will do
19 anything, even lie for you, your daughter. And we saw
20 that yesterday. That makes perfect sense if you just
21 killed somebody.

22 If you just killed somebody, the first thing you want
23 to do -- and I don't think anybody in this room has ever
24 killed anybody. But it makes perfect sense to me that
25 they -- is the first thing I would want to do if I killed

1 somebody at close range, I want to take a shower. Because
2 I want to wash not only the blood off of me, I want to
3 cleanse myself. That's the first thing you want, even if
4 it's 5:00 in the morning. It makes perfect sense that she
5 wanted to take a shower.

6 If you just killed somebody and your daughter is
7 pressing you, momma, what happened? What the hell is
8 going on? Momma, momma, what -- what happened? The best
9 you're going to give her is, I think I hurt somebody
10 tonight, if you just killed somebody. Everything she did
11 after this murder says she just killed somebody.

12 At the beginning of this case, ladies and gentlemen,
13 my co-counsel, Mr. McCollum, said to y'all, At the
14 conclusion of the case, we believe that you would find
15 that the only person that could have killed Ruby Flamm was
16 that woman. Ladies and gentlemen, is there any question
17 about that now? We ask that you find her guilty.

18 Thank you.

19 THE COURT: Thank you, Mr. Weston.

20 Mr. Bannister.

21 MR. BANNISTER: Ladies and gentlemen, you've heard a
22 fine argument from the top solicitor's prosecutor. And
23 he -- he does a very credible job of arguing the facts
24 that he has. So it is now our opportunity to tell you
25 what inferences are not there, according to what he says,

1 and the facts that are not there.

2 So one thing is that there's a lot to be gained by
3 going back and considering what went on at this house on
4 Colonial Avenue prior to the night -- or morning of the
5 19th of February [sic]. Let me go back and remind you
6 what was going on.

7 According to the testimony, the Defendant came to the
8 house. She had money. She and the deceased were friends.
9 That's not controverted by anybody. But she brought crack
10 cocaine. And she brought food. She cooked food for Ruby
11 Flamm. She did her hair. She helped her take a bath.
12 And she furnished her cocaine. And they were friends.
13 There was never any animosity whatsoever by any witness
14 that she had any motivation to hurt Ruby Flamm in any way,
15 period.

16 So where is there an evil heart that you see in these
17 charges today on behalf of Malette Kimbrough?

18 Now, let me go back. There were a lot of people that
19 came into that house, a lot of relatives. We'll go back
20 to the night or the afternoon of the 18th. There was some
21 people that came in. One of them who you've not heard
22 from was Portia, who is somehow kin to Lynn Smith, and
23 Ruby Flamm, and everybody else.

24 The only gun that there has been any testimony about
25 that was in that house was the gun of Portia. The only

1 violence that took place in that house was Portia had an
2 argument with Lynn Smith at Ruby's house, Ruby Flamm's
3 house. And she told them to get out.

4 And so Portia went outside. And you have some
5 testimony she fired a pistol up in the air. That
6 indicates anger. There was, also, testimony that a
7 22-caliber pistol could not have been the bullet that
8 killed Ms. Flamm. But there was, also, testimony by
9 Detective Bailey that there was another firearm in the
10 hands of Portia in another case.

11 Now -- now, what do you think Portia's attitude or
12 Portia's boyfriend's attitude would have been if they were
13 ordered out of the house because they were over there
14 using drugs as well, drugs that were brought by
15 Ms. Kimbrough, given to them, as far as we know, for free
16 and Lynn Smith for free. What's the attitude when you get
17 kicked out of the house? Would you be mad? Would you go
18 outside and you fire a pistol a couple of times because
19 you're mad? Is there any evidence that says she couldn't
20 have come back? Have you had any facts given to you today
21 to test that alibi of Portia? No.

22 We have only Lynn Smith to say what time that -- that
23 Malette Kimbrough left. Let me make a suggestion.
24 Instead of saying she left -- Ms. Kimbrough left because
25 she shot Ms. Flamm, let me ask you what would be your

1 attitude if you were in a house, relatives were in there,
2 it's not your house, you're using cocaine, and one of
3 those relatives gets ordered out and they have this big
4 controversy and the relative goes outside and shoots a
5 pistol up in the air? That would motivate most people to
6 say it is time for me to leave. It is time for me to get
7 out of here. However I've got to get out of here, now's
8 the time to get out. I suggest that is the reason Malette
9 Kimbrough left.

10 Now, let me go to the timing. Lynn Smith was all
11 over the place on timing.

12 Lorenzo Pardlow who was in the house -- and that was
13 the young man that testified he's guilty of burglary, he's
14 guilty of distribution of cocaine, that he was intoxicated
15 that night. He left after he -- according to his
16 testimony, he left once he heard or saw his grandmother
17 had been shot. He left. He left the house. No gun was
18 ever found in that house. And no cocaine, as far as we
19 know, was ever found in that house. We have only
20 Mr. Pardlow. And you can consider his truthfulness by his
21 record.

22 The 911 call had been made in time -- but we know for
23 a fact when it was made. And you recall at the time with
24 the excitement, the 911 operator asked Lynn Smith, Who
25 shot your grandmother [sic]?

1 She said, I don't know.

2 After giving it some reflection, she came back and
3 said, Well, Denise is gone, which is true, she was. We
4 have only Lynn Smith's word as to when she left.

5 Now, go to the investigation of the death. There was
6 a gunshot wound to the head. There's no test -- no
7 evidence, no testimony that there was any test of Ruby
8 Flamm's hands to see if there was gunshot residue, which
9 would mean that she committed suicide.

10 There was no evidence presented here today that
11 Lorenzo Pardlow's hands were tested to see if there was
12 gunpowder residue on his hands. And there's no evidence
13 before you that Lynn Smith's hands were tested to see if
14 there was any gunpowder residue on her hands.

15 There was no evidence presented that this Ms. Portia
16 Jenkins -- I believe is her last name -- was -- was ever
17 tested to see if there was any gunshot residue on her
18 hands. So you have an absence there of potential
19 evidence.

20 Go to the testimony now -- because this is where the
21 State [inaudible] --

22 THE COURT REPORTER: Judge, I can't hear him --

23 THE COURT: Mr. Bannister, could I ask you just to
24 speak up just a little bit?

25 MR. BANNISTER: I'm sorry. I have a weak voice.

1 THE COURT: No, no. I apologize to -- to interrupt
2 you. I'm so sorry.

3 MR. BANNISTER: The State is basing this case on
4 Malexes, who is Ms. Kimbrough -- Kimbrough's daughter.
5 They're basing it on a statement that she made to the
6 police that, My mother said she thought she hurt somebody.
7 And she was banging on the door at night.

8 Well, it was early in the morning, according to
9 Malexes. And I -- and I have to say Malexes did not
10 appear -- Malexes appeared to be somewhat slow maybe, and
11 easily confused, and, according to her, easily
12 intimidated. Malexes said her mother was banging on the
13 door. They didn't have a doorbell. And they were asleep.
14 So how would you get your parents -- how would you get
15 your daughter and her boyfriend awake without banging on
16 the door?

17 She walked either because of all the drama they had
18 over there -- she left for that reason, or for some other
19 reason. And she's -- she's there. She's banging on the
20 door. She comes in and she takes a shower. She has
21 nothing in her hand, no pocketbook, which Malexes said she
22 didn't have. There was no gun and no evidence of a gun.
23 No gun's ever been recovered that's a match to this
24 particular case.

25 So, now, we come to the question of Malexes. And

1 Malexes said she was intimidated by the police. And she
2 made a statement and recanted it and said it wasn't true,
3 her mother didn't say that.

4 It's in the public domain that a recent case --
5 and -- and I want to remind you of it because you saw the
6 officer testify. And you saw Malexes and her boyfriend
7 testify. It's called the Central Park five. It's been in
8 the newspapers. Some years ago --

9 MR. WESTON: Your Honor, I'm going to object if he's
10 getting ready to go into the facts of the Central Park
11 five case.

12 THE COURT: I just ask you to reference the case and
13 make your point about it.

14 MR. BANNISTER: All right.

15 THE COURT: Thank you.

16 MR. BANNISTER: I'll reference it.

17 Five teenagers confessed --

18 MR. WESTON: Objection, Your Honor.

19 THE COURT: Overruled. I'm going to allow him to do
20 that --

21 MR. WESTON: Your Honor, those are not the facts.

22 MR. BANNISTER: Those are the facts --

23 MR. WESTON: Those aren't the facts as he says they
24 are, Judge.

25 THE COURT: All right. Y'all approach.

1 (WHEREUPON, there was a disruption in the courtroom.)

2 THE COURT: Folks in the -- in the gallery, this is
3 not a time to get up. This is not a time to talk.

4 (WHEREUPON, a bench conference was held.)

5 THE COURT: All right. Ladies and gentlemen, we're
6 ready to proceed.

7 MR. BANNISTER: There was a confession made by a
8 teenager. And later, it was found to have been totally
9 false. And the rape conviction was vacated.

10 So you saw Malexes. It's up to you to determine
11 whether she was being intimidated by the policeman. It's
12 up to you to determine whether she was truthful when she
13 said, I didn't want to say that. But I would suggest to
14 you, under the circumstances, that casts a reasonable
15 doubt in your mind as to whether or not that was
16 sufficient to convict someone of murder.

17 Now, she said, I'm not going to tell you, according
18 to Malexes. Malexes, also, said you -- it's
19 uncontroverted -- that she's not aware that her mother was
20 using drugs. It is just as plausible that Malette
21 Kimbrough did not tell her daughter that she had been
22 there at a drug house spending money, buying drugs,
23 sharing them with people as the Prosecutor suggests. It
24 is just as reasonable an assumption that she wasn't going
25 to tell her she was at a drug house and that there was

1 some shooting over there and she left. That's why she
2 left.

3 At that point, it drops off -- the investigation
4 drops off. There was never any weapon. There was never
5 any DNA. There was never any testimony that was rendered
6 to you as to eliminate these other people in the house by
7 shotgun residue, or other things. So we submit to you
8 that there is reasonable doubt that this case has not been
9 proven for the serious crime against Malette Kimbrough.

10 Now, the Judge is going to tell you there's a
11 presumption of innocence that goes with Malette Kimbrough
12 until you go back to the jury room and you decide if that
13 presumption of innocence has been overcome by the facts of
14 this case. And that's a very powerful presumption because
15 it protects all of us. It means you that can't be guessed
16 to be guilty. It means that you have to be proven to be
17 guilty.

18 The burden of proof is on the State. We believe that
19 they have not met their burden of proof. And the Judge
20 will tell you what the burden is. They have not met that
21 burden. There's no gun, no gunshot residue, no motive --
22 absolutely no motive. There's absolutely no reason
23 whatsoever that Ms. Kimbrough would feloniously murder her
24 good friend that she went over there to take care of.

25 Finally, we come to circumstantial evidence. The

1 Judge is going to charge you there is no direct testimony,
2 no direct evidence. Nobody saw anybody shoot Ruby Flamm.
3 There's absolutely no evidence of that. There's no direct
4 evidence. So it's all circumstantial. The circumstances
5 all have to point irreconcilably that Ruby Flamm was shot
6 by Malette Kimbrough. That has to be the circumstances
7 without any other plausible explanation.

8 Now, let me go to Mr. Keith Ramsey. Keith Ramsey was
9 the neighbor. He said he heard a gunshot. He said he
10 knew Malette Kimbrough and had seen her there before. He
11 said he heard a gunshot, came outside. And he saw a black
12 woman walking down the street. He didn't see anything in
13 her hands, he didn't testify to that.

14 We asked him, Could you identify that as being
15 Malette Kimbrough?

16 He said, No.

17 But if Keith Ramsey was in the jury room with you
18 today, he couldn't say if that was Malette Kimbrough that
19 he saw walking down the street. It could have been
20 Portia. It could have been anybody. So he would have to
21 say, I don't know who that was.

22 Finally, I want to come -- you'll get a verdict form.
23 The verdict form will say, Guilty or not guilty. Then
24 there is a third verdict called not proven. In order to
25 prove guilty, you've got to go beyond a reasonable doubt.

1 And that's what I wanted to talk to you, finally, about,
2 reasonable doubt.

3 Reasonable doubt is the toughest burden that you have
4 to consider. You may believe that she's not guilty. You
5 may think it's highly unlikely, less than likely, probably
6 not, unlikely, possibly not, maybe not. And then you get
7 perhaps. Perhaps, that's not sufficient. You may think
8 that you suspect she's guilty. That's not sufficient.
9 You may think she's probably guilty, probably. That's not
10 sufficient. You may have a strong belief that she's
11 guilty. That doesn't meet the probable -- that does not
12 meet burden of proof beyond a reasonable doubt.

13 You've got to believe that she's guilty beyond all
14 reasonable doubt. That's a doubt that you can give a
15 reason to. In this case, there are a number of reasons
16 why you can't find that.

17 Number one, in all of these people who were in and
18 out of that house sharing cocaine, going to get money, not
19 one ever saw a gun possessed by Malette Kimbrough, not
20 one. The only gun anybody saw was with Portia Jenkins.

21 Number two, in all the testimony, there was never any
22 testimony of any animosity between anybody, except Lynn,
23 Ruby, Portia, and her boyfriend. That was the only
24 animosity and only motivation. There's plenty of reason
25 why after shots were fired, there was arguing in that

1 house, plenty of reasons why Malette Kimbrough said it's
2 time for me to go. I'm getting out of here. These people
3 are fussing, shooting. It's time for me to go.

4 There is plenty of reason to listen to the State's
5 witness and -- she recanted. We're supposed to guess
6 whether she's telling the truth then, as opposed to now.
7 We're supposed to infer that the mother didn't tell her
8 where she'd been, not because she was on a drug binge,
9 which she would have been ashamed of, or because she
10 killed somebody, or that she made the statement, I think I
11 hurt somebody, which she later recanted. All those are
12 reasons why you should find Malette Kimbrough not guilty,
13 not proven.

14 We're asking that you listen to the Judge's charge on
15 the law. We're asking that you apply the law that she
16 gives to you. You may have doubts. You may have
17 suspicions. But we submit you cannot believe that Malette
18 Kimbrough killed her good friend over the evidence
19 presented to you. We ask you to not believe that. And
20 for that reason, we ask you to find the correct verdict,
21 which is not guilty, not proven.

22 Thank you very much.

23 THE COURT: Ladies and gentlemen, let's take a break
24 before my charge on the law. I don't expect it to be
25 lengthy. But let's just take a quick break.

1 I want you to order your lunch while you're -- while
2 you're back there so it'll be delivered sometime close to
3 when you are -- to when you begin deliberating.

4 All right. Thank you.

5 (WHEREUPON, the jury was excused from open court at
6 approximately 10:52 a.m.)

7 THE COURT: We're in recess for 10 minutes.

8 (WHEREUPON, a break was taken.)

9 THE COURT: All right. It looks like -- are we all
10 ready to go?

11 MR. WESTON: The State's ready, Your Honor.

12 THE COURT: All right then. I think they've had an
13 opportunity to order their lunch, so.

14 (WHEREUPON, the jury came into open court at
15 approximately 11:15 a.m.)

16 CHARGE ON THE LAW

17 THE COURT: All right. Ladies and gentlemen, we're
18 now at the point for my charge on the law. And then the
19 case is going to be in your hands. And we hope that's
20 going to kind of coincide with your lunch getting here. I
21 anticipate, just based on the length of my charge, that my
22 charge will take about, oh, 20, 25 minutes, maybe.

23 All right. Madam Foreperson, and, ladies and
24 gentlemen, you have seen and heard the evidence presented,
25 as well as the arguments of Counsel. It now becomes my

1 duty and obligation to instruct you on the law applicable
2 in this case.

3 It will then be your duty and obligation to begin
4 your deliberations through which process you will decide
5 the facts, apply the law as instructed by the Court, and
6 determine whether or not the State has met its burden of
7 proof. It is your exclusive duty to determine the facts
8 in this case. You do that based on your own common sense
9 examination and evaluation of the testimony and other
10 evidence received during the trial of this case.

11 You 12 jurors alone will decide what weight, value,
12 and effect that is to be given to any particular testimony
13 or evidence received. Your ultimate goal is to determine
14 whether the State has met its burden of proof in this
15 case. And in doing so, you will have fulfilled your
16 obligations as jurors. And that is to determine whether
17 the State has met its burden of proof beyond a reasonable
18 doubt.

19 In this case, the State of South Carolina through the
20 circuit solicitor has charged the Defendant with the
21 criminal offenses known as murder and possession of a
22 weapon during the commission of a violent crime. The
23 allegations charging the Defendant with these crimes are
24 set forth in the indictment that has been previously
25 explained to you.

1 The indictment is not evidence in this case and may
2 not be considered by you as evidence against the
3 Defendant. The indictment will be in the jury room, but
4 serve only one purpose, and that is to serve as the
5 verdict form on which the juries unanimous decisions will
6 be written.

7 As to each of the charges set forth in the
8 indictment, the Defendant has entered a plea of not
9 guilty. That plea of not guilty has, therefore, placed
10 upon the State the burden of proving the allegations that
11 are set forth in the indictment, the burden of proving
12 each of the essential elements of any crimes charged and,
13 therefore, the burden of proving the guilt of the
14 Defendant to the satisfaction of you 12 jurors beyond a
15 reasonable doubt before a verdict of guilty could be
16 returned as to any indictment.

17 The burden is never upon a Defendant to prove that
18 she is not guilty or to prove that she is innocent.
19 Because in some cases, that might not be possible. The
20 burden is always upon the State, because they have made
21 the allegations to prove the Defendant guilty beyond a
22 reasonable doubt.

23 You are further instructed that it is a vital,
24 important, and cardinal rule of law that every Defendant
25 in a criminal trial no matter how serious the offense

1 might be for which she stands charged shall always be
2 presumed innocent of that charge. And that presumption of
3 innocence shall be with the Defendant from the moment of
4 her arrest, and throughout the course of the criminal
5 process, and even throughout the course of the actual
6 trial.

7 The presumption of innocence shall be with the
8 Defendant even as you go into the jury deliberation room
9 to begin your deliberations. And that presumption of
10 innocence shall be with her there and be with her forever,
11 unless you 12 jurors determine that she is no longer
12 entitled to that presumption of innocence. It is only if,
13 unless, and until you are satisfied of the Defendant's
14 guilt beyond a reasonable doubt that she would no longer
15 be entitled to the presumption of innocence.

16 I remind you that during this trial, you and I have
17 certain duties to perform. As the trial judge, it's my
18 responsibility to preside over the trial of the case. And
19 I, also, have the duty to rule on the admissibility of the
20 evidence offered during this trial.

21 You are to consider only the competent evidence
22 before you. If there was any testimony ordered stricken
23 from the record in this case, you must disregard that
24 testimony. You are to consider only the testimony which
25 has been presented from this witness stand, any exhibits

1 which have been made part of the record in this case, and
2 any stipulations of Counsel.

3 I have the additional duty to charge you the law
4 applicable in this case. As the presiding judge, I'm the
5 sole judge of the law of the case. And it is your duty,
6 as jurors, to accept and apply the law as I now state it
7 to you. If you already have any idea as to what the law
8 is or what the law ought to be and it does not agree with
9 what I tell you the law is, you must abandon this idea.
10 Because you were sworn to accept the law and apply the law
11 exactly as I state it to you.

12 In every case tried in this Court before a jury, the
13 jury becomes the sole and exclusive judge of the facts in
14 a case. The trial Judge cannot intimate, state, comment
15 on, or make any statement to a trial jury about the facts
16 in a case.

17 Since you, the jury, are the sole judge of the facts
18 in the case, you are not to infer from anything I have
19 said during the progress of this trial, and ruling upon
20 the admissibility of evidence, or otherwise, or anything
21 that I say now during the course of this instruction to
22 you that I have any opinion about the facts in this case.
23 I do not. The law does not allow me to have an opinion
24 about the facts in this case. This is a matter solely for
25 you, the jury, to determine.

1 As jurors, it is your duty to determine the effect,
2 value, weight, and truth of the evidence presented during
3 this trial. The State has the burden of proving the
4 Defendant guilty beyond a reasonable doubt. Some of you
5 may have served as jurors in civil cases where you were
6 told that it is only necessary to prove that a fact is
7 more likely true than not true, such as by the greater
8 weight or preponderance of the evidence. In criminal
9 cases, the State's proof must be more powerful than that.
10 It must be beyond a reasonable doubt.

11 Reasonable doubt is the kind of doubt that would make
12 a reasonable person hesitate to act. Proof beyond a
13 reasonable doubt is proof that leaves you firmly convinced
14 of the Defendant's guilt. There are very few things in
15 this world that we know with absolute certainty. And in
16 criminal cases, the law does not require proof that
17 overcomes every possible doubt.

18 If based on your consideration of the evidence, you
19 are firmly convinced that the Defendant is guilty of the
20 crimes charged, you must find the Defendant guilty. If,
21 on the other hand, you think there is a real possibility
22 that the Defendant is not guilty, you must give the
23 Defendant the benefit of the doubt and find her not
24 guilty.

25 There are two types of evidence which are, generally,

1 presented during a trial, direct evidence and
2 circumstantial evidence. Direct evidence directly proves
3 the existence of a fact and does not require deduction.

4 Circumstantial evidence is proof of a chain of facts
5 and circumstances indicating the existence of a fact.

6 Crimes may be proven by circumstantial evidence. The law
7 makes no distinction between the weight or value to be
8 given to either direct or circumstantial evidence.

9 However, to the extent the State relies on
10 circumstantial evidence, all of the circumstances must be
11 consistent with each other and when taken together point
12 conclusively to the guilt of the accused beyond a
13 reasonable doubt. If the circumstances merely portray the
14 Defendant's behavior as suspicious, the proof has failed.

15 The State has the burden of proving the Defendant
16 guilty beyond a reasonable doubt. This burden rests with
17 the State, regardless of whether the State relies on
18 direct evidence, circumstantial evidence, or some
19 combination of the two.

20 Necessarily, you must determine the credibility of
21 witnesses who have testified in this case. Credibility
22 simply means believability. It becomes your duty, as
23 jurors, to analyze and to evaluate the evidence and
24 determine if the State has met its burden of proof in the
25 case.

1 In determining the believability of witnesses who
2 have testified in this case, you may believe one witness
3 over several witnesses, or several witnesses over one
4 witness. You may believe a part of the testimony of a
5 witness and reject the remaining part of the testimony of
6 that same witness. You may believe the testimony of a
7 witness in its entirety, or reject the testimony of a
8 witness in its entirety. You may consider whether any
9 witness has exhibited to you any interest, bias,
10 prejudice, or other motive in this case. You may, also,
11 consider the appearance and manner of a witness while on
12 the witness stand.

13 As I have stated to you, the rules of evidence
14 ordinarily do not permit witnesses to testify to opinions
15 or conclusions. An exception to this rule exists for
16 witnesses we call expert witnesses.

17 A witness who by education and experience has become
18 an expert in some art, science, profession, or calling may
19 state an opinion as to relevant and material matter in
20 which the witness claims to be an expert. And they may,
21 also, state the reasons for the opinion. You should
22 consider any expert opinion received in evidence in this
23 case and, like any other evidence, give it the weight you
24 think it deserves.

25 If you decide that the opinion of an expert witness

1 is not based on sufficient education and experience, or if
2 you conclude that the reasons given in support of the
3 opinion are not sound, or that the opinion is outweighed
4 by other evidence, you may disregard the opinion entirely.
5 An expert witnesses testimony is to be given no greater
6 weight than that of other witnesses simply because the
7 witness is an expert.

8 Further, you are not required to accept an expert's
9 opinion, even though it is uncontradicted. I instruct you
10 and emphasize that the fact the Defendant did not testify
11 is not a factor to be considered by you in any way in your
12 deliberation and in your consideration on the question of
13 the guilt or innocence of the Defendant. It must not be
14 considered by you in any manner whatsoever.

15 A Defendant has the Constitutional right to remain
16 silent. And the assertion of this right must not be
17 considered by you in your deliberations. I repeat, under
18 your oath, you are to draw no conclusion whatsoever from
19 the fact that the Defendant did not testify in this case.
20 The fact that the Defendant did not testify should not
21 even be discussed in the jury room.

22 The burden of proof, as I have stated to you, is on
23 the State. The Defendant is not required to prove her
24 innocence. The burden of proof remains on the State to
25 prove guilt beyond a reasonable doubt.

1 In order to establish criminal liability, the State
2 must, also, prove criminal intent. For a particular
3 crime, the mental state might be -- required might be
4 purpose, intent, knowledge, recklessness, or criminal
5 negligence.

6 The State must prove criminal intent beyond a
7 reasonable doubt. Criminal intent is a matter that must
8 be determined by the jury from the facts of the case.
9 There is no way to prove criminal intent to a mathematical
10 certainty. So the law says that criminal intent may be
11 inferred from the circumstances shown to have existed.
12 This is how you determine whether or not the element
13 requiring intent was present.

14 It is not necessary to establish intent by direct
15 evidence. Intent may be established by circumstantial
16 evidence, or by taking into consideration the acts of the
17 parties and all the facts and circumstances of the case.

18 Criminal intent is a mental state of conscious
19 wrongdoing. It is up to you to determine what the
20 Defendant intended to do based on the circumstances shown
21 to have existed in this case.

22 The Defendant is charged with murder. The State must
23 prove beyond a reasonable doubt that the Defendant killed
24 another person with malice aforethought. Malice is
25 hatred, ill will, or hostility towards another person. It

1 is the intentional doing of a wrongful act without just
2 cause or excuse, and with an intent to inflict an injury
3 or under circumstances that the law will infer an evil
4 intent.

5 Malice aforethought does not require that malice
6 exist for any particular time before the act is committed.
7 But malice must exist in the mind of the Defendant just
8 before and at the time the act is committed. Therefore,
9 there must be a combination of the previous evil intent
10 and the act. Malice aforethought may be expressed or
11 inferred.

12 These terms "expressed" and "inferred" do not mean
13 different kinds of malice, but merely the manner in which
14 the malice may be shown to exist. That is either by
15 direct evidence or by inference from the facts and
16 circumstances which are proved.

17 Expressed malice is shown when a person speaks words
18 which express hatred or ill will for another, or when the
19 person prepared beforehand to do the act which was later
20 accomplished. For example, lying in wait for a person or
21 any other acts of preparation going to show that the deed
22 was within the Defendant's mind would be expressed malice.

23 Malice may be inferred from conduct showing a total
24 disregard for human life. Malice may, also, be inferred
25 from the use of a deadly weapon. A deadly weapon is any

1 article, instrument, or substance which is likely to cause
2 death or great bodily harm. Whether an instrument has
3 been used as a deadly weapon depends on the facts and
4 circumstances in each case. A gun may be a deadly weapon,
5 even if it is not operating.

6 The Defendant is charged with possession of a weapon
7 during the commission of a violent crime. The State must
8 prove beyond a reasonable doubt that the Defendant was in
9 possession of a firearm or visibly displayed what appeared
10 to be a firearm during the commission of a violent crime
11 or the attempt to commit a violent crime. A firearm means
12 any machine gun, automatic riffle, revolver, pistol, or
13 any weapon which is designed to or may be readily
14 converted to expel a projectile.

15 In order to find the Defendant guilty of possession
16 of a weapon during the commission of a violent crime or an
17 attempt to commit a violent crime, you must, first, find
18 the Defendant guilty of either committing a violent crime
19 or attempting to commit a violent crime. Murder is a
20 violent crime. The State must prove beyond a reasonable
21 doubt that the weapon further advanced or helped in the
22 commission of the crime.

23 Ladies and gentlemen, your verdict must be a
24 unanimous one.

25 Madam Foreperson, when the jury agrees on the

1 verdict, you will write the verdict on the back of the
2 indictment in this blank here for verdict, and then sign
3 your name as Foreperson of this jury. Then signal via the
4 light outside your jury deliberation room that you have
5 reached a verdict. At that time, we'll receive you back
6 into the courtroom.

7 I ask that you now return to your jury room. But do
8 not begin deliberating until you are told to do so by the
9 bailiff. There are some matters which must be discussed
10 with the attorneys before you can begin your
11 deliberations.

12 I speak on behalf of the attorneys in this case, and
13 the Court, and all the folks involved in this case, thank
14 you so much for your service.

15 And I'll ask you now to retire to your jury
16 deliberation room.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 11:30 a.m.)

19 THE COURT: Any objection to my charge on the law
20 from the State?

21 MR. MCCOLLUM: Not from the State, Your Honor.

22 THE COURT: Any from the Defense?

23 MR. STALVEY: No, ma'am, Your Honor.

24 THE COURT: All right. Very well then.

25 It's been a pleasure trying this case with you all.

1 It was -- got heated at times, but I think that was based
2 on the gravity of the circumstances for both sides.
3 And -- and that is understandable.

4 I'm going to ask y'all to, please, get together the
5 exhibits to go back. Just make sure you agree on the
6 exhibits to go back. And then there is the indictment in
7 this case.

8 MR. WESTON: Thank you, Your Honor.

9 THE COURT: Thank you.

10 Let me say to the folks in the gallery, I know it's
11 an emotional case. I know that I was pretty tough on
12 y'all in the gallery. I understand that. And the reason
13 was that I do know that it was an important case to both
14 sides, and emotions would naturally be high. And I felt
15 like I had to do that.

16 But I want to thank you for the way that you
17 conducted yourself, especially by the afternoon yesterday
18 and today. I think you've been -- it's been very
19 commendable in light of the circumstances.

20 Now, it's not over yet. The jury is going to come
21 back at some point, we think, probably today, maybe
22 tomorrow with their verdict in this case. And at that
23 time before they come back in, I'm going to tell you my
24 expectations. But suffice it to say if -- if you feel
25 like you can't hold your emotions, I want you to think

1 about that while the jury is out deliberating. If you
2 don't feel like you can hold your emotions, then it'd be
3 better to wait outside.

4 All right. Thank you.

5 MR. WESTON: Thank you, Your Honor.

6 MR. STALVEY: Thank you Your Honor.

7 THE COURT: We'll be in recess pending a verdict.

8 (WHEREUPON, the proceedings were recessed at.

9 approximately 11:32 a.m.)

10 QUESTIONS FROM THE JURY

11 THE COURT: There is a question about the verdict
12 form. I probably should have done the verdict form in
13 this case. But I'll explain it to them.

14 (WHEREUPON, the jury came into open court at
15 approximately 11:40 a.m.)

16 THE COURT: Back so soon.

17 JUROR #23, TAURUSHELL BRANHAM: I'm sorry.

18 THE COURT: No. Do not be sorry. Do not be sorry.

19 Ladies and gentlemen, I understand that there is a
20 little bit of confusion just about the verdict form. And
21 I apologize for the indictment being the verdict form.
22 And I apologize. I didn't explain that to you, and that's
23 my fault. That has -- that is not your fault in any way.

24 There are two possible verdicts in this case on the
25 charge of murder, and that's guilty or not guilty.

1 There is -- and then if you find the Defendant -- if
2 you were to find the Defendant guilty of murder, then you
3 may consider possession of a weapon during the commission
4 of a violent crime, guilty or not guilty. And if you'll
5 write those charges -- to the extent necessary, if you'll
6 write those charges separately on the verdict form.

7 That is completely my fault and my apologies to you
8 all.

9 All right. Very well.

10 Thank you.

11 (WHEREUPON, the jury was excused from open court at
12 approximately 11:41 a.m.)

13 THE COURT: I'm sorry about that y'all. I apologize.

14 MR. MCCOLLUM: Thank you, Your Honor.

15 MR. STALVEY: No problem, Judge.

16 THE COURT: All right. Thank y'all.

17 (WHEREUPON, the proceedings were recessed at
18 approximately 11:41 a.m.)

19 (WHEREUPON, Court's Exhibit No. 2 was marked for
20 identification and admitted into evidence.)

21 THE COURT: The jury has a question/request.

22 All right. It says, "Need the definition of
23 reasonable doubt versus circumstantial evidence versus a
24 hundred percent positively guilty."

25 And that's the --

1 MR. WESTON: I'm sorry, Your Honor. Could you repeat
2 the -- I lost you on the second part of that.

3 THE COURT: "Need the definition of reasonable doubt
4 versus circumstantial evidence versus a hundred percent
5 positively guilty."

6 And so I think, as I've tried to sort of decipher the
7 question, that, ultimately, what they're asking for is for
8 me to recharge on reasonable doubt and circumstantial
9 evidence.

10 Is that -- and I think there is some talk in there
11 about, you know, we can't know anything with absolute
12 certainty. And I think that's what this a hundred percent
13 positively guilty is referring to. And I think all of
14 that is covered in that portion of the charge.

15 But I'll, certainly, hear from either side if you've
16 got any suggestions as to how I should charge.

17 MR. WESTON: I think you're correct, Your Honor. I
18 think if you just charge reasonable doubt -- recharge
19 reasonable doubt and circumstantial evidence and
20 distinguish the two -- that they're two separate charges.
21 I think that'll be fine.

22 THE COURT: All right.

23 MR. STALVEY: Judge, we don't have any disagreement
24 with that.

25 THE COURT: All right then. I'm going to mark this

1 as Court's Exhibit No. 3.

2 (WHEREUPON, Court's Exhibit No. 3 was marked for
3 identification and admitted into evidence.)

4 (WHEREUPON, the jury came into open court at
5 approximately 12:59 p.m.)

6 THE COURT: All right. Ladies and gentlemen, I --
7 we've received your question. And I've spoken with the
8 attorneys about it. And after reviewing your question, we
9 feel like maybe the best thing to do is for me to recharge
10 you on reasonable doubt and on direct and circumstantial
11 evidence, and see if that is helpful to you. And -- but
12 if -- now, if that is not what you're looking for, then,
13 please, send me another note and we'll -- we'll figure
14 something out.

15 All right. Reasonable doubt. The State has the
16 burden of proving the Defendant guilty beyond a reasonable
17 doubt. Some of you may have served as jurors in civil
18 cases where you were told that it is only necessary to
19 prove that a fact is more likely true than not true, such
20 as by the greater weight or preponderance of the evidence.

21 In criminal cases, the State's proof must be more
22 powerful than that. It must be beyond a reasonable doubt.
23 Reasonable doubt is the kind of doubt that would make a
24 reasonable person hesitate to act. Proof beyond a
25 reasonable doubt is proof that leaves you firmly convinced

1 of the Defendant's guilt.

2 There are very few things in this world that we know
3 with absolute certainty. And in criminal cases, the law
4 does not require proof that overcomes every possible
5 doubt. If based on your consideration of the evidence you
6 are firmly convinced that the Defendant is guilty of the
7 crimes charged, you must find the Defendant guilty. If,
8 on the other hand, you think there is a real possibility
9 that the Defendant is not guilty, you must give the
10 Defendant the benefit of the doubt and find her not guilty.

11 Direct and circumstantial evidence. There are two
12 types of evidence which are, generally, presented during a
13 trial, direct evidence and circumstantial evidence.
14 Direct evidence directly proves the existence of a fact
15 and does not require deduction.

16 Circumstantial evidence is proof of a chain of facts
17 and circumstances indicating the existence of a fact.
18 Crimes may be proven by circumstantial evidence. The law
19 makes no distinction between the weight or value to be
20 given to either direct or circumstantial evidence.

21 However, to the extent the State relies on
22 circumstantial evidence, all of the circumstances must be
23 consistent with each other and when taken together point
24 conclusively to the guilt of the accused beyond a
25 reasonable doubt. If these circumstances merely portray

1 the Defendant's behavior as suspicious, the proof has
2 failed.

3 The State has the burden of proving the Defendant
4 guilty beyond a reasonable doubt. The burden rests with
5 the State, regardless of whether the State relies on
6 direct evidence, circumstantial evidence, or some
7 combination of the two.

8 All right. Do you feel that's sufficient?

9 (WHEREUPON, there was no verbal response.)

10 THE COURT: All right. I'm going to ask you to
11 return to your jury room to continue your deliberations.

12 Thank you so much.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 1:02 p.m.)

15 THE COURT: Any objection to my additional charge on
16 the law from the State?

17 MR. MCCOLLUM: None, Your Honor.

18 THE COURT: Any from the Defense?

19 MR. STALVEY: No, ma'am, Your Honor.

20 THE COURT: All right then. We're in recess pending
21 a verdict.

22 (WHEREUPON, the proceedings were recessed at
23 approximately 1:03 p.m.)

24 (WHEREUPON, Court's Exhibit No. 4 was marked for
25 identification and admitted into evidence.)

1 THE COURT: All right. We're back on the record in
2 State v. Kimbrough.

3 We have two questions from the jury. And -- and I --
4 I really want to hear some argument and if we even -- you
5 know, your thoughts on this.

6 The first question is, "What is the definition of
7 possession in commission of a crime?"

8 Okay. And then the second question is this, "Can the
9 Defendant be guilty of murder and not guilty of possession
10 of a weapon?"

11 Yes, sir.

12 MR. WESTON: Your Honor, as to the first one, I think
13 you -- you could re-read the definition again, obviously.

14 As to the second one, I think their verdict is their
15 verdict. If they said -- if they answered, yes to one,
16 and no to the other, I don't know how you could overturn
17 that.

18 And so I -- I'm not -- I really don't know what the
19 answer to the second part of that is in terms of what you
20 should -- what is the appropriate thing to tell the jury,
21 other than each -- the verdicts are independent of each
22 other. And they have to consider each crime separately is
23 all, I think, you can tell them.

24 THE COURT: How about the attorneys approach for just
25 a minute.

1 (WHEREUPON, a bench conference was held.)

2 THE COURT: Do you mind going and getting the written
3 copy of my charge?

4 THE BAILIFF: I'm sorry.

5 THE COURT: Will you get the written copy of the
6 charge? And then bring the jury back in here as well.

7 THE BAILIFF: Yes, Your Honor.

8 THE COURT: Thank you.

9 (WHEREUPON, the jury came into open court at
10 approximately 3:06 p.m.)

11 THE COURT: All right. Ladies and gentlemen, I have
12 received two questions from you. And I want to -- and I
13 want to go through and -- we've talked. I've spoken with
14 the attorneys about this.

15 And I'm going to start with what I think is your
16 second question first. "Can the Defendant be guilty of
17 murder and not guilty of possession of a weapon?"

18 And the answer to that is, if that's what you find
19 the facts to be, then yes.

20 "What is the definition of possession in commission
21 of a crime?"

22 I don't want to -- I'm not trying to -- to be
23 insulting or rude to read you the charge that I've already
24 given you. But I feel like I need to preface with that.
25 Okay. So I want to start with reading that to you, and

1 then give you a little bit more explanation. Okay.

2 The Defendant is charged with possession of a weapon
3 during the commission of a violent crime. The State must
4 prove beyond a reasonable doubt that the Defendant was in
5 possession of a firearm or visibly displayed what appeared
6 to be a firearm during the commission of a violent crime
7 or the attempt to commit a violent crime. A firearm means
8 any machine gun, automatic rifle, revolver, pistol, or any
9 weapon which is designed to or may be readily converted to
10 expel a projectile.

11 In order to find the Defendant guilty of possession
12 of a weapon during the commission of a violent crime or an
13 attempt to commit a violent crime, you must, first, find
14 the Defendant guilty of either committing a violent crime
15 or attempting to commit a violent crime. Murder is a
16 violent crime. The State must prove beyond a reasonable
17 doubt that the weapon further advanced or helped in the
18 commission of the crime.

19 To prove possession, the State must prove beyond a
20 reasonable doubt that the Defendant had both the power and
21 the intent to control the disposition or use of the weapon
22 at the time the crime was committed. Actual possession
23 means that the gun was in the actual physical -- or the
24 weapon was in the actual physical custody of the Defendant
25 at the time of the commission of the violent crime.

1 All right. I hope that's helpful to you. I'm going
2 the send you back still with the written copy of the
3 charge.

4 And, please, let me know if we can be of any further
5 assistance to you.

6 Thank you.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 3:09 p.m.)

9 (WHEREUPON, Court's Exhibit Nos. 5 and 6 were marked
10 for identification and admitted into evidence.)

11 THE COURT: All right. Any objection to that from
12 the State?

13 MR. MCCOLLUM: None, Your Honor.

14 THE COURT: Any from the Defense?

15 MR. STALVEY: No, ma'am, Your Honor.

16 THE COURT: All right. Then we'll be in recess
17 pending a verdict.

18 (WHEREUPON, the proceedings were recessed at
19 approximately 3:10 p.m.)

20 THE COURT: All right. Before we bring the jury back
21 in, I -- I want to talk to both sides. My understanding
22 is there may have been something going on in the hallway,
23 some talking. I want to be very clear with you. You may
24 have noticed that all the sudden there is a very increased
25 law enforcement presence in the courtroom. And I want to

1 assure you that that presence is increased outside as
2 well. These deputies will not allow anything to happen.
3 And I will tell you that if there is any outburst of any
4 kind, anything, then I am going to direct these deputies
5 to take whoever does it into custody, period.

6 I will not put up with this jury being disrespected.
7 They didn't ask to be involved in this case. They got
8 told to be involved in this case. So we're going to give
9 them respect so they don't hear anything either way.

10 And I know it is emotional. And I appreciate that it
11 is emotional. I might not be able to stay in the
12 courtroom when I was hearing a verdict being read one way
13 or another. And, therefore, I'm going to give you a
14 moment to think about it. And if you need to leave the
15 courtroom before this verdict is read, you have your
16 opportunity and it's now. Okay.

17 Does everybody feel like you can hold on to your
18 emotions?

19 (WHEREUPON, there was no response.)

20 THE COURT: All right. As long as we can do that and
21 as long as you understand that if we have any outburst
22 whatsoever, I'm going to take you into custody. And my
23 contempt powers in circuit court for an outburst in court
24 are -- could be conceivably up to six months -- excuse me,
25 up to -- up to 10 years, but it's definitely up to six

1 months without any other proceedings. In other words,
2 what I say, up to six months, goes. So if it's worth it,
3 I'm telling you that's what I'm going to do.

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

5 (WHEREUPON, the jury came into open court at
6 approximately 3:25 p.m.)

7 THE COURT: Madam Foreperson, it's my understanding
8 that the jury has reached a verdict; is that correct?

9 JUROR #23, TAURUSHELL BRANHAM: We have.

10 THE COURT: Would you, please, give the indictment to
11 the bailiff.

12 Thank you.

13 VERDICT

14 THE CLERK: Your Honor, in the case of
15 2018-GS-23-6044, the State v. Malette Denise Kimbrough
16 a/k/a Melette Denise Kimbrough, indicted for murder, the
17 verdict is guilty.

18 And possession of a weapon during the commission of a
19 violent crime, guilty.

20 Ladies and gentlemen of the jury, if this is the
21 verdict you came to in the deliberation room, please,
22 raise your right hand.

23 (WHEREUPON, all jurors raised their right hand.)

24 THE COURT: And, ladies and gentlemen, just to
25 clarify, on the verdict form itself, there was simply one

1 verdict read -- I mean written --

2 And, yes, ma'am, are you -- oh, okay. No, I just
3 wanted to make sure you didn't need to -- didn't need to
4 say anything. No, that's fine. You're fine. You're
5 perfectly fine. No. I appreciate it.

6 It was one verdict written. And -- and I want to
7 make sure that each of you -- your verdict was guilty on
8 each count of the indictment. And, if so, please, signify
9 by raising your right hand.

10 (WHEREUPON, all jurors raised their right hand.)

11 THE COURT: All right. Very well.

12 All right. Anything -- anything further from the
13 State before I release the jury?

14 MR. MCCOLLUM: Nothing further, Your Honor.

15 THE COURT: Anything from the Defense before I
16 release the jury?

17 MR. STALVEY: Your Honor, nothing further from the
18 Defense before releasing the jury.

19 THE COURT: All right. Very well then.

20 Ladies and gentlemen, as I told you earlier, I speak
21 for everyone involved in this case, thank you so much for
22 your service. I'm going to step back there and say
23 goodbye to you before you leave.

24 Okay. If you'd step to your jury deliberation room
25 now, please.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 3:28 p.m.)

3 THE COURT: I want to speak to the jury before
4 they're released. But I want to tell everyone in the --
5 in the gallery, I appreciate the controlled emotions. I
6 ask you to continue with that even after -- as we move to
7 sentencing in a moment. And even as you go out into the
8 hallway, if you'll understand we've had to get an -- an
9 increased law enforcement presence here as a result.

10 All right. And I want to say to the attorneys in
11 this case, both sides, I don't think I've seen a better
12 tried, better fought case between four attorneys in I
13 don't know when. It was just, I thought, an outstanding
14 case. And I was so pleased that we had law students here
15 learning from the outstanding job you did.

16 Ms. Kimbrough, I know the case didn't go the way you
17 had hoped. But you can take some comfort in that your
18 attorneys did an absolutely outstanding job.

19 All right. We'll move to sentencing. And I'll be
20 back in just a moment.

21 (WHEREUPON, a break was taken.)

22 THE COURT: The jury was complimentary on the
23 presentation from both sides. And although they did --
24 although they said they struggled and they really went
25 through the evidence, they felt very confident in their

1 verdict.

2 All right. Are we ready to move to sentencing?

3 MR. STALVEY: Your Honor --

4 THE COURT: Yes, sir.

5 MR. STALVEY: -- if I could just put a quick motion
6 on the record.

7 THE COURT: Please.

8 MOTIONS

9 MR. STALVEY: Judge, at this time, after receiving
10 the verdict of the jury, on behalf of Ms. Kimbrough, the
11 Defense would move for a new trial based on grounds that
12 the evidence does not support the verdict. Judge, we'd
13 ask you to take that into consideration.

14 Thank you.

15 THE COURT: And I thank you, Mr. Stalvey. I thank
16 you for your motion.

17 And it's, certainly, preserved for the record and
18 respectfully denied.

19 MR. MCCOLLUM: Your Honor, may it please the Court.

20 A spokesperson from the victim's family is present in
21 the courtroom and would like to speak at the appropriate
22 time.

23 THE COURT: All right. Very well.

24 And if y'all want to come on up. We'll -- we'll do
25 it just like we do when we do a guilty plea.

1 think that -- that, certainly, in my mind very much weighs
2 in your favor. And I appreciate it.

3 And I note all the family support that you have had
4 throughout the trial.

5 Anything else from either side?

6 MR. MCCOLLUM: Nothing from the State, Your Honor.

7 SENTENCING

8 THE COURT: The sentence of the Court on murder is 37
9 years. Credit for 751 days.

10 And then concurrent to that, five years. Credit for
11 751 days.

12 Good luck to you.

13 *****END OF TRANSCRIPT OF RECORD*****
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Letitia Verdin, Circuit Court Judge

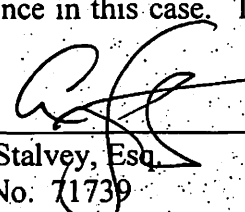
Case Nos.: 2017A2330204814, 2017A2330204896

The State, ... Respondent.
v.
Melette Kimbrough, ... Appellant.

NOTICE OF APPEAL

Melette Kimbrough appeals her conviction and sentence in this case. The sentence was imposed by the Honorable Letitia Verdin on June 12, 2019.

June 18, 2019



Alex R. Stalvey, Esq.
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Attorney for Appellant

Other Counsel of Record:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Letitia Verdin, Circuit Court Judge

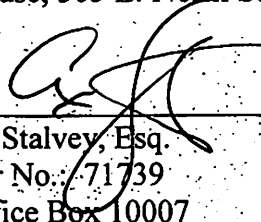
Case No.: 2017A2330204814, 2017A2330204896

The State, ... Respondent.
v.
Melette Kimbrough, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Jeff Weston by depositing a copy of it in the United States Mail, postage prepaid, on June 18, 2019, addressed to Jeff Weston, 13th Circuit Solicitor's Office, 305 E. North Street, Suite 325, Greenville, South Carolina, 29601 and to the Honorable Letitia Verdin, Greenville County Courthouse, 305 E. North Street, Greenville, Suite 318, South Carolina 29601.

June 18, 2019



Alex R. Stalvey, Esq.
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Attorney for Appellant

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19 JUN 18 PM 1:51
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108

WITNESSES

Antonio L Bailey

Greenville County Sheriffs Office

5/23/2017

ARREST WARRANT NUMBER(s)

2017A2330204814 and 2017A2330204896

**ACTION OF GRAND JURY
TRUE BILL**

Clay Tuttle

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

326

[Signature]

Foreperson of Petit Jury

Date: 6/12/19

2018
DOCKET NO. ~~2017~~-GS-23-

WJW

000014

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August TERM 2017

THE STATE

vs.

MALETTE DENISE KIMBROUGH

A/K/A

MELETTE DENISE KIMBROUGH

Indictment for

0116 / 0549

MURDER

AND

**POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME**

VIOLATION § 16-03-0010 and § 16-23-0490

ENTERED
ACCT
[Signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER
AND
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

AUG 28 2018

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

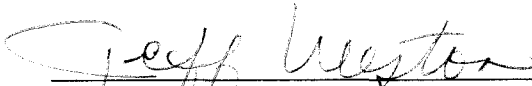
COUNT I - MURDER

That MALETTE DENISE KIMBROUGH a/k/a MELETTE DENISE KIMBROUGH did in Greenville County, on or about the 19th day of November, 2016, unlawfully and with malice aforethought kill RUBY FLAMM by means of shooting her once in the head with a handgun, and that RUBY FLAMM died as a proximate result thereof. This is in violation of §16-03-0010 of the South Carolina Code of Laws (1976) as amended.

COUNT II – POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That MALETTE DENISE KIMBROUGH a/k/a MELETTE DENISE KIMBROUGH did in Greenville County, on or about the 19th day of November, 2016, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Murder. This is in violation of §16-23-0490 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.

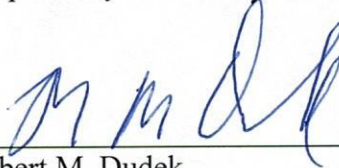

SOLICITOR

BAR # 6047

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,



Robert M. Dudek
Chief Appellate Defender

RECEIVED

Oct 08 2020

SC Court of Appeals

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

ATTORNEY FOR APPELLANT

This 8th day of October, 2020.