

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Diane S. Goodstein, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ELIJAH QUINLIN DIANTE GREEN,

APPELLANT.

APPELLATE CASE NO. 2021-000888

RECORD ON APPEAL

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THE STATE OF SOUTH CAROLINA	) IN THE COURT OF GENERAL SESSIONS
	)
COUNTY OF DORCHESTER	) 2019-GS-18-00423; -00424;
	) -00426; -00427; -00429
	)
STATE OF SOUTH CAROLINA	)
	)
VS.	) <u>TRANSCRIPT OF RECORD</u>
	)
ELIJAH QUINLIN DIANTE GREEN	)
	- and -

THE STATE OF SOUTH CAROLINA	) IN THE COURT OF GENERAL SESSIONS
	)
COUNTY OF DORCHESTER	) 2019-GS-18-00430; -00432;
	) -00433; -00434; -00436
	)
STATE OF SOUTH CAROLINA	)
	)
VS.	) <u>TRANSCRIPT OF RECORD</u>
	)
DEVONTE TREVON MAJOR	)

B E F O R E:

The Honorable Diane S. Goodstein, Judge, and a jury
Saint George, South Carolina

DATES: Friday, July 9, 12, 13, 14, 15, 16, 2021

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

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Attorneys for the State

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Attorneys for Defendant Elijah Quinlin Diante Green

Laree A. Hensley, Esquire
Attorney for Defendant Devonte Trevon Major

Reported by: Cathy J. Provost, RMR, Official Court Reporter

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JURY STRIKE SHEET

<u>NAME:</u>	<u>RACE:</u>	<u>SEX:</u>	<u>STE:</u>	<u>DFT:</u>	<u>CRT:</u>	<u>SEATED:</u>
1. Goodwine, Tobias L.	B	M				X
2. Poe, Dillon H.	W	M				X
3. Miller, Tamra	W	F		Green		
4. Weeks, Charles J., Jr.	W	M		Major		
5. Kerstetter, Stephanie M.	W	F				X
6. Driggers, Melinda B.	W	F		Green		
7. Jones, Ryabn K.	W	M				X
8. Ryans, Janeka T.	B	F		Major		
9. Pitre, Cad J.	W	M				X
10. Wade, Cynthia V.	W	F				X
11. Gailes, Roberta Davis	B	F	X			
12. Collins, Amanda Q.	W	F				X
13. Peeples, Rosearie	W	F		Green		
14. Lutz, Angelia D.	W	F		Major		
15. Horne, D'Ann	W	F		Green		
16. Hazen, Elizabeth A.	W	F				X
17. Brewer, Dahlia Rivers	H	F		Major		
18. Johnson, Norman L.	B	M	X			
19. Wren, Christopher L.	W	M		Green		
20. Walters, Jamie V.	W	M		Major		
21. Bisceglia, Lori A.	W	F				X
22. Hydar, Donald W.	W	M	X			
23. Felesky, Christine M.	W	F				X

JURY STRIKE SHEET

(cont.)

<u>NAME:</u>	<u>RACE:</u>	<u>SEX:</u>	<u>STE:</u>	<u>DFT:</u>	<u>CRT:</u>	<u>SEATED:</u>
24. Huiet, Russell E.	W	M		Green		
25. Gordon, James A.	B	M	X			
26. Fuqua, Deborah D.	B	F	X			
27. Cain, Patrick W.	W	M		Green		
28. Stewart, Kimeta D.	B	F				X
29. Brown, Karen H.	W	F		Green		
30. Keenan, Joshua L.	W	M				ALT1
31. Garrett, Douglas W.	W	M		Major		
32. Brezden, Rosemary L.	W	F				
ALT2						
33. Nelson, Danyelle S.	B	F				ALT3

-- P R O C E E D I N G S --

(WHEREUPON, proceedings commenced on Friday, July 9, 2021,
at 2:41 p.m.)

PRETRIAL - MATTER(S) OF LAW

THE COURT: We're just going to start with the solicitor.
And then we'll hear from the defendants on any pretrial motions.

ATTORNEY OSBORNE: Thank you, Judge. Good afternoon.

THE COURT: Good afternoon.

ATTORNEY OSBORNE: I already started talking to Ms. Hensley
and Ms. Gay. The first motion -- and I emailed them, I think,
eight in total, although it looks like one, we're not going to be
able to do because of the audio issue with *Denno*.

But after talking to Ms. Hensley, it's going to be a
super-quick motion, I think, because we're only seeking to
introduce two clips which, I think, in total, are like three
minutes.

THE COURT: Okay.

ATTORNEY OSBORNE: And they've already been provided a copy.

THE COURT: Okay.

ATTORNEY OSBORNE: The first motion is sequester of
witnesses. State doesn't object to that. The only witnesses
that we would ask to be present during the trial are Marcus
Porter, victim; David Swibaker, the second victim; and our case
agent, Jonathan Davis.

THE COURT: Okay. Any objection to that from either

1 defendant?

2 ATTORNEY HENSLEY: I don't think the law allows me to object
3 to it, Your Honor. I think they're permitted to be in here.

4 THE COURT: Well, I concur. But you know how that is, one
5 must object and sometimes the law will change. But then you have
6 it. All right. Yes, ma'am? Ms. Gay, any objections?

7 ATTORNEY GAY: Same thing, Your Honor. I would object to
8 them both being in here at the same time because I think that
9 there's witnesses that should be sequestered. I think that, you
10 know, in reality, the reason to sequester is to keep witnesses
11 from being able to hear what the other witness says to somehow
12 bolster or change their testimony.

13 And so, yes, there are two victims, but maybe one should not
14 be in the courtroom at the time until the other one testified,
15 and then he's allowed to come in and both be in.

16 I think it's important to keep them sequestered.

17 THE COURT: Thank you so much. Overruled. Noting your
18 exception for the record. Okay. Next.

19 ATTORNEY OSBORNE: Rolling through the less-needy motions
20 first. We also have -- well, all right, so I've never done this
21 before. We're not really having a meeting of mind of how to do
22 it. So we have all of our exhibits from the previous trial.
23 They have red state's exhibit stickers on them. The court
24 reporter placed her initials, if I remember correctly, as well as
25 the date, on each one of those red stickers.

1 So a couple different ways to handle it. Obviously we can,
2 and we have, reprinted out the paper exhibits. I mean, we prefer
3 to just use exactly what we had before.

4 As an alternative, I mean, I don't see any harm on just
5 using the exact same red stickers. All it does is just have a
6 date on it, so I don't see where, like, I don't see even when the
7 jury gets the evidence how that date's going to be prejudice.
8 They're not going to know what that date means. That could have
9 been the date that it came into the courtroom. There's no
10 reference to the date.

11 So preferably, just to keep it simple, just use the exact
12 same stickers. As an alternative, we did order white stickers so
13 we could put a white sticker next to the red sticker. But, to
14 me, that almost draws more attention that there was a previous
15 hearing and now we have a second hearing.

16 I don't like the option of putting a sticker on top of the
17 old sticker.

18 So anyway, so that's where we're at with that, Judge.

19 THE COURT: Okay. Yes, ma'am, Ms. Gay?

20 ATTORNEY GAY: Well, I have a problem with it. And, you
21 know, that's what I think he's saying, we're not having a meeting
22 of the minds. You know, my problem is is that to have the
23 sticker at all -- and you know this is all about prejudice to my
24 client or prejudice to Laree's client, Mr. Major. I mean, you
25 can see these stickers. It says Exhibit 218.

1 I mean, there's definitely an inference that there's been
2 some other things going on in this case. And that, in itself,
3 the issue of the fact that the other two defendants were
4 convicted and had been on TV and all these things, and talked
5 about their sentences and all that, this is all a bigger issue,
6 with this being the second set of defendants tried in the same
7 case.

8 And so, you know, I believe that we should cover them up.
9 And so I think that -- and then the problem becomes that on the
10 ones -- maybe using pictures was a good idea. This is a picture
11 of the exhibit; this is not the real exhibit with the little red
12 sticker on it. And then we can just cover it up on the picture.

13 So the first set of defendants have their evidence and their
14 evidence with their stickers on it, and then we would have our
15 evidence with our exhibit stickers. Could be white, red,
16 whatever.

17 But I don't think that we should allow a piece of paper with
18 that thing on it that says Exhibit No. 218, as an example, to go
19 to the jury.

20 THE COURT: And you would say?

21 ATTORNEY HENSLEY: I think the bigger issue is it just says
22 May the 12th or May the 14th or whatever. And so I think the
23 ability to make that connection between that trial in May and
24 this trial is the issue. And I guess, also, just their evidence
25 and our evidence for record purposes.

1 THE COURT: So let me ask this question. What items are not
2 able to be duplicated?

3 ATTORNEY OSBORNE: All of the physical items like the shoes
4 from each of the defendants, the guns, the clothing, GSR, DNA,
5 the buccal swabs. Things of that nature.

6 ATTORNEY HENSLEY: Could they go in separate bags, new bags?

7 THE COURT: That's a good question, for me, really. On some
8 of the things, I gather they are -- on some of the things,
9 they're in enclosures that are marked. But I gather some of the
10 items, the stickers are actually on the item; yes?

11 ATTORNEY OSBORNE: That's right. Yes, ma'am. And the bag,
12 many times, has initials on the bag. And that's how, you know,
13 some of this -- because they look at it and, Well, that's my
14 initials on it, that's how I know I received it. Although, you
15 know, it's torn, too, now, at this point. But they can still see
16 their initials and the date.

17 I mean, if chain doesn't become an issue -- and chain's not
18 an issue, thank God, as the last time with the container G
19 nonsense. But if that's not an issue, then we can make ---

20 ATTORNEY HENSLEY: I think it's an issue.

21 ATTORNEY OSBORNE: I think it's got to be.

22 THE COURT: You think what now?

23 ATTORNEY HENSLEY: I mean, I think chain is an issue, so
24 they'll need to be able to recognize their signature. So, I
25 mean, I don't know what we do about the stickers on those items.

1 There's certainly fewer of those than this book of pictures, you
2 know, that would all have stickers that said May the 12th or May
3 the 14th or whatever day, so ...

4 THE COURT: I'm not worried about those. Those are easy.
5 Just duplicate those, put new stickers on them in a new trial.
6 You know, it's difficult and it's a pain, but it's easy to
7 handle.

8 With regards to the initials on the bag, and you have to
9 hand it to the person, and it's been marked, and it's been in
10 evidence, and they need to see that original one in order to
11 identify it -- right?

12 ATTORNEY OSBORNE: Yes, ma'am.

13 THE COURT: You know, Yes, I see the initials on this bag;
14 yes, this is mine; yes, I can authenticate it.

15 But let me pose this as a solution, and y'all tell me what's
16 wrong with it. Judge Goodstein, pursuant to your instruction,
17 I'm now going to put this in this little bag and I'm going to put
18 this sticker on it, and it will be marked as blah-blah-blah-blah
19 pursuant to your instruction. Therefore, it's on me. It's on
20 me.

21 ATTORNEY HENSLEY: And I don't think it draws any attention
22 to it.

23 ATTORNEY GAY: No.

24 THE COURT: It calls attention, that I said for some reason,
25 and they're not going to know. And then, however, however, at

1 the conclusion of the trial, what I want to do is to put it
2 altogether.

3 In other words, in my head let's say it's a pair of shoes.
4 The pair of shoes, if it's in a bag with initials, I've taken it
5 out and put in another bag with another number on it. At the
6 conclusion of the trial, they would all just be, take the second
7 bag and just throw it in with the first bag and the shoes.

8 Now, that's not going to work for everything. Tell me what
9 that won't work for. The buccal swabs?

10 ATTORNEY OSBORNE: I really wish I -- and this is on me. I
11 told Ms. Stevens that we probably wouldn't need the physical
12 evidence for this part of it. I'd really like to look at it.

13 How about this. The jury won't be able to see those little
14 initials on that state's exhibit sticker from where they're
15 sitting, I think we can all agree on that.

16 THE COURT: Right.

17 ATTORNEY OSBORNE: So what about if we just go ahead,
18 introduce, move into evidence like we normally would during a
19 trial, and then before it goes back to the jury we agree on
20 packaging that. Doesn't draw attention to the fact that we've
21 already done this once before.

22 THE COURT: The only thing is, because you've got to mark it
23 as an exhibit, if it gets out of sync, that's going to be the
24 only hiccup. So I think that, bring a bunch of bags. I don't
25 care what color, it doesn't matter what color the stickers are.

1 And just so it can be, that be, managed. And then maybe just get
2 somebody from the office just to help you manage the exhibits and
3 the remarking of the bags.

4 And then when we're done, then we'll just take this bag and
5 put in this bag with the first bag and stick them all together so
6 that, in the event of an appeal, it's discernable. The same
7 exhibits, let's say the shoes, but here's this trial, here's this
8 trial.

9 ATTORNEY OSBORNE: I'm tracking. Okay.

10 THE COURT: So that it's on me. It won't be previously
11 marked as. It will be, Judge, pursuant to your instruction, I'm
12 going to do da-da-da-da-da-da.

13 ATTORNEY OSBORNE: Okay.

14 THE COURT: Jurors, they tend not to think about that other
15 than, Isn't she picky.

16 ATTORNEY OSBORNE: Okay.

17 THE COURT: And if something comes up because we've got
18 something a little unusual, we'll figure it out.

19 ATTORNEY OSBORNE: Yes, ma'am.

20 THE COURT: Give me, like, 30 seconds heads up, and we'll
21 come up with so something. Hopefully. Okay.

22 ATTORNEY OSBORNE: All right. The next one is -- and I
23 think we've kind of already got a little bit of an agreement on
24 this -- impeachment of Swibaker and Porter's prior convictions.
25 I provided the most updated NCIC to both Ms. Gay and Ms. Hensley.

1 I just ask that, when they review through it, if they see that
2 they want to impeach them on a prior conviction, just to let me
3 know. And I think we're probably going to reach an agreement on
4 that.

5 THE COURT: Y'all have the most current rap sheet? Yes?
6 Yes?

7 ATTORNEY HENSLEY: Sort of.

8 ATTORNEY GAY: One of the things is, Mr. Porter has a
9 trafficking conviction, but we can't find it anywhere.

10 ATTORNEY HENSLEY: It's just pending. It doesn't show up on
11 his rap sheet. But they have the information.

12 THE COURT: It's a pending charge; right?

13 ATTORNEY HENSLEY: A pending charge.

14 THE COURT: Not a conviction.

15 ATTORNEY HENSLEY: Right. But he's got lots of pending
16 charges that do show up. For some reason, the Dorchester County
17 ones don't. But we've worked it out.

18 ATTORNEY OSBORNE: Pending charges, I'm going to ask him
19 about his pending charges.

20 ATTORNEY HENSLEY: Right. Definitely for impeachment, would
21 be his convictions. I think we worked out what we can use.

22 THE COURT: All right. Great.

23 ATTORNEY OSBORNE: All right. And so now getting into --
24 all right. So we, the state, filed a pretrial motion for
25 third-party guilt seeking to bar the defense from bringing in any

1 evidence regarding Jaquavious Washington's cellphone records. To
2 refresh your memory, Judge, Jaquavious Washington was the other
3 individual. Police were looking at him.

4 THE COURT: Yes.

5 ATTORNEY OSBORNE: You know, our position on that is, that
6 is, again, just throwing mere suspicion to another person's
7 responsibility. It does not exonerate any one of these
8 individuals.

9 And even if true, which there's no way to authenticate those
10 records at this point that I'm aware of, even if true, that
11 certainly doesn't exonerate them, doesn't meet the threshold
12 third-party guilt. Ask that it precluded.

13 THE COURT: It does not exclude?

14 ATTORNEY OSBORNE: That's right. Yes, ma'am.

15 THE COURT: That was not the case in the last trial.

16 ATTORNEY OSBORNE: They made a good argument.

17 THE COURT: I'll listen to you both. Who wants to? Your
18 eyebrows are raised higher than Ms. Gay's. Do you want go first?

19 ATTORNEY HENSLEY: I don't think that -- we have the same
20 argument. So based on that, I don't think third-party guilt,
21 from my perspective, is an issue.

22 THE COURT: Thank you. Yes, ma'am, Ms. Gay?

23 ATTORNEY GAY: Well, I think that it is. I don't believe he
24 should be able to limit our cross-examination of the victims and
25 what we asked them about what they know in terms of bringing in

1 evidence. On a person who's not testifying, I can understand
2 that that isn't something that we can just, you know, make a
3 motion about.

4 But, you know, I do think that there is testimony. I
5 wasn't -- I didn't sit through the last trial. I know Laree did.
6 But I do think it's appropriate to cross-examine about the
7 person's relationship and the knowledge and prior contact or
8 dealings with an individual; that, at some point, we should not
9 be precluded from inferring whatever we want to infer to the jury
10 as opposed to -- I don't know that you want to -- may not be
11 third-party exoneration, but it's definitely, you know, available
12 cross-examination and inferences that you can make to a jury.

13 THE COURT: Well, let me say this. I'm just hearing a
14 little bit of ahead, and I'm good with that. Because if it is
15 relevant, if there is an issue which is important to the case
16 that the cross-examination or the response would make more
17 probable or less probable, I'm fine with, that okay. That is not
18 necessarily third-party guilt.

19 ATTORNEY GAY: That's what I'm saying. It still can be
20 discussed as in fact.

21 THE COURT: Well, in order to discuss -- it was not, it was
22 not/could not be my client because it was John Doe. In order, as
23 I understand the case law where it is currently, in order to do
24 that two things have to happen: Number one, there has to be
25 evidence that exists, it cannot be conjecture; it's got to, in

1 reality, exist; and it has to exclude the defendant who is
2 offering it.

3 And there was an argument that was made, obviously I found
4 to be legitimate given the evidence that was presented last time,
5 and I don't -- I am concerned that that does not exist in this
6 case based upon what I was able to learn in the last trial.

7 But if you're going through cross-examination, just cross on
8 that, do you know what I mean? But if you're going to ask for
9 third-party guilt, let's have a conversation about it.

10 ATTORNEY GAY: Yes, ma'am. And I'm not so sure that we can
11 establish that as an ultimate closure argument. But we certainly
12 have the right, I believe, to flesh it out and see what comes
13 out.

14 ATTORNEY OSBORNE: And just to clarify the state's ---

15 THE COURT: I think I'm good.

16 ATTORNEY OSBORNE: And just to clarify the state's issue,
17 certainly when you're talking about relationships and things of
18 that nature, you know, cross-examining Marcus Porter, You knew
19 Jaquavious Washington and you sold marijuana; didn't you?, that's
20 not what I'm talking about.

21 The only evidence that I'm seeking to exclude here is the
22 cellphone records from the night of the incident. And the only
23 reason to try to elicit testimony regarding where Jaquavious
24 Washington's phone was on the night of the incident, at the time
25 of the incident, is to say, He did it and my guys didn't.

1 That's the evidence I'm seeking to keep out.

2 THE COURT: I'm not hearing that that's going to be offered,
3 but if it is they'll let me know.

4 ATTORNEY OSBORNE: All right. The next kind of needy
5 motion, I guess, is the *Lyle* motion, to keep out prior bad acts.
6 The only prior bad act that we have here is a week prior to this
7 incident Marcus's home was burglarized. He was not home during
8 the incident. David Swibaker was.

9 David Swibaker said there were five individuals present
10 during that home invasion. He says it was the same guys that did
11 the murder plus, he believes, Jaquavious Washington.

12 We don't seek to elicit any testimony regarding that. What
13 I have instructed the witnesses before is to simply say, Was your
14 house burglarized before, yes or no? Answer, Yes. Leave it at
15 that.

16 Now, there's a bit of a -- because it does get a little bit
17 interesting because there is a shoe print on the back of the door
18 which doesn't match any one of the four. So that was the way I
19 was going to explain that from the state's position, but not get
20 into the facts of that prior burglary.

21 The second thing that is of interest is that both David and
22 Marcus say that they had watches that they believe were stolen
23 during the first incident, not during the second incident. Those
24 two watches -- or I think might have been three watches -- were
25 recovered from the vehicle that these defendants were found

1 fleeing in, along with the other two. The way I handled that was
2 to simply say, Is that your watch?, not for them to speculate
3 when the watch would have been stolen.

4 THE COURT: Okay. Anybody have anything about that?

5 ATTORNEY HENSLEY: I mean, of course we want to talk about
6 the shoe print that doesn't match any of these defendants.
7 Around that, the facts of the first burglary, the door got kicked
8 opened. So, you know, I think we're going to want to talk about
9 that.

10 ATTORNEY OSBORNE: I don't mind there being a mention of
11 there being a burglary, because I'm going to say that. Was your
12 house burglarized before? Yes. How did the perpetrators make
13 entry? My back door was kicked in. I'm going to kind of -- give
14 me permission to lead him, both of the, a little bit on that, and
15 then close it down there.

16 THE COURT: In other words ---

17 ATTORNEY GAY: I don't want testimony that this guy was
18 there a week prior. I'm not trying to open that door or get that
19 testimony in.

20 THE COURT: Right. And that's the way that we handled that
21 at the last trial. Did something happen a week, two weeks
22 before, whatever? Yes. What was it? There was a home invasion.
23 Or I don't know how they described it. Somebody came in the
24 house. How many? Five people came in the house. End of it.
25 We're not going to start identifying people. Okay.

1 ATTORNEY GAY: And with regard to the watches, and maybe,
2 Laree, you can refresh my recollection, but they did, in the last
3 trial, say, These are my watches? All right. I assume your
4 ruling would be consistent with your last time?

5 THE COURT: I don't know.

6 ATTORNEY OSBORNE: Judge, I remember this pretty well,
7 because on direct, when it came to David Swibaker I simply just,
8 I showed him a picture and then I said, Is that your watch?, and
9 he said, Yeah, that's my watch.

10 And then defense kind of came after him a little bit and
11 said, Is that your watch?, and he's like, Well, you can just tell
12 from the picture it's your watch? He said no. And then I showed
13 him the watch, and, Oh, this is my watch; I wore it on my wrist
14 for six months; I know this is -- I mean, it is ---

15 ATTORNEY GAY: Well, we won't be doing that.

16 THE COURT: Knowing the answer.

17 ATTORNEY OSBORNE: That's my answer.

18 ATTORNEY GAY: Thanks for the warning on that. How about we
19 just stipulate it's his watch.

20 THE COURT: This is his watch.

21 ATTORNEY GAY: If we just want to make a broader *Lyle*
22 argument, Your Honor, about prior bad acts and exceptions to
23 prior bad acts, I don't think there's anything identifying my
24 client to this act.

25 I do think there's prejudice to the mention of the act being

1 something in this trial that would indicate that possibly these
2 people may have been involved in that act, especially with him
3 tying it to something related to property found in the car.

4 I think, you know, whether he's saying that they weren't
5 involved or not, he's inferring, on some level, that there may be
6 a connection. And I don't think it meets an exception to *Lyle*.

7 THE COURT: Let me say this. Let me say this. The way that
8 it came out in the last trial, and in the last trial it was from
9 an evidentiary standpoint. From the state's perspective, I think
10 more important in the last trial than this trial. And that's
11 just my opinion, if you will.

12 But the way that it was handled was just to connect my
13 watch, this car, period. There was no mention whatsoever about,
14 like, to tie the first instance to the car. In other words -- am
15 I remembering that correctly?

16 ATTORNEY OSBORNE: That is absolutely correct.

17 THE COURT: In other words, there wasn't any, like, Well,
18 when did you lose the watch? Oh, I lost the watch two weeks
19 before this happened. And that was found in the car. It wasn't
20 like that. It was like, it was no more than, Your watch in this
21 car. Your watch, your watch. In the car, in the car. Boom,
22 that was it.

23 ATTORNEY GAY: See, I don't have a problem with that at all.
24 What I have a problem with is him referring to this incident that
25 happened with him, you know, the incident where there was a

1 burglary a couple weeks before, inferring on some level that they
2 may have been involved and this may have been the watch.

3 Now, what Laree's saying is, No, we'll be talking about
4 that, blaming it on some other people. Understand. But I'm just
5 saying that, in terms of *Lyle*, I think you get into, I would ask
6 to exclude this information about the prior burglary.

7 ATTORNEY OSBORNE: I'm not bringing the prior burglary up.
8 I'm literally just saying, Is that your watch?

9 ATTORNEY GAY: No. You said you were going to ask, Were you
10 burglarized two weeks ago?

11 ATTORNEY OSBORNE: That was with the previous one. But in
12 regards to the watch ---

13 ATTORNEY GAY: I understand what they're going to say about
14 the watch. That's fine. You don't have a problem with that; do
15 you?

16 ATTORNEY HENSLEY: I don't.

17 THE COURT: Yeah. And the only reason that, the only reason
18 that the instance two weeks earlier becomes important is because
19 of the footprint on the back door. That's it. And that's the
20 only reason why it has any relevance at all. It's just, Did
21 something happened? Two weeks, something happened two weeks
22 before. What happened? Somebody came in my house. How many
23 people? Five. And how did they come in? They kicked in the
24 back door. And that's the end of it.

25 No, Were they tall; were they short, big, little, none of

1 that. Had on shoes? No. It's only -- it only goes to why the
2 shoe print on the back door. Yes?

3 ATTORNEY OSBORNE: Yes. Yes, ma'am.

4 The next one is, and I can -- may I approach, Your Honor?

5 (WHEREUPON, State's Exhibit 218 is marked for
6 identification.)

7 THE COURT: Uh-huh.

8 ATTORNEY OSBORNE: It's a terrible copy, it's a lot darker
9 than the originals. But this is the defense's motion to seek to
10 exclude this exhibit, I think is, state's 218. It is a
11 screenshot from a Live 5 News broadcast. And we didn't really
12 flush this out too much in the first trial.

13 So the way this came about was, the night of the incident,
14 the night of the burglary and the murder, was January the 27th,
15 going into January the 28th of 2019. Marcus Porter was formally
16 interviewed when he was released from the hospital on February
17 the 4th of 2019 at the Summerville Police Department station.

18 When he was interviewed, for the first 30 minutes of the
19 interview, he kept referring to Green. He would say, Green did
20 this; Green did that.

21 And after, literally, 30 minutes into the interview,
22 Detective Davis, who's the case agent, said, You know, you keep
23 calling him Green, do you know this guy? And he said Well, I saw
24 the news, and I saw him on the news, and that's one of the guys
25 that came in, he's the light-skinned guy. And they said, Well,

1 how do you know? He said, Well, he locked eyes with me before he
2 shot me, and I looked him in the eyes, that's him.

3 David Swibaker was interviewed two days later. David
4 Swibaker said the same thing, he said, I saw him on the news,
5 Green, and that was the light-skinned guy, and I saw him based on
6 his eyes. They both said he had hazel-colored eyes, and they
7 remembered that.

8 Not a great photograph. That's kind of dark. But they're
9 both identifying him based on that.

10 So basically, if I'm reading the motion correctly, the
11 motion is to preclude the out-of-court ID because it's suggestive
12 in its nature.

13 My research on this, basically seems like the seminal case
14 on it is *Perry v. New Hampshire*, a Supreme Court case. And in
15 that case -- well, basically the holding is, *Neil v. Biggers* and
16 these cases that followed deal with suppressing out-of-court
17 identifications where there's a suggestive or improper technique
18 employed by the police. The police didn't do anything here.

19 And there's some pretty good quotes. And South Carolina
20 seems to follow that holding, or that law. In *State v. Wyatt*,
21 that's 421 S.C. 306, says, The Supreme Court of the United States
22 has repeatedly emphasized, quote, that due process concerns arise
23 only when law enforcement officers use an identification
24 procedure that is both suggestive and unnecessary. And again, on
25 this case we don't have that.

1 And looking at -- there's several cases on this. The *State*
2 *v. Tisdale* case, I think, is probably the one that's most on
3 point. You have three tellers from a bank robbery. Before the
4 police were able to show the lineups to them, each one had saw
5 the news from the night before and said, That's the guy that
6 robbed me.

7 There is an authentication, a secondary authentication,
8 objection. I think, I mean, reading the authentication rules,
9 and I know one, you know, it seems to me like we met it. The
10 matter is basically, simply the matter is in question is what
11 we're claiming it to be. The matter in question here is that,
12 did Marcus Porter and David Swibaker see a news report regarding
13 Elijah Green and these other individuals and then make an
14 identification based on that.

15 Both of the witnesses have seen that and both of the
16 witnesses are saying, yes, or we anticipate they will testify
17 that, Yes, this is the photograph that I saw and, Yes, this is
18 the photograph that I based my identification is on.

19 I thought there was another part of their objection. I
20 think that's all I have for now.

21 THE COURT: Okay. All right. The piece that I need to hear
22 from you about is the piece that the exclusion of suggestive
23 lineups comes obviously from those activities presented by law
24 enforcement, or by the government. What about -- what if it's
25 not presented by the government, what about that?

1 And you stand, and you go first? Because that's what I did.
2 Last time I did ---

3 ATTORNEY HENSLEY: I don't care.

4 ATTORNEY GAY: It's okay if Laree goes first.

5 THE COURT: I'm getting so confused.

6 ATTORNEY HENSLEY: We'll pick an order, at least, who will
7 go first in the trial. But for the purpose of the pretrial
8 motion ---

9 THE COURT: Okay.

10 ATTORNEY HENSLEY: --- I think my case is different from
11 what Mr. Osborne described. I think Mr. Major's identification,
12 I agree that this isn't a *Neil v. Biggers* issue because it's not
13 the government. And *State v. Tisdale* is about that.

14 But my case is different from *State v. Tisdale* because these
15 people in *State v. Tisdale* have already said, We looked at them;
16 we knew them; they weren't -- the only description they had of my
17 client before Mr. Porter saw the news, my understanding is, that
18 he was an African American, heavyset male.

19 So in this picture, State's 218, there's only one person who
20 could be -- only one person who matches that description is
21 Mr. Major, because he's the African American, heavyset male in
22 the picture. So I don't think the identification was that they
23 had on masks; they couldn't see their faces; there's nothing
24 about locking eyes with this guy.

25 So I think this is different than *State v. Tisdale*, because

1 I don't think the identification was as descriptive; that they
2 described the amount of time that they had to see them. I think
3 they saw a picture on the news that, said, Man, dog shot dead in
4 Summerville; obviously identifies these people from their
5 incident and looked at the news and said, Well, one of these guys
6 is an African American, heavyset guy, and I know I saw an African
7 American, heavyset guy, so D.T. Major must be that guy.

8 I think that is suggestive. I think it creates a
9 substantial likelihood of irreparable misidentification. I think
10 the length of time between the event and the out-of-court ID, the
11 facts surrounding their exposure to the photograph, all of those
12 things, I think, make it that we should suppress any in-court
13 identification, because I think their identification was just
14 tainted. I don't think it was tainted by the government; I just
15 think that this was so suggestive that it led them to that
16 conclusion.

17 And also, just with regard to the entry of the photograph --
18 I don't know if we're there yet but -- I certainly object to, I
19 think, under 403, that this is unduly prejudicial. The probative
20 value substantially outweighs the danger of unfair prejudice
21 because it says, it basically says, these are the guys.

22 And so based on that, you know, I would move to exclude 218
23 and the in-court -- the out-of-court identification in court.

24 ATTORNEY OSBORNE: Just for clarification purposes, neither
25 one identified your client.

1 ATTORNEY HENSLEY: Well, I thought he said he recognized
2 Major in the interview.

3 ATTORNEY OSBORNE: No.

4 ATTORNEY HENSLEY: He's not going to do any in-court
5 identification with Major?

6 ATTORNEY OSBORNE: No. It was Elijah Green. Well, I mean,
7 I ---

8 ATTORNEY HENSLEY: I thought in that interview he said both
9 of their names, and he said he knew it from the news. That's
10 what I thought.

11 ATTORNEY OSBORNE: Well, I wasn't aware of them identifying
12 Major. It was Green who was the one that they identified that I
13 was aware of.

14 And as far as the in-court ID, well, that's a tricky
15 situation, all right, because I don't know what's going to happen
16 when I get them on the stand. And the reason why I say that,
17 last trial I had where that question was asked of me, I had to
18 tell her on the stand, and she told me in pretrial she wouldn't
19 be able to identify him if she saw him again. On the stand I
20 asked her, I said, Well you, wouldn't be able to identify this
21 guy if you saw this again; would you? And she looks at the
22 defendant, stares him right in the eye, and says, Oh, I'll know
23 him when I see him again; I'm looking at him right now. Well,
24 now I'm stuck. So I don't know if anything like that is going to
25 happen, but I can tell ---

1 ATTORNEY HENSLEY: Well, Mr. Porter's here today.

2 THE COURT: It's like a Perry Mason.

3 ATTORNEY HENSLEY: We're going to try to avoid this, unless
4 it's I'm getting to be Mr. Mason. And if he doesn't plan to do
5 any in-court identification of Mr. Major or any mention of that,
6 then I don't think I have a dog in this fight, so.

7 ATTORNEY OSBORNE: Cannot make that, won't make that mistake
8 again. Here's the argument that I made before and did some
9 research on. There's no mechanism to suppress an in-court
10 identification when there's no tainted out-of-court
11 identification procedure to make that in-court identification
12 unreliable. That's the real quandary there.

13 So to answer that question, I mean, I don't know. What do I
14 do right now? As a prosecutor, I'm going to show them a lineup
15 now? It seems crazy. So I don't know how that's going to
16 proceed. But what I do feel pretty confident about is there's no
17 mechanism to suppress it if it does happen.

18 ATTORNEY HENSLEY: That's an in limine motion; right?

19 THE COURT: Okay. So how do you propose to use this?

20 ATTORNEY OSBORNE: I'm sorry, how do I propose to do what?

21 THE COURT: How do you propose to use this?

22 ATTORNEY GAY: The picture.

23 THE COURT: Which is marked as 218.

24 ATTORNEY OSBORNE: I mean, I was simply going to ask them,
25 Did you have the occasion to watch the news the following day?,

1 or, Did you see anything regarding this incident the following
2 day? My pretrial with them has gone, Yes, I have. Okay, well
3 what did you see? Well, I saw them on the news. Did you
4 recognize anybody from the news as being involved in this
5 incident? Both have indicated to me they did, and that was
6 Elijah Green. And then I was going to show them that.

7 And from my perspective -- I thought about this. So if we,
8 let's say that I, just show Elijah Green and I don't show the
9 other defendants. Well, that looks pretty, one, prejudicial in
10 the sense of what news broadcast would just broadcast Elijah
11 Green? I mean, they saw all four of them, they saw the whole
12 array.

13 Secondly, and the thing that I liked about this one from a
14 prosecution point view is that, that doesn't give heights, that
15 doesn't give description, anything like that. They identified
16 the light-skinned individual as being a tall person. Looking at
17 a photo there's no way of knowing what his height is. And he
18 still identified Elijah Green as being that individual.

19 So, and, I mean, I understand the 403 argument, it's
20 directing them to that, but that whole news broadcast directed
21 them to that incident. Marcus Porter is literally looking at his
22 house on the news. I mean, it would be disingenuous to say that
23 he didn't realize that was his incident.

24 And there's one last point. There was a lot of good quotes
25 and a lot of good cases, you know, goes to the weight and not the

1 admissibility. And both of those guys are going to be subjected
2 to cross-examination, and there's a lot of meat on the bone there
3 to go at them with cross on this ID and the reliability of that.
4 But that would be up to the jury. Our position would be to weigh
5 that.

6 ATTORNEY GAY: Judge, I just feel compelled to say that from
7 Elijah Green's perspective it really does hit him in terms of how
8 this picture is used. And also, with what Ms. Hensley was
9 saying, there was things discussed initially that said
10 light-skinned, and then there was an ID of a person, or, that's
11 him, that's Elijah Green.

12 And so we, as she was saying, there are opportunities -- we
13 never really got to talk about their opportunity to see, how
14 long, you know, all these things that would be what they call the
15 indicia of reliability before such time as he sees this.

16 And so though it isn't a law enforcement lineup or anything
17 like that, it does, with them being called the defendants, and
18 the guys that did it, shot dead in Summerville, with all these
19 pictures, it does indicate that these are the people that they
20 found, and then they're ID'ing him.

21 And so we believe it would be, some of this should be --
22 there's obviously going to testify, they're obviously going to be
23 cross-examined. But if he's going to point his finger at Elijah
24 Green and say, That's him right there, that's what I would be
25 asking the Court to suppress.

1 THE COURT: I'm going to exclude it. There's nothing about
2 it I like. And let me tell you why, let me make a record. You
3 know, I think probably I'm less troubled by the fact that, I
4 locked eyes with this person and I had an opportunity and saw the
5 picture on TV, blah-blah-blah. It becomes relevant, okay. And
6 then it can go from there.

7 First of all, when they say he was, he was whatever he was,
8 he was light-skinned with hazel eyes, this person doesn't have
9 hazel eyes, so all of a sudden I'm like, What do we do? He
10 doesn't have hazel eyes. I don't like, I don't know where this
11 came from. I don't know how, like, Channel 5 knows this and
12 knows all of this. I don't like, I don't like the caption on it.

13 No, it's not coming in. No. And the reason is, is it more,
14 is it more prejudicial than probative? At this point, based on
15 what I'm hearing, Uh-uh, I don't like it.

16 Now, it can become so. And if it does, it does, I'll
17 revisit it.

18 And what happens -- and this is another very, very much a
19 concern that I have. How do I, as a trial judge, handle -- this
20 comes in. Nobody said they're using it, had anything to do with
21 Mr. Major. But there's his picture, and under it it says, man,
22 dog shot dead in Summerville, and there's his picture. We
23 didn't/I didn't identify Mr. Major. And it's like, well,
24 obviously the TV did.

25 I'm sorry. We'll mark it for identification for this

1 hearing. It may become relevant in some form or fashion.

2 ATTORNEY OSBORNE: All right. So just so I understand the
3 ruling, the ruling is consistent with the last trial. I will
4 still be able to elicit testimony that, You watched the news, and
5 you saw an individual on there you recognized as Green. That
6 specific exhibit is what's being excluded?

7 THE COURT: Exactly.

8 ATTORNEY OSBORNE: Thank you, Your Honor.

9 THE COURT: I think that's fair.

10 ATTORNEY OSBORNE: Okay.

11 THE COURT: As part of this, it's not meant -- and that's
12 subject to cross-examination. And if they open the door, they
13 open the door. But I don't know how Mr. Major -- and one of my
14 true concerns is how does Mr. Major overcome that. I don't know.

15 ATTORNEY GAY: In terms of the in-court ID, is that
16 something that you're going to allow them to do or not based on
17 the fact that they watched this Live 5 coverage that claimed that
18 these are the people?

19 THE COURT: Maybe. Maybe. And just based on testimony that
20 I have heard, yes, that could happen. It is possible that there
21 could be an in-court identification.

22 ATTORNEY GAY: So the picture stays out?

23 THE COURT: Pardon?

24 ATTORNEY GAY: But the picture stays out?

25 THE COURT: Yes, ma'am.

1 ATTORNEY HENSLEY: Just to be sure I'm clear, Mr. Osborne
2 intends to only have an in-court identification of Mr. Green. Is
3 that correct?

4 ATTORNEY OSBORNE: I'm not making that mistake again.

5 THE COURT: That's what he thinks.

6 ATTORNEY HENSLEY: So I'm clear.

7 THE COURT: I understand. I understand.

8 ATTORNEY OSBORNE: And the last one that I'm aware of was
9 the *Denno* hearing. We do have Mr. Moy here. We don't -- but
10 we're not able to play the actual -- I mean, we could go through
11 it, or we could just wait.

12 ATTORNEY HENSLEY: I think that it's important to hear the
13 clip. So that's a problem. But I don't think that it will take
14 a long time. So I don't think that sometime before ---

15 THE COURT: You mean you can't hear it if you play it on the
16 computer, like no sound, if you play it on some ---

17 ATTORNEY HENSLEY: It's just there's no amplification of the
18 sound. I mean, you can hear it if you're sitting at
19 Mr. Osborne's desk, but I don't know that the Court can hear it.

20 THE COURT: If we all gather and put it right there, can't
21 we all hear it? I mean, I like being up here and everything, but
22 I can be there. I mean, I walk around the courthouse, and I've
23 been all over this courtroom.

24 And I hate to do -- you know what I mean.

25 (WHEREUPON, an off-the-record discussion is held in open

1 court.)

2 THE COURT: Obviously I can position myself here. But, you
3 know, your clients have got to be able to hear it.

4 ATTORNEY HENSLEY: Right. That's the problem.

5 THE COURT: But if we can, if we can gather in their area so
6 they can hear, I'm fine with that.

7 ATTORNEY HENSLEY: I'm just not sure that they can hear. I
8 mean, when we were listening to it over there it was just like
9 anything else that you would listen to on your computer, you can
10 only make it so loud.

11 THE COURT: I'm a worker. I'm like, let 'er rip, you know
12 what I mean? And I've got a couple little, tiny blue-tooth
13 connectible things that really do work.

14 ATTORNEY GAY: Judge, I need to use the restroom, if you
15 don't mind. I'm not part to that. I think it's Mr. Major only
16 that they have this on. Do you mind if I use the restroom while
17 you're hearing that? Thank you.

18 THE COURT: Absolutely. And if we think you need to
19 participate, we'll hold up. So then just have everyone over
20 here.

21 ATTORNEY OSBORNE: The state calls Officer Phillip Moy.

22 CLERK OF COURT: If you'll raise your right hand, and state
23 your full name for the record.

24 THE WITNESS: Phillip Moy.
25

1 PHILLIP M. MOY

2 having first been duly sworn, was examined and testified as
3 follows:

4 ATTORNEY OSBORNE: May I approach the witness, Judge?

5 THE COURT: Yes.

6 (WHEREUPON, State's Exhibits 198 and 199 are marked for
7 identification.)

8 **DIRECT EXAMINATION**

9 BY ATTORNEY OSBORNE:

10 Q Officer Moy, I'm showing you State's 198 and 199. Can you
11 take a look at those and tell me if you recognize those.

12 A I do.

13 Q And what are they?

14 A These are going to be the video clips from the interview
15 with Mr. Major.

16 Q Okay.

17 A This is going to be the full one, and the clipped version.

18 Q So 198 is the full interview, and 199 is just a clip or two
19 taken from the interview?

20 A That's correct.

21 ATTORNEY OSBORNE: Okay. And, Your Honor, I'll have some
22 more predicate questions per *Denno*, but at this time I'd like to
23 publish State's 199, the clipped version of the interview.

24 THE COURT: Yes.

25 (WHEREUPON, State's Exhibit 199 is published.)

1 ATTORNEY OSBORNE: And now I'm going play clip 2.

2 (WHEREUPON, State's exhibit 198 is published.)

3 ATTORNEY OSBORNE: And that concludes the clipped portion of
4 testimony, Your Honor. I can get the other pre-predicate
5 questions in reference to Miranda.

6 THE COURT: Okay.

7 ATTORNEY OSBORNE: May I approach?

8 THE COURT: Yes.

9 (WHEREUPON, State's Exhibit 200 is marked for
10 identification.)

11 Q I'm showing you what's been marked as State's Exhibit
12 No. 200. Can you take a look at that and tell me if you
13 recognize that?

14 A I do.

15 Q And what is that?

16 A This is the Summerville Police Department Advisement of
17 Rights form.

18 Q And just some backup questions here. Back in 2019 did
19 you -- where did you work?

20 A Summerville Police Department.

21 Q Okay. And what was your initial role in this case?

22 A Case agent.

23 Q And you had the occasion to interview Devonte Major? I
24 think that's the clips that we just saw.

25 A That's correct.

1 Q Was there anyone else present during that interview?

2 A Detective Edward Farr.

3 Q And we heard, from clip 1, that you advised the defendant of

4 his Miranda rights?

5 A That's right.

6 Q State's 200, is this the form that you used?

7 A Yes.

8 Q Can you see that okay?

9 A Yes.

10 Q So the top portion up here, did you fill this out or did he

11 fill that out?

12 A I filled it out.

13 Q And were you basing your answers off what?

14 A It was a question and answer. So I wrote it in what his

15 answers were to my questions.

16 Q Did you advise Mr. Major of his Miranda rights?

17 A I did.

18 Q And what were they again?

19 A I'm sorry?

20 Q His Miranda rights.

21 A His --

22 Q Can you read them?

23 A Yes, I can read them. Do you want me to read the whole

24 thing?

25 Q Yes.

1 A So it says, Detective Phillip Moy has advised me that he is
2 a member of the Summerville Police Department, and has further
3 advised me that, 1, I have the absolute right to remain silent,
4 to not answer any questions or give a statement, and that cannot
5 be used against me.

6 Q And let me just stop you right there. Next to no. 1 it
7 looks like there are some initials. Is that correct?

8 A Correct.

9 Q And who's initials are those?

10 A That's Defendant Major's.

11 Q Did he initial those after, every time you advised of the
12 right, or did he do it at the end? Or, do you remember?

13 A We did it sequentially, after each.

14 Q All right. Go ahead.

15 A No. 2, If I do answer questions or give a statement,
16 anything I say can and will be used against me in a court of law.

17 No. 3, I have the right to consult with a lawyer of my
18 choice before I answer questions or give a statement, and also to
19 have them present while I am being questioned.

20 Four, if I wish to talk to a lawyer or have them present but
21 I'm unable to afford or hire a lawyer, one will be appointed to
22 represent me, free of charge.

23 And, 5, if I decide to answer questions or give a statement
24 without having a lawyer present representing me, I have the
25 absolute right, during this interview, to stop answering

1 questions and remain silent.

2 Q Okay. And then we heard on the clip -- did you read that
3 last little paragraph there, too?

4 A That's correct.

5 Q And what does that say?

6 A I fully understand each of these rights -- I'm sorry?

7 THE COURT: You know, I know that my court reporter also,
8 she can, she can see the screen. Just, as you read ---

9 THE WITNESS: Slow.

10 THE COURT: Yeah.

11 A I fully understand each of these rights which I have been
12 advised of. And there's a place for the witnesses, which were
13 myself and Detective Farr, to sign, and also Defendant Major.

14 Q Okay. So the signature there, Devonte Major, that's the
15 defendant's signature?

16 A Correct.

17 Q All right. How long did the entire interview last?

18 A Approximately an hour.

19 Q And it started about 4:30?

20 A That's correct.

21 Q And do you remember the time in which the arrest was made
22 that night? Not the exact time.

23 A I don't remember the exact time.

24 Q Was it about midnight or so?

25 A About.

1 Q And they had to be transported from Cottageville to
2 Summerville; is that correct?

3 A That's correct.

4 Q During your entire encounter with Defendant Major, did he
5 appear to be intoxicated or under the influence of drugs?

6 A No.

7 Q Did Mr. Major appear to have any physical or mental
8 disability that would have impaired his ability to understand
9 what was being said to him?

10 A No.

11 Q Prior to or during your interview with Mr. Major did you
12 offer him any breaks, bathroom or otherwise, or if he had asked
13 did you deny it?

14 A He was not denied.

15 Q Was Mr. Major denied access to a telephone, food, or water
16 or drink?

17 A No.

18 Q And were there any threats or promises made in exchange for
19 his statement?

20 A No.

21 Q Now, I realize that we've only played a clip, okay. But can
22 you highlight what were Mr. Major's, what was Mr. Major's,
23 statement? And only discuss what Mr. Major said his involvement
24 was.

25 A In summary, Defendant Major stated that he came from

1 Beaufort to Summerville to buy an eighth, or a 3.5 grams, of
2 marijuana for, I believe, it was 20 or \$25; and that the vehicle
3 he was riding in was stolen.

4 Q Did he mention anything about -- during the second clip,
5 which I think you've already seen, he showed you something, to
6 demonstrate, is that fair to say ---

7 A Yes.

8 Q --- what he did that night? What did he show you?

9 A As he was describing going and smoking marijuana that night,
10 he indicated that he had placed it, or quantities of it, into his
11 pocket. And at that time he started digging in his pocket, kind
12 of flicking out stems and what we know as shake, which are loose,
13 small quantities of marijuana and onto the interview room floor.

14 Q And did you ask him about his shoes?

15 A Yes.

16 Q Did he have any explanation for his shoes being muddy?

17 A He said he had to push the vehicle that got stuck in the
18 mud.

19 ATTORNEY OSBORNE: No further questions.

20 THE COURT: All right. Cross-examination?

21 ATTORNEY HENSLEY: Thank you, Your Honor.

22 **CROSS-EXAMINATION**

23 BY ATTORNEY HENSLEY:

24 Q Is it Detective Moy?

25 A It's officer now.

1 Q It was detective then; is that right?

2 A That's correct.

3 Q Okay. I'm Laree Hensley, I'm Devonte Major's lawyer. So I
4 just have a couple of questions, okay.

5 So you asked Devonte Major if he was under the influence of
6 alcohol or medication, and he said no; correct?

7 A I believe so; yeah.

8 Q I mean, it's on the form.

9 A Okay.

10 Q Right?

11 A Correct.

12 Q I'm sorry, it's not still up there. But you didn't ask him
13 if he was under the influence of marijuana; right?

14 A I believe not specifically. It would have been verbatim
15 from the form.

16 Q But he told you that he had been smoking marijuana that
17 night; correct?

18 A Correct.

19 Q And the interview started about 4:32 a.m. Right?

20 A Correct.

21 Q So that's about four hours from, approximately from, the
22 time of the arrest; correct?

23 A Correct.

24 Q And then it lasted about an hour; right?

25 A Correct.

1 Q He certainly appeared, in the clip, to be tired; right?

2 A I'm not sure.

3 Q I know you didn't see it just then, but if he was yawning
4 and all of that, that would indicate that he was tired?

5 A He might have yawned.

6 Q And you said you didn't deny him any breaks. Did you offer
7 him any breaks?

8 A I don't recall.

9 Q Would it be fair to say that you didn't offer him any
10 breaks?

11 A I don't remember, in reviewing the video, stopping and
12 offering a break. No.

13 Q You didn't offer him any access to a phone, either; right?

14 A Not during the interview, no.

15 Q Or to food?

16 A I'm sorry. Say it again.

17 Q You didn't offer him any access to food, either; correct?

18 A I did not deny him any food.

19 Q That's not my question, though. Did you offer him any?

20 A Not on -- at least not while it was being recorded.

21 Q Was there part of the interview that wasn't recorded?

22 A No.

23 Q So you didn't offer him any access to food or water; right?

24 A I did not deny him access.

25 Q And you did not offer him any access to food or water?

1 A Correct.

2 Q In the video he appears to hesitate before he initials
3 no. 2., If I do answer questions or give a statement, anything I
4 say can or will be used against me in a court of law. That's
5 fair?

6 A I would have to re-watch it to know exactly.

7 Q And the same thing when he signs the waiver of rights at the
8 end; correct?

9 A If that's how it is on the video.

10 Q What did he ask you before he signed his name on the waiver
11 of rights?

12 A I don't know specifically.

13 Q Would it help you to listen to it again?

14 A I could.

15 Q I can't play the clip for you, but I think maybe Mr. Osborne
16 can.

17 ATTORNEY HENSLEY: Can the witness step down, Your Honor, so
18 that he can come over?

19 THE COURT: Of course.

20 ATTORNEY HENSLEY: You have to be pretty close to be able to
21 hear.

22 THE COURT: Of course.

23 (WHEREUPON, the video is published.)

24 Q I'm sorry. Were you able to understand what he asked you
25 before he signed the waiver of rights at the bottom?

1 A It's a two-part question, right? The one hesitation before
2 the no. 2, he says, Huh. And I re-read the question, make sure
3 he understands it, and then he replies, This is like Miranda
4 rights? And I say, Yes, this is your advisement of rights. And
5 then before the waiver at the bottom, it's indiscernible to me
6 from listening to it but I do ask him, like, kind of, Huh, like
7 if he had a question, so I acknowledged it. He kind of said
8 something, but he does sign the waiver of rights.

9 ATTORNEY HENSLEY: I think that's all the questions I have,
10 Your Honor.

11 THE COURT: All right. Yes, ma'am? Just to make sure, just
12 to offer you an opportunity to cross-examine.

13 ATTORNEY GAY: Yes. I have no questions for the witness,
14 Your Honor.

15 THE COURT: Redirect?

16 ATTORNEY OSBORNE: No, Your Honor.

17 THE COURT: Thank you. Any additional witnesses?

18 ATTORNEY OSBORNE: No, Your Honor.

19 THE COURT: No?

20 ATTORNEY OSBORNE: No.

21 THE COURT: Okay.

22 ATTORNEY HENSLEY: Thank you, Your Honor. While I think the
23 testimony is clear, you know, obviously 4:00 in the morning; the
24 fellow's been in custody at least four hours, around four hours,
25 before the start; interview lasted an hour. While he wasn't

1 denied access to a phone, food or water, he certainly wasn't
2 offered any access. He appears to be tired. He hesitates during
3 the signing of the form.

4 So we would argue that the statements were not
5 intelligently, knowingly and voluntarily made, and were just
6 obtained in violation of the defendant's rights.

7 THE COURT: Thank you so much. And as I listened to the
8 tape, and based on the testimony, and given the level that I
9 looked at it, it's admissible.

10 Whether or not the jury believes it is voluntary. But when
11 we get to it, I think it's up to them. But I think it's
12 admissible. I respectfully deny your motion.

13 ATTORNEY HENSLEY: Thank you, Your Honor.

14 THE COURT: What else we got? What else do we got?
15 Anything from the state?

16 ATTORNEY OSBORNE: That's all I had on my list.

17 THE COURT: All right. Yes, ma'am?

18 ATTORNEY GAY: No, nothing more.

19 ATTORNEY HENSLEY: I think that's everything that we have at
20 pretrial.

21 THE COURT: Very well. Our first panel is coming in at
22 9:30?

23 CLERK OF COURT: Yes, ma'am.

24 THE COURT: And I'll do the general qualification, and then
25 we will go into the qualification on this case. We'll do it just

1 like we did the last time.

2 What we attempted to do the last time was to get enough
3 jurors to have a draw to have to pick from. That did not work
4 out particularly well. If it works out this time, and basically,
5 really, everyone's review, if you all are satisfied when we have
6 qualified sufficient people, then we will stop at that point. If
7 not, we'll just qualify the whole panel and have them come back.

8 What we did last time, and what I anticipate we'll do this
9 time, is it will take us all day to get through the
10 qualifications. And then we'll have folks come back, enough
11 folks come back, the following morning for our jury selection,
12 and then we'll select our jury and go from there.

13 You have looked at the indictments? Yes? Yes?

14 ATTORNEY HENSLEY: I have, Your Honor.

15 ATTORNEY GAY: Yes, ma'am.

16 THE COURT: Okay, great. And you've looked at each other's
17 voir dire? She doesn't have any ---

18 ATTORNEY HENSLEY: With regard to the indictments, the armed
19 robbery indictments are in there, but I understand he's not going
20 for it.

21 THE COURT: That's right; right?

22 ATTORNEY OSBORNE: Yes, ma'am.

23 ATTORNEY GAY: And I haven't created a voir dire document
24 yet. I've looked at Laree's, and mine will be very similar. I
25 might have one or two other questions, but I might just adopt

1 what she did. We'll see.

2 ATTORNEY HENSLEY: Mr. Major has an unrelated case, an
3 indictment for that case, up here for an ABHAN. I just assume
4 that there will be no mention of that and they won't be read or
5 anything; right? We're not -- I mean, this isn't that trial, and
6 I don't represent him on those charges. So I just, for the
7 record ---

8 THE COURT: That would be down in the clerk's office. It
9 won't get mixed up.

10 ATTORNEY HENSLEY: That causes me concern.

11 THE COURT: Sure, of course. Of course. All right. Very
12 well. And I think we did three alternates last time.

13 CLERK OF COURT: I think.

14 THE COURT: I anticipate we'll do the same this time. And
15 just to put on the record, and I guess at the beginning by
16 asking, is the victim, the alleged victim, requesting that the
17 search dog be present, as well?

18 ATTORNEY OSBORNE: Yes, ma'am.

19 THE COURT: Okay. And last time what we did was, the
20 service dog was in, in the row where the jury could not see the
21 service dog. And I don't think there was any indication at any
22 point that the jury saw the dog at all. And if there's a request
23 that the dog be present, I'm happy to hear from you. But the
24 last time the dog, I allowed the dog to be present, and no one
25 knew he was in the courtroom, or she was in the courtroom. So

1 any concern?

2 ATTORNEY HENSLEY: I'd just object to the presence of the
3 dog just because this case involves ill-treatment of an animal.
4 So, you know, I think it creates sympathy towards the victim.

5 But I do agree that for the parts of the trial that I could
6 hear while I was downstairs, I never saw any issue with the dog.

7 Now, the dog was barking earlier in the day while we were up
8 here, but I didn't see that happen in that trial. So I know from
9 having dogs, there's not much you can do to make it not do that
10 when it starts. So, you know, I don't know, we'll cross that
11 bridge when we come to it.

12 THE COURT: You're exactly correct. I mean, service dogs
13 shouldn't do that, and didn't happen the last time. And we'll
14 just anticipate -- if it happens this time, it will present a
15 problem, without a doubt, and we will see where we go from there.
16 Okay.

17 Have a good weekend, everyone. I will see you Monday
18 morning at 9:30.

19 ATTORNEY OSBORNE: Thank you, Judge.

20 (WHEREUPON, court recessed for the day on Friday, July 9,
21 2021, at 4:04 p.m., and reconvened on Monday, July 12, 2021, at
22 10:07 a.m.)

23 PRETRIAL - MATTER(S) OF LAW

24 THE COURT: You got so much going on. You want to tell me
25 something about stickers?

1 ATTORNEY OSBORNE: After we got through on Friday I spoke
2 with the clerk, and we think we have a proposal that would be
3 easier for us. And the defense, I emailed them, I brought it by
4 them, and both Ms. Hensley and Ms. Gay agree.

5 So what we were going to do was take all of the evidence;
6 put it into the back room; remove all of the old stickers and
7 then replace them with new stickers. And where they can't be
8 removed because of whatever, paper, whatever, we'll just mark it
9 out and slap a new sticker on top of it. In case a new sticker
10 falls off, at least there will be no date.

11 When we get done with trial, I guess regardless of which way
12 it goes when we get done with trial, we will then put stickers --
13 so each exhibit will then have two stickers. And the clerk has
14 agreed, because she kept notes from the first trial, to go back
15 and recreate putting an initial and the date from the first trial
16 from which each exhibit was entered.

17 THE COURT: Got it.

18 ATTORNEY OSBORNE: So every exhibit will have two stickers,
19 with the date from the new trial and from the old trial.

20 THE COURT: Got it. So when we're finished and you're all
21 back there doing the stickers, and I've got clerk's office and
22 defense counsel and the solicitor's office all together doing
23 that, because you've all done such a wonderful job, if we had
24 DoorDash or Uber breaks up here, I would be responsible for
25 lunch. But in that we don't, I guess I'm safe.

1 ATTORNEY OSBORNE: Fair enough. Thank you, Judge.

2 THE COURT: That sounds like a perfect resolution. A lot of
3 work on everybody's part, and I am very grateful.

4 ATTORNEY OSBORNE: Thank you, Judge.

5 THE COURT: Thank you. All right. And that's good,
6 everybody's cool with that?

7 ATTORNEY HENSLEY: I think that works fine. I think that
8 works better than everything else we thought of.

9 THE COURT: Plus you've got me beat, that's for sure.

10 (WHEREUPON, court recessed at 10:09 a.m. and reconvened at
11 11:11 a.m.)

12 (WHEREUPON, the first jury panel is seated in the courtroom
13 at 11:20 a.m.)

14 (WHEREUPON, the Clerk of Court conducted roll call, and the
15 Court conducted exemptions and transfers necessary to qualify the
16 first jury panel.)

17 JURY VOIR DIRE and QUALIFICATION

18 THE COURT: Now, ladies and gentlemen, we are now going to
19 do a little bit of, tell you a little bit of, a civics lesson.
20 And here it is.

21 Ladies and gentlemen, under South Carolina law, the
22 prosecuting attorneys are called solicitors. There may be one
23 other state in the country where the prosecuting attorney is
24 called solicitor. And we may be the only one. I need you to
25 look that up, I need know that, because I think we may be the

1 only one. You hear state's attorney. Most often, they're called
2 the district attorney but, in South Carolina, we call our
3 prosecuting attorneys solicitors, is what we call them. And it
4 absolutely hearkens back to English jurisprudence.

5 And so in just a moment I'm going to be calling on the
6 solicitor's office, and I'm going to ask that the solicitor's
7 office call our first case for trial. Solicitor.

8 ATTORNEY OSBORNE: Thank you, Judge. This is the case of
9 The State versus Elijah Green and Devonte Major. Elijah Green
10 and Devonte Major have been charged with the same charges. I'll
11 just go through them and read the indictment numbers.

12 Elijah Green's been charged with murder. The indictment
13 number's 2019-GS-18-0423; attempted murder, that's 0426; burglary
14 in the first degree, 0424; possession of a firearm during the
15 commission of a violent crime, 0427; ill-treatment of animals,
16 0429.

17 Devonte Major's charges are murder, that's 2019-GS-18-0430;
18 attempted murder is 0432; burglary in the first degree, 0433;
19 possession of a firearm during the commission of a violent crime,
20 0434; and ill-treatment of animals, 0436.

21 And may I approach, Your Honor?

22 THE COURT: You may.

23 Now, ladies and gentlemen, what has just occurred is that
24 solicitor has called our first case for trial, and he's given
25 some numbers and he's read the type of charge for which, these

1 individuals, the indictments have been issued for. And in a
2 moment I am going to be reading to you some of the allegations
3 from the indictments.

4 Now, before I do that, it's really important that I
5 immediately tell you that, to each and every allegation as to
6 each of these indictments, each of these gentlemen have pled not
7 guilty. Not guilty. And that places the burden of proof on the
8 state to prove each and every allegation of each indictment.
9 They must prove those allegations beyond a reasonable doubt for
10 each of these individuals.

11 Now, ladies and gentlemen, so I want to tell you that, what
12 is an indictment? Well, first of all, it's a piece of paper. A
13 piece of paper. And the purpose of it is to notify a citizen
14 that the state alleges that that citizen has violated one or more
15 of the criminal laws of the state of South Carolina. It is a
16 notice document.

17 It is not, in any sense, evidence of any of the allegations
18 that it contains. So, ladies and gentlemen, my purpose in
19 reading to you some of the allegations of the indictment is
20 simply to find out whether or not any of you know or think you
21 may know, or have you heard or think you may have heard, anything
22 about these allegations. And that's the reason that I will be
23 reading to you some of the allegations of the indictments.

24 Now, ladies and gentlemen, after I do that then I'm going to
25 have an opportunity to introduce you to some folks. And then I

1 have a few additional questions that I will ask of you.

2 Now, ladies and gentlemen, each of these gentlemen are
3 charged with the same crimes. So the way that I'm going to
4 proceed is that I am going to go over them. I'm going to,
5 instead of reading each one twice, I'm going to tell you that the
6 indictment, the allegations of the particular indictment, that
7 there's one for each of these gentlemen. And again, I do want
8 you to keep in mind that these gentlemen, each of them, have pled
9 not guilty to each of these indictments.

10 All right. I'm going to, again I'm going to, tell you the
11 question in advance that I'm going to ask you at the conclusion
12 of reading to you some of the allegations of the indictments. My
13 question is going to be this. Do any of you know or think you
14 may know, or have you heard or think you may have heard, anything
15 about these allegations?

16 Ladies and gentlemen, Indictment 2019-GS-18-0430 and 0423
17 allege that, in Dorchester County, South Carolina, on or about
18 January the 28th, 2019, with malice aforethought, the defendants,
19 Elijah Quinlin Diante Green and Devonte Trevon Major, did kill
20 one Joe Weaver, by means of shooting the victim. The victim did
21 die as a proximate result thereof. This offense being in
22 violation of the common law and Section 16-3-10 of the South
23 Carolina Code of Laws, as amended. Those are the allegations of
24 those indictments.

25 With regards to Indictments 2019-GS-18-0426 and 0432, these

1 indictments are for attempted murder. And they allege that, in
2 Dorchester County, South Carolina, on or about January the 28th,
3 2019, the Defendant Elijah Quinlin Diante Green and the Defendant
4 Devonte Trevon Major did, with the intent to kill, attempt to
5 kill one Marcus Porter with malice aforethought, by shooting the
6 victim, this offense being in violation of Section 16-3-29 of the
7 South Carolina Code of Laws, as amended.

8 And with regards to Indictments 2019-GS-18-0433 and 0424,
9 these indictments allege that, in Dorchester County, South
10 Carolina, on or about January the 28th, 2019, the Defendant
11 Elijah Quinlin Diante Green and Defendant Devonte Trevon Major
12 did willfully and unlawfully enter the dwelling of Marcus Porter
13 without consent and with the intent to commit a crime therein,
14 and when, in effecting entry or while in the dwelling or in
15 immediate flight, the defendant, or another participant in the
16 crime, is armed with a deadly weapon or explosive, causes
17 physical injury to a person who is not a participant in the
18 crime, uses or threatens the use of a dangerous instrument,
19 displays what is or appears to be a knife, pistol, revolver,
20 rifle, shotgun, machinegun or other firearm, the burglary is
21 committed by a person with a prior record of two or more
22 convictions for burglary or housebreaking or a combination of
23 both, or the entering or the remaining occurs in the nighttime.
24 This offense being in violation of Section 16-11-311 of the South
25 Carolina Code of Laws, as amended.

1 Further, Indictments 2019-GS-18-0434 and Indictment
2 2019-GS-18-0427 allege that, in Dorchester County, South
3 Carolina, on or about January the 28th, 2019, the Defendant
4 Elijah Quinlin Diante Green and Devonte Trevon Major did visibly
5 display or have in his possession a handgun during the commission
6 of a violent crime, as defined by Section 16-1-60 of the Code of
7 Laws of South Carolina, 1976, as amended, to wit, burglary in the
8 first degree and murder, thereby violating Section 16-23-490 of
9 the Code of Laws of South Carolina, 1976, as amended.

10 And Indictments 2019-GS-18-0436 and Indictment
11 2019-GS-18-0429 allege that, in Dorchester County, South
12 Carolina, on or about January the 28th, 2019, the Defendant
13 Elijah Quinlin Diante Green and the Defendant Devonte Trevon
14 Major did torture, torment, needlessly mutilate, cruelly kill or
15 inflict excessive or repeated unnecessary pain or suffering upon
16 an animal or by omission or commission did cause the acts to be
17 done, in that the defendant did cruelly kill a dog by shooting
18 it. This offense being in violation of Section 47-1-40(B) of the
19 South Carolina Code of Laws, as amended.

20 Ladies and gentlemen, to each of these indictments and to
21 each of the allegations contained in each of these indictments
22 each of these defendants have pled not guilty.

23 Ladies and gentlemen, do any of you know or think you know,
24 or have you heard or think you may have heard, anything about
25 these allegations? If so, please stand at this time.

1 (No response.)

2 THE COURT: And I find no one standing. All right. Now,
3 ladies and gentlemen, please allow me to introduce you to
4 Solicitor Osborne. And he will introduce the folks from his
5 office and who will be assisting him, if anyone, during the
6 trial. And I think someone appears to be.

7 And my question is going to be, after each introduction of
8 folks, I'm going to ask you this question. Are you related, by
9 blood or marriage, or acquainted with these individuals?

10 Let me define acquainted with for you. I'm trying to find
11 out if you have any connection with these folks at all. It may
12 be that you went to school with someone that I'll ask you about,
13 20 years ago, for example. You hadn't thought about that person,
14 you hadn't seen him in 20 years. Well, believe it or not, you do
15 have that connection with the individual, and you would stand and
16 give me that information. I'm trying to find out if you have any
17 connection with these folks. It may be that you simply work at
18 the same location with someone that you'll hear about and maybe
19 wave to each other across the parking lot. Well, believe it or
20 not, that relationship, as limited as it, is, would be
21 encompassed within my definition of acquainted with, and you
22 would simply stand and share that information with me.

23 Again, I'm simply trying to find out if you have any
24 relationship with these folks at all.

25 Ladies and gentlemen, and I'm going to now call on Solicitor

1 Osborne to go over the folks in his office.

2 ATTORNEY OSBORNE: Thank you, Your Honor.

3 THE COURT: Yes.

4 ATTORNEY OSBORNE: Again, my name is David Osborne. I think
5 the Judge is right, I think we are the only prosecutors, in South
6 Carolina, in the country that refer to ourselves as assistant
7 solicitors. So I am assistant solicitor in the First Circuit.
8 This is in Nick Young, he is also an assistant solicitor, he's
9 going to be prosecuting the case with me. This is Carrie Huff,
10 she is our court administrator.

11 Throughout the trial you'll probably also be seeing Stacy
12 Cook, she's a legal assistant, as well as Rebecca Durr. They're
13 going to be helping rally in witnesses and whatnot as the trial
14 goes along.

15 And you'll also be seeing seated at our table the
16 Summerville Police Department Detective Sergeant Jonathan Davis.

17 Also in our office, other assistant solicitors, David Pascoe
18 is our First Circuit Solicitor, he's our boss; Kelly LaPlante,
19 she's in First Circuit here in Dorchester; Mike Speers, John
20 Rivers, Baker Allen, Meagan Chinnis, Jillian Frederick and Vergil
21 Deas.

22 THE COURT: Ladies and gentlemen, are you related, by blood
23 or marriage, or acquainted with any of the individuals that
24 Mr. Osborne just mentioned, or anyone in the First Circuit
25 Solicitor's Office? If so, please stand at this time.

1 (A juror stands.)

2 THE COURT: All right. Now, let me tell you how I need you
3 to do, how we're going to do this. I am going to ask you some
4 follow-up questions. And I don't want any more information than
5 and I ask for, okay.

6 JUROR 391: Yes, ma'am.

7 THE COURT: First of all, your number?

8 JUROR 391: 391.

9 THE COURT: 391. Tell me who you know.

10 JUROR 391: Carrie here, and Ms. Rebecca Durr.

11 THE COURT: All right. Now, do you visit in each others'
12 homes?

13 JUROR 391: No.

14 THE COURT: All right. Would you describe your relationship
15 as one that is a personal friendship, a personal
16 acquaintanceship, or one that's more of a professional nature?

17 JUROR 391: Friendship.

18 THE COURT: Friendship, all right. And as a result of the
19 friendship that you just described, might those friendships/could
20 those friendships, in any regard, interfere with your ability to
21 be completely, completely fair and impartial to the state of
22 South Carolina, as well as Mr. Green and Mr. Major? And it's
23 just got to be yes or no.

24 JUROR 391: No.

25 THE COURT: Can you set those relationships completely aside

1 and make up your mind based upon what you hear in court while
2 court is in session, being completely unaffected by this
3 relationship?

4 JUROR 391: Yes.

5 THE COURT: Please stay with us.

6 Now, ladies and gentlemen, please allow me to introduce you
7 to Mr. Elijah Green. Mr. Green, could please stand. Thank you
8 so much, Mr. Green.

9 Ladies and gentlemen, are you related, by blood or marriage,
10 or acquainted with Mr. Elijah Green? And, ladies and gentlemen,
11 Mr. Green's full name is Elijah Quinlin Diante Green. Are you
12 related, by blood or marriage, or acquainted with Mr. Green? If
13 so, please stand at this time.

14 (No response.)

15 THE COURT: And I find no one standing.

16 Now, ladies and gentlemen, Mr. Michael Coleman is present
17 with us today representing Mr. Green. At trial Ms. Melisa Gay
18 is going to be with Mr. Green, representing Mr. Green. And so
19 I'm going to allow Mr. Coleman to introduce himself and introduce
20 Ms. Gay.

21 And the question will be, are you related, by blood or
22 marriage, or acquainted with or have you or any member of your
23 immediate family, to your knowledge, ever been represented by
24 Mr. Coleman or Ms. Gay. Thank you. Mr. Coleman?

25 ATTORNEY COLEMAN: Thank you, Judge. My name is Michael

1 Coleman. I have a practice in Charleston, pretty much the
2 tri-county area. I've been practicing here almost 20 years. I
3 am actually here on behalf of Ms. Melisa Gay, Lisa Gay, who will
4 be here later. And she has her paralegal here with her today,
5 Mary English.

6 THE COURT: Thank you for that, Mr. Coleman.

7 Ladies and gentlemen, are you related, by blood or marriage,
8 or acquainted with or have you or any member of your immediate
9 family ever been represented by Mr. Coleman or Ms. Gay, or are
10 you acquainted with the paralegal from Ms. Gay's office, or any
11 other employee, to your knowledge, of Ms. Gay or Mr. Coleman? If
12 so, please stand at this time.

13 (No response.)

14 THE COURT: And I find no one standing.

15 Now, ladies and gentlemen, please allow me to introduce you
16 to Mr. Devonte Trevon Major. And this is Mr. Major. Thank you,
17 Mr. Major. You may be seated.

18 Ladies and gentlemen, are you related, by blood or marriage,
19 or acquainted with Mr. Devonte Major? If so, please stand.

20 (No response.)

21 THE COURT: And I find no one standing.

22 Now, ladies and gentlemen, allow me to introduce you to
23 Ms. Laree Hensley. She represents Mr. Major. She is a sole
24 practitioner. I'm going to allow her to introduce herself to
25 you.

1 ATTORNEY HENSLEY: Thank you, Your Honor. My name's Laree
2 Hensley. I'm a lawyer in the tri-county area. I handle cases in
3 Charleston, Berkeley and Dorchester County. I've been a lawyer
4 for 21 years, and my practice is on Dorchester Road. And I
5 handle mostly family court and criminal defense cases.

6 THE COURT: Thank you. Ladies and gentlemen, are you
7 related, by blood or marriage, or acquainted with or have you or
8 any member of your immediate family, to your knowledge, ever been
9 represented by Ms. Laree Hensley? If so, please stand at this
10 time.

11 (No response.)

12 THE COURT: And I find no one standing.

13 Now, ladies and gentlemen, as an accommodation to the Court,
14 the attorneys give to me at this time a list of potential
15 witnesses, because it's my opportunity to ask whether or not
16 you're related, by blood or marriage, or acquainted with any of
17 the potential, potential witnesses. So in just a moment I'm
18 going to be going over, with you, that list.

19 My question as to each and every one of these individuals
20 is, are you related, by blood or marriage, or acquainted with any
21 of these individuals? Apparently I have misplaced my list. I am
22 so sorry.

23 All right. Leta Boehler; Joshua Scarborough; Jacob Cramer;
24 Dylan Reynolds; Matthew Brooks.

25 And I'm just going ask, if these folks happen to be, here,

1 I'm going to ask you to stand, just, it's easier to put a face
2 with the names oftentimes than just the name.

3 Kenneth Driscoll; I want to be sure I said Matthew Brooks, I
4 think I did; Christopher Flynn; Scott Kunce; Phillip Moy;
5 Jonathan Davis; Rachel Nguyen; Ryan DeWane; Nicole Hardin; James
6 Green; James, apparently has a nickname, Cord, King; Nicholas
7 Batalis; David Swibaker; Marcus Porter; Salina Sheppard; Muanah
8 Fortune; Polo Salazar; Jamie Hall; Bethany Davidson; Vera
9 Martinez; Charlotte Pitts; Jackie Davis; Daniel Greene; Christina
10 Denson; Marie Wearing; Christopher Flynn; Christopher Hirsch;
11 Taylor Jackson; Megan Wade; Jonathan James; Jaquavious
12 Washington; Wade Rollings; Bernard Seabrook; Shaneka Wright.

13 Are you related, by blood or marriage, or acquainted with
14 any of those individuals? Or do you need me to go over the list
15 again?

16 (No response.)

17 THE COURT: I find no one standing. I find no one standing.

18 Now, ladies and gentlemen, are any members of our jury
19 panel, are any members of our jury panel related, by blood or
20 marriage, to a member of law enforcement? Are you now related,
21 by blood or marriage, to a member of law enforcement? If so,
22 please stand.

23 (No response.)

24 THE COURT: I find no one standing.

25 (A juror stands.)

1 THE COURT: Oh, maybe I do. Your number?

2 JUROR 206: 206.

3 ATTORNEY OSBORNE: And ---

4 JUROR 206: I just want to clarify. When you say law
5 enforcement, does that mean any law enforcement at all in the
6 whole country?

7 THE COURT: Yes, in the country.

8 JUROR 206: Okay. Yes.

9 THE COURT: Your number again?

10 JUROR 206: 206.

11 THE COURT: And the law enforcement agency is?

12 JUROR 206: It's the Zachary Police Department in Zachary,
13 Louisiana.

14 THE COURT: Gotcha. And that relationship is?

15 JUROR 206: He's a cousin.

16 THE COURT: Thank you.

17 JUROR 206: You're welcome.

18 THE COURT: I'm going to ask these two questions together.
19 Don't respond to either until I've asked both.

20 Are any members of our jury panel a member of an
21 organization such as MADD, the Mothers Against Drunk Driving,
22 CAVE, PAR, or any other type of group? That's question number
23 one.

24 Question number two is this. Have any members of our jury
25 panel or members of your immediate family or close personal

1 friend -- now, let me talk to you about what this is. This
2 close, personal friend is someone who is so close to you that
3 they really are like a member of your family. In other words,
4 you probably like this close, personal friend better than you
5 like your brother or sister. That's how close it is. This is
6 not just some casual friend or even casual, close friend; this is
7 someone who is so important to you that they are like a, truly
8 like a, member of your family. So that's what I'm talking about
9 when I'm talking about a close, personal friend.

10 Have you or any member of your immediate family or close,
11 personal friend, been the victim of a violent crime? If you need
12 to respond to either of those questions, please stand.

13 (Jurors stand.)

14 THE COURT: All right, I'm going to have you come forward.
15 And your number?

16 THE BAILIFF: No. 206; juror 206.

17 THE COURT: Now, let me tell you, when you approach, I need
18 enough volume for my court reporter to hear. I don't want
19 anybody else hearing.

20 (WHEREUPON, an in camera colloquy is conducted outside the
21 presence of the jury as follows:)

22 ATTORNEY OSBORNE: And people may gather around but, if they
23 do, they've got to do the best they can. I don't want the rest
24 of the panel to be able to hear you. Yes, ma'am?

25 JUROR 206: My cousin that I mentioned ---

1 THE COURT: Way too much volume.

2 JUROR 206: My cousin that I mentioned earlier that's a
3 police officer, his father was killed by a drunk driver years
4 ago. And then, also, my daughter was sexually assaulted about 10
5 years ago.

6 THE COURT: Would either of those events happening keep
7 you/prevent you or have an impact on your ability to be
8 completely fair and impartial both to the state, as well as to
9 the defendants?

10 JUROR 206: No, they would not.

11 ATTORNEY OSBORNE: Can you set those experiences completely
12 aside and make up your mind based upon what you hear in court
13 while court is in session?

14 JUROR 206: Yes, I can.

15 THE COURT: Thank you so much. You may stay with us.
16 Next, please. Yes, ma'am?

17 THE BAILIFF: Juror no. 234.

18 (WHEREUPON, an in camera colloquy is conducted outside the
19 presence of the jury as follows:)

20 THE COURT: Yes, ma'am. Hi.

21 JUROR 234: When I was 19, I was robbed at gunpoint. And my
22 brother-in-law used to be a police officer, and he was on the
23 SWAT team, and he was almost killed by prisoner.

24 THE COURT: All right. Okay. As a result of either of
25 those experiences, might they or could they interfere with your

1 ability to be completely fair and impartial both to the state, as
2 well as to the defendants?

3 JUROR 234: I don't think so.

4 THE COURT: Can you set those experiences completely aside
5 and make up your mind based upon what you hear in court while
6 court is in session?

7 JUROR 234: Yes.

8 THE COURT: Yes?

9 JUROR 234: Uh-huh.

10 THE COURT: Thank you. Please stay with us.

11 THE BAILIFF: Juror no. 93.

12 (WHEREUPON, an in camera colloquy is conducted outside the
13 presence of the jury as follows:)

14 THE COURT: Good morning. Or, good afternoon. Yes, ma'am?

15 JUROR 93: My first son's friend was murdered a few years
16 ago in Louisville.

17 THE COURT: Would that event happen to impact/interfere in
18 any respect with your ability to be completely fair and impartial
19 to the state, as well as to these defendants?

20 JUROR 93: Probably not.

21 THE COURT: Can you set that experience completely aside,
22 completely aside, and make up your mind based solely, based only,
23 on what you hear in court while court is in session, being
24 completely unaffected by that experience?

25 JUROR 93: Uhm, I don't know.

1 THE COURT: All right. I'm going to ask you to sit this one
2 out, but please stay with is.

3 JUROR 93: All right.

4 THE COURT: Out.

5 THE BAILIFF: Juror no. 204.

6 (WHEREUPON, an in camera colloquy is conducted outside the
7 presence of the jury as follows:)

8 ATTORNEY OSBORNE: 204, yes, ma'am?

9 JUROR 204: I had a cousin that was murdered a couple years
10 ago.

11 THE COURT: And as a result of that experience, might
12 that/could that interfere with your ability to be completely fair
13 and impartial to the state, as well as to each of these
14 defendants?

15 JUROR 204: It won't.

16 THE COURT: Can you set that tragedy aside and make up your
17 mind based upon what you hear in court while court is in session?

18 JUROR 204: Yes, ma'am.

19 THE COURT: Very well. Please stay with is.

20 JUROR 204: Thank you.

21 THE BAILIFF: Juror no 391.

22 (WHEREUPON, an in camera colloquy is conducted outside the
23 presence of the jury as follows:)

24 THE COURT: Yes sir?

25 JUROR 391: Yes, ma'am. Mr. Jim Bell, murdered back on

1 January 1st, he was like a father to me. And his son was like a,
2 son who committed murder, was like a brother to me.

3 THE COURT: Okay. As a result of that occurrence, might
4 that or could that interfere with your ability to be completely
5 fair and impartial to the state, as well as to each of these
6 defendants?

7 JUROR 391: I would hope not.

8 THE COURT: You would hope not. Here's the question. Can
9 you make up your mind based solely, meaning based only, on what
10 you hear in court while court is in session, being completely
11 unaffected by that occurrence?

12 JUROR 391: I would hope I would make the right decisions.
13 Yes.

14 THE COURT: All right. Are you convinced, do you believe,
15 or are you reticent?

16 JUROR 391: I can make right decisions.

17 THE COURT: Okay. Right decision means that, right decision
18 means that you listen to the evidence, listen to the law, and you
19 make your decision whether or not the state has met its burden of
20 proof as to each allegation on each indictment with regards to
21 each defendant. All must be considered independently. Can you
22 do that?

23 JUROR 391: Yes.

24 THE COURT: Yes?

25 JUROR 391: Yes.

1 THE COURT: All right. Stay with is.

2 JUROR 391: Yes, ma'am.

3 THE COURT: Can you all hear me if I stand here? No? Yes?
4 All right. I'm going to stay down here just in case anybody else
5 needs to approach.

6 All right. I'm going to ask three questions together. And
7 please don't answer any question until I've asked all three.

8 Are you a member of the National Rifle Association? That's
9 the first question.

10 The second question, Have you or any member of your
11 immediate family ever been arrested for a violent crime?

12 And, do you have any member of your immediate family who has
13 ever been convicted of a violent crime?

14 If you need to respond to any of those three questions, I'm
15 going to ask you to please approach. Y'all need me to ask them
16 again? Everybody got them?

17 (No response.)

18 THE COURT: All right. I find no one approaching. Very
19 well.

20 And does any member of our jury panel live in the area of
21 ■ Myrtle in Summerville, South Carolina? In the area means,
22 let's say, within five blocks of ■ Myrtle, South Carolina? If
23 so, please stand.

24 (No response.)

25 THE COURT: All right. I find no one standing.

1 And have any members of our jury panel had any discussions
2 or overheard any conversation or had contact with any person
3 regarding a Term of Court in Dorchester County around May the
4 12th, 2021? If so, please stand.

5 (No response.)

6 THE COURT: Find no one standing.

7 Are you related, by blood or marriage, or a close, personal
8 friend of anyone employed by the city of Summerville's Police
9 Department, Dorchester County Sheriff's Department or Colleton
10 County Sheriff's Department? If so, please stand.

11 (No response.)

12 THE COURT: And I find no one standing.

13 All right. Ladies and gentlemen, my final question to you
14 is this. Do you know any reason why you ought not/should
15 not/could not be a juror in this case, being ready, willing and
16 able to listen to the evidence and make up your mind based solely
17 on what you hear in court while court is in session, being
18 completely unaffected by matters -- the case law talks about
19 matters -- extraneous, matters outside the Court, being
20 completely fair and impartial to the state and to each of these
21 defendants?

22 If you have any concern about your ability to do that, I'm
23 going to ask you to approach. It may be that the particular
24 subject matter of these indictments causes you concern. It might
25 be because all of a sudden you remember that at home on the

1 refrigerator the tickets to go see Mickey are posted and you
2 forgot to tell me you're supposed to leave tomorrow afternoon to
3 go see Mickey. Or it really could be anything. It could be that
4 you now remember that you needed to respond to a question that I
5 asked earlier and now it's like, Gosh, how do I bring that up
6 now, I forgot, now I remember. If for any reason whatsoever, I'm
7 going to ask you to please approach. Just come on forward. Come
8 on forward. Stand and come forward.

9 THE BAILIFF: Juror no. 218.

10 (WHEREUPON, an in camera colloquy is conducted outside the
11 presence of the jury as follows:)

12 THE COURT: Yes, ma'am?

13 JUROR 218: I just get emotional after I hear all that. It
14 makes me cry. I cannot stand it. I get too emotional.

15 THE COURT: You think you're too emotional?

16 JUROR 218: Yeah, I get too emotional. Talk about dog and
17 that, makes -- I, I am about to cry.

18 THE COURT: Okay. And other than crying, how do you think
19 that will affect your ability to listen to the evidence ---

20 JUROR 218: I don't think I can handle.

21 THE COURT: I'm sorry?

22 JUROR 218: I don't think I can handle.

23 THE COURT: You don't think you can handle it?

24 JUROR 218: I can't handle any of it.

25 THE COURT: You can't handle it?

1 JUROR 218: I can't handle it. I get too emotional.

2 THE COURT: All right. I am going to transfer your service.
3 I'm going to ask you to go, and we'll put you in another term of
4 court. If you'll go over done there. All right.

5 Next.

6 THE BAILIFF: Juror no. 282.

7 (WHEREUPON, an in camera colloquy is conducted outside the
8 presence of the jury as follows:)

9 THE COURT: You're 282. Yes, ma'am?

10 JUROR 282: I work for two entities, Charleston Veterinary
11 Referral Center and BluePearl Pet, and we do emergency animals in
12 trauma. So I'm not quite sure this is -- it might be a conflict
13 of interest in the case.

14 THE COURT: Well, I will tell you that it is not a conflict
15 of interest. But I will ask you this question. Because of what
16 you do for a living, do you believe that, based on the
17 allegations, that they could/they might, you're concerned that
18 that would have an impact on your ability to be completely fair
19 and impartial to the state, as well as to each of these
20 defendants?

21 JUROR 282: It probably would. Yes.

22 THE COURT: Yes. I'm going to ask you to transfer your
23 service. All right. Thank you.

24 THE BAILIFF: Juror no. 7.

25 (WHEREUPON, an in camera colloquy is conducted outside the

1 presence of the jury as follows:)

2 THE COURT: Yes, ma'am?

3 JUROR 7: Yes, ma'am. I work for an attorney at the moment,
4 and we are slammed with cases and I really don't have the
5 capability to get off. And my mom's having surgery next week.

6 THE COURT: Okay. What day is your mama having surgery?

7 JUROR 7: Wednesday.

8 THE COURT: She's having surgery on Wednesday, okay.

9 JUROR 7: And we've already lost my dad, so this is the
10 first big surgery after him.

11 THE COURT: I'm not going to risk you not being there for
12 your mama. I'm going to transfer your service. Pick another
13 week.

14 JUROR 7: Thank you, ma'am.

15 THE BAILIFF: Juror no. 286.

16 (WHEREUPON, an in camera colloquy is conducted outside the
17 presence of the jury as follows:)

18 THE COURT: I'm going to let you try a civil term. I'm
19 going to -- go to Jody. I'm going to let you try a civil, like a
20 motor vehicle accident. I'm going to transfer your service.
21 Just go pick another week.

22 JUROR 286: Thank you. Thank you. Go over and see her?

23 THE COURT: Yeah, go see Jody.

24 ATTORNEY OSBORNE: Was 93 excused?

25 THE COURT: Yeah, she's excused. You got 93 as excused?

1 CLERK OF COURT: Yes.

2 THE COURT: All right. Now, ladies and gentlemen, this is
3 how we're going to proceed. You are all now qualified to be
4 potential jurors in this case. We're going to do our jury
5 selection in the morning, in the morning, at 9:30. So I need you
6 here at 9:30 in the morning.

7 And, ladies and gentlemen, just to confirm with everyone,
8 since we're doing panels, I like to be sure I've got everybody's
9 phone number so that we can reach folks. And so you sent in your
10 juror information sheet. If your number has changed or if you
11 didn't send in your juror information sheet but you came today,
12 that's terrific, if you'll just approach and make sure that we
13 have your number where we can reach you. If you have gotten so
14 excited because it's a brand new phone that's come out and you
15 have a brand new phone number and we may not have your number,
16 I'm going to ask you to please approach and be sure that we have
17 it.

18 Otherwise, I'm going to ask you to please report, just as
19 you did this morning, at 9:30 in the morning.

20 Now in just a moment I'm going to be excusing you with some
21 instructions. You got a little bit of information, not a lot,
22 but a little bit. Because you have that information, you must
23 not discuss this matter or allow anyone to discuss it with you.
24 And that means your family, your friends, your coworkers. And
25 that's because you are a potential juror.

1 Now, you can certainly tell whomever's curious that you did
2 report; that you have been through the jury selection; and that
3 you have to report in the morning and you may be selected to
4 serve on the jury. But, ladies and gentlemen, please do not
5 discuss this matter; do not discuss these allegations.

6 And if anybody is -- you can tell whomever's curious that
7 this is a criminal matter as opposed to a civil matter, but
8 you've been told by the Judge not to discuss it. Let them get
9 upset with me, not you.

10 And anybody work at night? Anybody work at night, you go in
11 at night? You do? Not tonight.

12 JUROR: Yeah.

13 THE COURT: Blame it on me. Anybody that I need to call and
14 explain, give me a name and a phone number in the morning and
15 I'll be happy to do it. You cannot be a juror in the day and
16 work all night. Anyone else? Very well.

17 Ladies and gentlemen, those of you that are dashing off to
18 work for the afternoon -- not you, because I don't want you
19 working this evening -- that want to go to work this afternoon,
20 if you will go down to the clerk's office, that is directly below
21 us, and we'll certainly get you a sheet of paper that will verify
22 for your employer where you have been and what you have been up
23 to this morning and up to this point in time.

24 Thank you so much for every tick of the clock. And I look
25 forward to seeing you in the morning at 9:30, 9:30. Thank you so

1 much. Remember social distancing as you leave.

2 (WHEREUPON, the first jury panel is excused for the day at
3 12:46 p.m.)

4 (Whereupon, court recessed at 12:47 p.m. and reconvened at
5 12:58 p.m.)

6 (WHEREUPON, the second jury panel is seated in the courtroom
7 at 1:01 p.m.)

8 (WHEREUPON, the Clerk of Court conducted roll call, and the
9 Court conducted exemptions and transfers necessary to qualify the
10 second jury panel.)

11 JURY VOIR DIRE and QUALIFICATION

12 THE COURT: All right. Now, ladies and gentlemen, at this
13 time I find that our panel is qualified, and we're going to now
14 shift into the qualifications, which means I've got some
15 questions to ask of you. And I'm going to introduce you to some
16 folks with regards to our first case for trial.

17 I'm going to call on our solicitor in South Carolina, our
18 prosecutor, our state's attorney, if you will, called solicitors,
19 I'm going to call on Solicitor Osborne and ask him to please call
20 our first case for trial.

21 ATTORNEY OSBORNE: Thank you, Judge.

22 THE COURT: Yes.

23 ATTORNEY OSBORNE: The case is the State versus Elijah Green
24 and Devonte Major. They both have been charged with the same
25 charges. The first charge is murder, this is Elijah Green, the

1 indictment number is 2019-GS-18-0423; the second charge is
2 attempted murder at 0426; burglary, first degree, is the next
3 charge, 0424; then possession of a weapon during the commission
4 of a violent crime, 0427; ill-treatment of animals, 0429.

5 For Devonte Major, the first charge is murder,
6 2019-GS-18-0430; attempted murder is 0432; burglary in the first
7 degree, 0433; possession of a firearm during the commission of a
8 violent crime, 0434; and ill-treatment of animals, 0436.

9 May I approach, Your Honor?

10 THE COURT: Yes. All right. Ladies and gentlemen, what has
11 just occurred is that Solicitor Osborne has just called my
12 attention to the first case for trial. And he has just shared
13 with me the charges, the indictments, if you will, against
14 Mr. Green and Mr. Major.

15 Now, ladies and gentlemen, he's done that by use of what is
16 called an indictment. I want to talk about what an indictment is
17 and what it is not. First of all, it's a piece of paper; it's a
18 notice document; it is a document that is used to notify a
19 citizen that the state is alleging that that citizen has violated
20 one or more of the criminal laws of the state of South Carolina.

21 I want to hasten and I want to tell you that each of these
22 defendants, Mr. Green and Mr. Major, that they deny, they have
23 pled not guilty. That places the burden of proof on the state to
24 prove each allegation of each indictment against each of these
25 individuals. They have the burden to prove each allegation

1 beyond a reasonable doubt. So I want to hasten to tell you that.

2 Now, ladies and gentlemen, I am going to read to you some of
3 the allegations of these indictments, but I want to tell you why.
4 The reason that I'm going to be doing that is that I am trying to
5 find out whether or not any of you know anything or have heard
6 anything about these allegations. And the way that I'm going to
7 do that is by reading to you some of the allegations in these
8 indictments.

9 And I want, just as Solicitor Osborne said, each of these
10 defendants are charged with the same offenses, so I'm going to,
11 I'm going to do that together. However, they are to be treated
12 absolutely independently, one from the other. I do that for
13 what's called judicial economy, to be as efficient with time as
14 we can.

15 And again, be mindful that each of these defendants have
16 pled not guilty.

17 When I have finished reading to you some of these
18 allegations, my question to you is going to be this. Do any of
19 you know or think you may know, or have you heard or think you
20 may have heard, anything about these allegations? That's going
21 to be the question.

22 Now, ladies and gentlemen, I will begin with the indictments
23 for murder. And the indictment numbers are 2019-GS-18-0430 and
24 0423. And these indictments allege -- Yes, do you need to
25 approach?

1 JUROR: No, ma'am. I'm sorry. My back hurts just sitting
2 on this wooden thing.

3 THE COURT: You can stand.

4 JUROR: I don't want to be rude.

5 THE COURT: It is not rude.

6 JUROR: Okay.

7 THE COURT: Feel free to stand and move about.

8 JUROR: That's why I was just leaning, trying to ---

9 THE COURT: Not a problem. And do you know what? How about
10 a different chair, would that help?

11 THE BAILIFF: I can roll one up.

12 THE COURT: We happen to have one on rollers.

13 JUROR: I was in a car accident five years ago, so.

14 THE COURT: Sure. There you go, come on and get --
15 hopefully we can get you a little more comfortable. As a matter
16 of fact, we have cushions, we ought to bring the cushions out.

17 Seriously, if you need to stand and move around, that is
18 fine, don't worry about it. That is perfectly fine.

19 ATTORNEY COLEMAN: Can I approach, Your Honor?

20 THE COURT: Yeah.

21 (WHEREUPON, an off-the-record discussion was held at
22 sidebar.)

23 THE COURT: Ladies and gentlemen, I want to share with you
24 what that's about, because this is Mr. Coleman. I was going to
25 introduce him to you in just a little bit. And he is here with

1 Mr. Green, and he is helping Ms. Melisa Gay, who is Mr. Green's
2 attorney, and she is about to enter the courtroom. And you're
3 just going to see Mr. Coleman, who has another matter in another
4 court, he's going to be leaving, but Ms. Gay will take his seat.
5 And I'll have an opportunity to introduce you to Ms. Gay. She
6 represents Mr. Green, Elijah Green. So you will see that happen
7 in just a few moments. And that that's what that was about.

8 Now, ladies and gentlemen, with regards to these
9 indictments, these indictments allege that, in Dorchester County,
10 South Carolina, on or about January the 28th, 2019, with malice
11 aforethought the Defendant Elijah Quinlin Diante Green, and the
12 other indictment alleges that the Defendant Devonte Trevon Major,
13 did kill one Joe Weaver, by means of shooting the victim. The
14 victim did die as a proximate result thereof. This offense being
15 in violation of the common law and Section 16-3-10 of the South
16 Carolina Code of Laws, as amended.

17 Ladies and gentlemen, the next indictments, 2019-GS-18-0426
18 and 0432, allege that, in Dorchester County, South Carolina, on
19 or about January the 28th, 2019, the Defendant Elijah Quinlin
20 Diante Green, and the other indictment alleges that the Defendant
21 Devonte Trevon Major, did, with the intent to kill, attempt to
22 kill one Marcus Porter with malice aforethought by shooting the
23 victim. The offense being in violation of Section 16-3-29 of the
24 South Carolina Code of Laws, as amended.

25 Ladies and gentlemen, the next indictments are

1 2019-GS-18-0433 and 0424. They are the indictments for burglary
2 in the first degree. And they allege that, in Dorchester County,
3 South Carolina, on or about January the 28th, 2019, that the
4 Defendant Devonte Trevon Major, and the other indictment, the
5 Defendant Elijah Quinlin Diante Green, did willfully and
6 unlawfully enter the dwelling of Marcus Porter without consent
7 and with the intent to commit a crime therein, and when, in
8 effecting entry or while in the dwelling or in the immediate
9 flight, the defendant or another participant in the crime is
10 armed with a deadly weapon or explosive, causes physical injury
11 to a person who is not a participant in the crime, uses or
12 threatens the use of a dangerous instrument, displays what is or
13 appears to be a knife, pistol, revolver, rifle, shotgun,
14 machinegun or other firearm, or the entering or the remaining
15 occurs in the nighttime. This offense being in violation of
16 Section 16-11-311 of the South Carolina Code of Laws, as amended.

17 The next two indictments, ladies and gentlemen, are
18 2019-GS-18-434 and 427. The alleged crime is possession of a
19 firearm or a knife during the commission of a violent crime.
20 These indictments allege that, in Dorchester County, South
21 Carolina, on or about January the 28th, 2019, the Defendant
22 Elijah Quinlin Diante Green, and the other indictment alleges the
23 Defendant Devonte Trevon Major, did visibly display or have in
24 his possession a handgun during the commission of a violent crime
25 as defined by Section 16-1-60 of the Code of Laws of South

1 Carolina, 1976, as amended, to wit, burglary in the first degree
2 and murder, thereby violating Section 16-23-49 of the Code of
3 Laws of South Carolina, 1976, as amended.

4 And Indictments 2019-GS-18-0436 and 0429, which allege
5 ill-treatment of animals, in general, torture, allege that, in
6 Dorchester County, South Carolina, on or about January the 28th,
7 2019, the Defendant Elijah Quinlin Diante Green, and the other
8 indictment alleges that the Defendant Devonte Trevon Major, and
9 both go on to state, did torture, torment, needlessly mutilate,
10 cruelly kill or inflict excessive or repeated unnecessary pain or
11 suffering upon an animal or by omission other commission did
12 cause the acts to be done, in that the defendant did cruelly kill
13 a dog by shooting it. This offense being in violation of Section
14 47-1-40(B) of the South Carolina Code of Laws, as amended.

15 Let me hasten again to remind you that, to each and every
16 allegation of each of these indictments, that each of these
17 defendants have pled not guilty.

18 Now, ladies and gentlemen, my question. Do any of you know
19 or think you may know, or have you heard or think you may have
20 heard, anything about these allegations? If so, please stand at
21 this time.

22 (No response.)

23 THE COURT: And I find no one standing. All right. Come on
24 forward, Ms. Gay. And you are excused, Mr. Coleman. And, thank
25 you.

1 Now, ladies and gentlemen, allow me, please, to introduce
2 you to Solicitor Osborne. And he is going to introduce folks in
3 his office, and he's going to share with you who will be
4 assisting him from the solicitor's office in this trial.

5 ATTORNEY OSBORNE: Thank you, Judge.

6 THE COURT: Yes.

7 ATTORNEY OSBORNE: Good afternoon. My name is David
8 Osborne. I am a prosecutor, or assistant solicitor as we're
9 called here in South Carolina. This is Nick Young, he is also a
10 prosecutor, he's going to be helping me with this case. This is
11 Carrie Huff, she is our court administrator.

12 Throughout the trial you'll also see Detective/Sergeant
13 Jonathan Davis, he's the case agent. He'll be seated at the
14 table with us. We'll also be assisted with/by Rebecca Durr, as
15 well as Stacy Cook, they're legal assistants. They're going to
16 be helping us rallying in witnesses.

17 THE COURT: And the solicitors are?

18 ATTORNEY OSBORNE: Oh, so sorry, Judge. My boss is David
19 Pascoe, he is the First Circuit Solicitor. Kelly LaPlante, Mike
20 Speers, John Rivers, Baker Allen, Meagan Chinnis, Jillian
21 Frederick and Vergil Deas, they are also all prosecutors. We all
22 work here in Dorchester.

23 THE COURT: Ladies and gentlemen, I am going to be using
24 this term, are you quanted with. I'm going to start in just a
25 little bit, but I want to define that term for you because I

1 intend a very general definition of acquainted with. I am trying
2 to find out if you have any connection with these folks I'm going
3 to be asking you about.

4 Let me give you a couple examples. It may be that you went
5 to school with somebody that I'll mention and you hadn't thought
6 about that person, you haven't even seen that person, in 20
7 years. Well, believe it or not, if you went to school with that
8 persons and you know you went to school with him but you haven't
9 thought about him or seen him in 20 years, that relationship, as
10 old and limited as it is, would be encompassed within my
11 definition of acquainted with. I'm trying to find out if you
12 have any connection with these folks that I'm going to be asking
13 about.

14 It may be that you simply work in the same location with
15 somebody that I may ask you about, and maybe you wave at each
16 other across the parking lot. That relationship, as limited as
17 it is, would be encompassed within my intended definition of
18 acquainted with. So I'll just ask that you keep that in mind as
19 we go through these questions.

20 Ladies and gentlemen, are you related, by blood or marriage,
21 or acquainted with Mr. Osborne or any of the members of the First
22 Judicial Circuit Solicitor's Office, any of the attorneys, any of
23 the folks that work there? If so, please stand at this time.

24 (Jurors respond.)

25 THE COURT: Yes, sir, your number?

1 JUROR 243: 243.

2 THE COURT: Let me tell you, I don't want to have a
3 narrative. I need to control your responses. So let me do that,
4 okay.

5 JUROR 243: Okay.

6 THE COURT: First of all, who do you know?

7 JUROR 243: I just want to make sure that, on the
8 acquainted, when David Pascoe was running for office many, many
9 years ago I picked up the phone and called him to ask questions.

10 THE COURT: Okay. In other words, you have -- yeah, that
11 would be applicable. As a result of that contact with Solicitor
12 Pascoe, might that/could that/would that have an affect on your
13 ability to be completely fair and impartial?

14 JUROR 243: Not at all.

15 THE COURT: And can you set that experience completely aside
16 and make up your mind based upon what you hear in court while
17 court is in session?

18 JUROR 243: Yes, ma'am.

19 THE COURT: Anyone else in the office that you know?

20 JUROR 243: No, ma'am.

21 THE COURT: Thank you. All right.

22 Yes, sir, tell me who you know?

23 JUROR 267: LaPlante.

24 THE COURT: Whom?

25 JUROR 267: Kelly LaPlante, I think.

1 THE COURT: LaPlante, do you know Ms. LaPlante?

2 JUROR 267: I know her husband.

3 THE COURT: You know Mr. LaPlante, all right.

4 JUROR 267: Yeah.

5 THE COURT: And as a result of the fact that you know
6 Mr. LaPlante, would that have an affect on your ability to be
7 fair and impartial to the state, as well as to each of these
8 defendants?

9 JUROR 267: No, ma'am.

10 THE COURT: Thank you. You may be seated.

11 ATTORNEY HENSLEY: Your Honor, could we get his juror
12 number?

13 THE COURT: I'm sorry. Thank you. Yes, sir, your number?

14 JUROR 267: 267.

15 THE COURT: Thank you, 267.

16 Yes, ma'am, your number?

17 JUROR 92: Ninety-two.

18 THE COURT: Who do you know?

19 JUROR 92: Stacy Cook.

20 THE COURT: Let me ask you this question. Do you visit in
21 each other's homes?

22 JUROR 92: We have.

23 THE COURT: Yes?

24 JUROR 92: Lately, no.

25 THE COURT: Lately no, but in the past you have?

1 JUROR 92: Yes.

2 THE COURT: As a result of your relationship with Ms. Cook,
3 might that or could that interfere with your ability to be
4 completely fair and impartial to the state, as well as to each of
5 these defendants?

6 JUROR 92: No.

7 THE COURT: Very well. Thank you.

8 JUROR 92: Thank you.

9 THE COURT: All right. Now, ladies and gentlemen, please
10 allow me to introduce you to Mr. Elijah Green. And, Mr. Green,
11 if you would please stand. Thank you so much. And if you'd
12 please be seated.

13 Ladies and gentlemen, are you related, by blood or marriage,
14 or acquainted with Mr. Elijah -- his whole name is Elijah Quintin
15 Diante Green, Elijah Green, Mr. Green? Related by blood or
16 marriage, or acquainted with him? If so, please stand.

17 (No response.)

18 THE COURT: And I find no one standing.

19 Ladies and gentlemen, Mr. Green is represented by Melisa
20 Gay. And this is Melisa Gay. Mr. Coleman, I'll ask if you know
21 Mr. Coleman. He was here. And as I had explained to you
22 earlier, he is gone to take care of another matter. Ms. Gray
23 represents Mr. Green, and she is now present, and Mr. Coleman has
24 left.

25 Are you related, by blood or marriage, or acquainted with

1 either Mr. Coleman or Ms. Gay, or have you or any member of your
2 immediate family, to your knowledge, been represented by Ms. Gay
3 or Mr. Coleman? If so, please stand at this time.

4 (No response.)

5 THE COURT: Thank you so much.

6 ATTORNEY GAY: Thank you, Your Honor.

7 THE COURT: Now, ladies and gentlemen, please allow me to
8 introduce you to Mr. Devonte Major. Thank you, Mr. Major. And
9 you may be seated.

10 Ladies and gentlemen, are your related, by blood or
11 marriage, or acquainted with Mr. Devonte Major? If so, please
12 stand at this time. And I find no one standing.

13 (No response.)

14 THE COURT: And Mr. Major is represented by Laree Hensley.
15 Ms. Hensley practices law in the tri-county area, just as Ms. Gay
16 does.

17 Ladies and gentlemen, are you related, by blood or marriage,
18 or acquainted with, or have you or any member of your immediate
19 family, to your knowledge, ever been represented by Ms. Laree
20 Hensley? If so, please stand at this time.

21 (No response.)

22 THE COURT: Thank you, Ms. Hensley. I find no one standing.

23 Now, ladies and gentlemen, at this point in our process the
24 attorneys give to me a list of potential witnesses. And so I'm
25 going to go over with you this list. My question as to each and

1 every one of these folks is this. Are you related, by blood or
2 marriage, or acquainted with any of these individuals? Now, when
3 I had gone through the list, there are a few folks on this list,
4 if you need me to repeat one or more names on this list, happy to
5 do so. You just need to let me know.

6 Leta Boehler; Joshua Scarborough; Jacob Cramer; Dylan
7 Reynolds; Matthew Brooks; Kenneth Driscoll; Christopher Flynn;
8 Scott Kunce; Phillip Moy; Jonathan Davis; Rachel Nguyen; Ryan
9 DeWane; Nicole Hardin; James Green; James, James has a nickname
10 Cord, King; Dr. Nicholas Batalis; David Swibaker; Marcus Porter;
11 Salina Sheppard; Muanah Fortune; Polo Salazar; Jamie Hall;
12 Bethany Davidson; Vera Martinez; Charlotte Pitts; Jackie Davis;
13 Daniel Greene; Christina Denson; Marie Wearing; Christopher
14 Flynn; Christopher Hirsch; Taylor Jackson; Megan Wade; Jonathan
15 James; Jaquavious Washington; Wade Rollings; Bernard Seabrook;
16 Shaneka Wright.

17 You are related, by blood or marriage, or acquainted with
18 any of those individuals? Or do you need me to repeat the list,
19 anybody? If you do, please stand.

20 (No response.)

21 THE COURT: And I find no one standing.

22 Now, ladies and gentlemen, are you a former law enforcement
23 employee, or do you have any members of your immediate family who
24 are employed by law enforcement agencies? If so, please stand.

25 (Jurors stand.)

1 THE COURT: All right. And, yes, sir? We're going to start
2 with your number.

3 JUROR 410: 410.

4 THE COURT: And is it you or a family member?

5 JUROR 410: Myself.

6 THE COURT: In the past?

7 JUROR 410: Yes, ma'am.

8 THE COURT: All right. And how long ago?

9 JUROR 410: Seven years ago now.

10 THE COURT: All right. And what law enforcement agency?

11 JUROR 410: Most recently City of Belton Police Department.

12 THE COURT: Okay, very well. Thank you.

13 Yes, sir?

14 JUROR 243: Yes, ma'am, 243. My daughter works for
15 Summerville Police Department as a 911 call dispatcher.

16 THE COURT: All right. And that's currently?

17 JUROR 14: Yes, ma'am.

18 THE COURT: All right. Very well. And yes, ma'am?

19 JUROR 264: 264. And I'm retired law enforcement from
20 Berkeley County.

21 THE COURT: Can you speak a little louder?

22 JUROR 264: My number's 264, and I'm retired law enforcement
23 from Berkeley County.

24 THE COURT: Thank you. Yes, ma'am?

25 JUROR 92: Ninety-two. My sister-in-law and my

1 brother-in-law are police officers in Columbia. I'm based in
2 Dorchester County in Summerville police. And my mother-in-law's
3 currently just retired from dispatch for Dorchester County.

4 THE COURT: All right, thank you. Yes, sir?

5 JUROR 19: Nineteen. Son-in-law, disabled, New York City
6 Police.

7 THE COURT: Thank you.

8 All right. Ladies and gentlemen, I'm going to ask you, I
9 think it's going to be, about three questions, could be four, but
10 together. And I don't want you to respond to any until I've
11 asked all. And then I'm going to have you approach.

12 Question number one is, Are you a member of an organization
13 such as MADD, which is Mothers Against Drunk Driving, CAVE, PAR,
14 which is People Against Rape, or any other type group? That's
15 question number one.

16 Question number two, Have you or any member of your
17 immediate family, to your knowledge, been the victim of a violent
18 crime?

19 And, Are you a member of the National Rifle Association?

20 If you need to respond to any of those questions, I'm going
21 to ask you to approach.

22 (Jurors stand.)

23 THE BAILIFF: Juror no. 275.

24 THE COURT: Okay. Now, let me tell you, everyone who
25 approaches, I need just enough volume for my court reporter, who

1 is here, to hear you. I am interested in the rest of the panel
2 not hearing you. The rest will gather around. Okay. Juror 275.

3 THE BAILIFF: 275 coming down.

4 (WHEREUPON, an in camera colloquy is conducted outside the
5 presence of the jury as follows:)

6 THE COURT: Hello. Yes, sir?

7 JUROR 275: I'm a member of the NRA.

8 THE COURT: Thank you, sir.

9 THE BAILIFF: 267.

10 THE COURT: 267.

11 THE BAILIFF: Yes, ma'am.

12 (WHEREUPON, an in camera colloquy is conducted outside the
13 presence of the jury as follows:)

14 JUROR 267: I'm a member of NRA.

15 THE COURT: Thank you.

16 THE BAILIFF: 243.

17 (WHEREUPON, an in camera colloquy is conducted outside the
18 presence of the jury as follows:)

19 THE COURT: Yes, sir?

20 JUROR 243: Yes, ma'am. A member of National Rifle
21 Association. And my daughter alleged to have been raped at one
22 time.

23 THE COURT: And how long ago?

24 JUROR 243: About five or six years ago.

25 THE COURT: Five or six years ago, all right. Anything

1 about your daughter's experience that might or could interfere
2 with your ability to be completely fair and impartial to the
3 state, as well as to each of these defendants?

4 JUROR 243: Not at all, ma'am.

5 THE COURT: Can you set that aside ---

6 JUROR 243: I sure can.

7 THE COURT: --- and make up your mind based on what you hear
8 in court while court is in session?

9 JUROR 243: Yes, ma'am.

10 THE COURT: Very well. Please stay with us.

11 THE BAILIFF: 264.

12 (WHEREUPON, an in camera colloquy is conducted outside the
13 presence of the jury as follows:)

14 THE COURT: Yes, ma'am.

15 JUROR 243: (Inaudible).

16 THE REPORTER: I cannot hear her.

17 THE COURT: In 2006 she witnessed her father shoot her mom.

18 JUROR 243: She survived.

19 THE COURT: She survived, okay. And as a result of that
20 experience would that/could that interfere with your ability to
21 be completely fair and impartial to the state, as well as to each
22 of these defendants?

23 JUROR 243: No, it wouldn't affect me.

24 THE COURT: Can you set that experience completely aside and
25 make up your mind based upon what you hear in court while court

1 is in session?

2 JUROR 243: Yes, ma'am.

3 THE COURT: Thank you. Please stay with us.

4 THE BAILIFF: 378. 378.

5 (WHEREUPON, an in camera colloquy is conducted outside the
6 presence of the jury as follows:)

7 THE COURT: Yes, sir?

8 JUROR 378: Yes. Oh, you're talking about -- my sister got
9 shot in the leg by one of my other sister's disgruntled
10 boyfriend.

11 THE COURT: All right. How long ago was that?

12 JUROR 378: About five.

13 THE COURT: Five or so. As a result of that experience,
14 might that or could that interfere with your ability to be
15 completely fair and impartial to the state, as well as to each of
16 these defendants?

17 JUROR 378: No. No.

18 THE COURT: Can you set that experience aside and make up
19 your mind based on what you hear in court while court is in
20 session?

21 JUROR 378: Yes.

22 THE COURT: Thank you. Please stay with us.

23 (WHEREUPON, an off-the-record discussion was held at
24 sidebar.)

25 THE COURT: All right. Ladies and gentlemen, I'm going to

1 ask you two questions together. And please don't answer either
2 until I've asked both.

3 Ladies and gentlemen, have you had any conversations or
4 overheard any conversations, or had any contact with any person
5 regarding a term of court that was on or about May the 12th of
6 2021? That's question number one.

7 Question number two is, Has any member of your immediate
8 family ever been convicted of a violent crime?

9 And this one. Have you or any member of your immediate
10 family, to your knowledge, ever been arrested for a violent
11 crime?

12 If you need to respond to any of those questions, I'm going
13 to ask you to please stand and approach.

14 (Jurors stand.)

15 THE BAILIFF: First up is no. 82.

16 THE COURT: Eighty-two.

17 THE BAILIFF: Yes, ma'am, 82 up first.

18 THE COURT: All right.

19 (WHEREUPON, an in camera colloquy is conducted outside the
20 presence of the jury as follows:)

21 THE COURT: Hi.

22 JUROR 82: Hi. Yes. My son, when he was 14, there was a
23 case, that he was convicted. He was in jail, but he's out now
24 and everything. But it was like the whole trouble, they didn't
25 want him back, he knew what was going on. So until he told what

1 he knew, then, yes.

2 THE COURT: Okay. And do you know what the offense was?

3 JUROR 82: I think it was, my son said that he was in jail,
4 and he was trying to put a hit out on somebody. You know, but it
5 wasn't attempted.

6 THE COURT: Okay. And as a result of that experience with
7 your son, might that or could that interfere with your
8 ability ---

9 JUROR 82: No.

10 THE COURT: --- to be completely fair and impartial?

11 JUROR 82: No.

12 THE COURT: And can you set that experience completely aside
13 and make up your mind based on what you hear in court while court
14 is in session?

15 JUROR 82: I can. Whatever it is, you've got to do. He was
16 wrong, he was wrong, and he paid his time.

17 THE COURT: All right. Thank you.

18 ATTORNEY GAY: What's your number?

19 JUROR 82: Eighty-two.

20 THE BAILIFF: Juror no. 87. Eighty-seven, coming down.

21 (WHEREUPON, an in camera colloquy is conducted outside the
22 presence of the jury as follows:)

23 THE COURT: Yes, ma'am.

24 JUROR 87: My stepson is currently in jail for burglary.

25 THE COURT: Okay. And is that in our area or somewhere

1 else?

2 JUROR 87: He is actually in Kershaw County.

3 THE COURT: In Kershaw County. Would that have an affect
4 our ability to be completely and fair and impartial to the state,
5 as well as to each of these defendants?

6 JUROR 87: No, but the animal situation might.

7 THE COURT: Okay. All right.

8 JUROR 87: I'll be completely honest.

9 THE COURT: Okay. Are you concerned that that would have an
10 affect on your ability to be fair and impartial?

11 JUROR 87: Yes. Because I raised pigs, ducks.

12 THE COURT: Okay.

13 JUROR 87: I've raised goats. I've got plenty of dogs,
14 cats. They can't defend themselves.

15 THE COURT: Okay. Very well. I'll tell you what. I'm
16 going to ask you to sit this one out. I'm going to ask you not
17 to discuss this matter.

18 JUROR 87: All right.

19 THE COURT: And I'm actually going to ask you to transfer,
20 if you'd be so kind. And just go pick another week for me.

21 JUROR 87: Okay.

22 THE COURT: All right.

23 THE BAILIFF: Juror no. 273.

24 THE COURT: Did you get that?

25 CLERK OF COURT: Yes, ma'am.

1 (WHEREUPON, an in camera colloquy is conducted outside the
2 presence of the jury as follows:)

3 THE COURT: Yes, ma'am.

4 JUROR 273: Hello.

5 THE COURT: Hi.

6 JUROR 273: It was my nephew. It was like, I think, six
7 years ago when he got arrested for armed robbery.

8 THE COURT: Okay. And where was that?

9 JUROR 273: Charleston County.

10 THE COURT: And as a result of that, would that have an
11 affect on your ability to be completely fair and impartial to the
12 state, as well as to ---

13 JUROR 273: No, ma'am.

14 THE COURT: --- each of these defendants?

15 JUROR 273: No, ma'am.

16 THE COURT: Can you set that experience aside and make up
17 your mind ---

18 A Yes, ma'am.

19 Q --- based on what you hear in court while court is in
20 session?

21 JUROR 273: Yes, ma'am.

22 THE COURT: Thank you. Please stay with us.

23 THE BAILIFF: Juror no. 264, 264 coming up.

24 (WHEREUPON, an in camera colloquy is conducted outside the
25 presence of the jury as follows:)

1 THE COURT: Hi. Yes, ma'am?

2 JUROR 264: The previous incident, my father was charged
3 with rape, that was in Greenwood County.

4 THE COURT: In Greenwood County. And you've already told
5 us. Does that change your answers?

6 JUROR 264: No.

7 THE COURT: Wouldn't have an affect?

8 JUROR 264: No.

9 THE COURT: Very well. Thank you.

10 THE BAILIFF: Juror no. 378.

11 (WHEREUPON, an in camera colloquy is conducted outside the
12 presence of the jury as follows:)

13 THE COURT: Yes, sir?

14 JUROR 378: My cousin committed homicide almost 35 years
15 ago.

16 THE COURT: Okay. And would that have an affect on your
17 ability to be completely fair and impartial to the state, as well
18 as to each of these defendants?

19 JUROR 378: No.

20 THE COURT: And can you set that aside and make up your mind
21 based on what you hear in court while court is in session?

22 JUROR 378: Yes.

23 THE COURT: Thank you.

24 THE BAILIFF: Juror no. 86.

25 (WHEREUPON, an in camera colloquy is conducted outside the

1 presence of the jury as follows:)

2 THE COURT: Hi.

3 JUROR 86: I want to be clear what you were saying about
4 May 21st.

5 THE COURT: What about May 21st?

6 JUROR 86: I thought that was one of the questions.

7 THE COURT: Have you talked to anyone about any court that
8 occurred around May 12th? I think it's May 12th.

9 JUROR 86: No.

10 THE COURT: Okay. Have you talked to anybody about any kind
11 of court that has occurred recently?

12 JUROR 86: No.

13 THE COURT: No. Okay. And so when you came up here, were
14 you wondering about the date?

15 JUROR 86: Yes.

16 THE COURT: Okay.

17 JUROR 86: Because I heard the last part, but I didn't hear
18 the first part.

19 THE COURT: The first part. Oh, okay. But you hadn't
20 talked to anybody about any kind of court?

21 JUROR 86: Not lately.

22 THE COURT: Not lately? When's the last time you talked
23 about court?

24 JUROR 86: Well, it wasn't a court in South Carolina. It
25 was in another state.

1 THE COURT: All right. Thank you.

2 (WHEREUPON, an off-the-record discussion was held at
3 sidebar.)

4 THE COURT: Ladies and gentlemen, do you -- and I suppose I
5 should ask -- or any member of your immediate family, to your
6 knowledge, live within the area of ■■■ Myrtle in Summerville,
7 let's say four, five, six blocks, somewhere in the close vicinity
8 of ■■■ Myrtle in Summerville? If so, please stand.

9 (No response.)

10 THE COURT: All right. I find none standing.

11 Now, ladies and gentlemen, this is my concluding question,
12 it's this. Do you know any reason why you ought not/should
13 not/could not be a juror in this case? Because, as a juror, you
14 must be ready, willing and able to listen to the evidence, listen
15 to my charge on the law, and you must make up your mind based
16 solely, based solely, on what you hear in court while court is in
17 session, being completely unaffected by matters -- and the case
18 law talks about matters -- extraneous, matters outside the Court.
19 And you must be ready, willing and able to be completely fair and
20 impartial to the state and to each of these defendants.

21 If you have any concerns about your ability to do that, if
22 you have any concerns about these particular charges, if you just
23 remembered that the tickets to go to Disney World are on the
24 fridgey at home and you're supposed to leave Thursday and you're
25 thinking, How in the world am I supposed to tell her that now?,

1 or if you have any concerns about maybe you meant to answer a
2 question earlier or, as you sat there, you really, you should
3 have answered to a question earlier and, Gee, whiz, now how do I
4 go answer the question?, if you just remembered that you need to
5 respond to a question.

6 Anything that gives you any pause or any concern about being
7 a juror in this case, I'm going to ask you to please come forward
8 at this time.

9 (Juror stands.)

10 THE COURT: And your number is?

11 JUROR 267: 267.

12 THE COURT: Seven?

13 THE BAILIFF: 267.

14 (WHEREUPON, an in camera colloquy is conducted outside the
15 presence of the jury as follows:)

16 THE COURT: Yes, sir.

17 JUROR 267: I'm a CPA, and I represent a lot of plaintiffs'
18 attorneys. So I'm not sure if I can be impartial in this, in the
19 case.

20 THE COURT: Okay. Well, let me just share with you that
21 there isn't a plaintiff in this case.

22 JUROR 267: Okay.

23 THE COURT: That's all civil.

24 JUROR 267: No, that's fine. I just, you know, felt ...

25 THE COURT: And you have met lawyers that are in this case.

1 JUROR 267: Yes.

2 THE COURT: And I gather you don't do any of their work?

3 JUROR 267: Not that I know of.

4 THE COURT: Not that you know of. They would have shared
5 with me even if you did not remember. All right.

6 JUROR 267: Okay. Good. Thanks.

7 THE COURT: Thank you.

8 Now, ladies and gentlemen, you are now qualified with
9 regards to this case. And I need to give you some instruction.
10 First of all, I'm going to ask you to please return in the
11 morning at 9:30. We're going to go select a jury in this case at
12 9:30 in the morning, and we are going to get right into the trial
13 of this case. So please be in the jury assembly room at 9:30 in
14 the morning. That's the first thing I need to share with you.

15 Second, anybody work at night? Anybody work at night?
16 Okay. Not tonight. Let me tell you why. It is not fair to
17 expect you to work at night and be able to pay appropriate
18 attention during the day. So I'm going instruct you, do not go
19 to work tonight, rest, because you need to be able to pay
20 attention tomorrow. If you are concerned that your employer is
21 going to have any concern, just get me a name and a phone number
22 and I will be happy to call in the morning and have a
23 conversation. You know, the folks who work during the day will
24 be here during the day, resting at night. And I need you to be
25 rested, as well. But if anybody is -- I want them to be upset

1 with me, not you. So if I need to talk to anybody, I'd be happy
2 to. Just be sure that you pass along a name and a number in the
3 morning, and I'll be happy to do that.

4 Now, anyone who is going to go on to work for this
5 afternoon, this afternoon, and you need something for your
6 employer, we'd be happy to get that for you downstairs in the
7 clerk's office, which is directly below where we are.

8 So, ladies and gentlemen, I also need to ask you and
9 instruct you with regards to this. Be mindful not to discuss
10 this matter. You have a little bit of information. Those of
11 that serve on this jury, each time we leave each other I will
12 give you this instruction. Do not discuss this matter or allow
13 anyone to discuss it with you. You have a little bit of
14 information. Therefore, I'm going to instruct you not to discuss
15 this matter or allow anyone to discuss it with you.

16 Now, you're going to be going home. Somebody's going to be
17 curious about what you have been up to. So let's talk about
18 that. You can certainly say you responded to your summons; that,
19 gosh, it took a long time; that it's a criminal matter as opposed
20 to a civil matter; and that you are reporting back tomorrow
21 morning at 9:30 for the actual jury selection, and you don't know
22 if you're going to be selected or not.

23 But with regards to anything beyond that, you can certainly
24 say it's a criminal matter as opposed to a civil matter, that's
25 fine. But you must not discuss it beyond that. And so I'm going

1 to ask you and instruct you not to do that.

2 Leave your cellphones somewhere else other than the
3 courthouse tomorrow. You must not have any cellphone with you
4 while you are serving on the jury. I should say cellphones or
5 other communication device that has the ability to access the
6 internet. So please be mindful to leave those somewhere other
7 than the courthouse.

8 If you forget, it's okay, just let one of our bailiffs know,
9 and they'll be happy to take good care of your communication
10 device or cellphone until one of the breaks or at the end of the
11 day.

12 But ladies and gentlemen, I look forward to seeing you in
13 the morning at 9:30. At 9:30.

14 (WHEREUPON, the second jury panel is excused for the day at
15 2:36 p.m.)

16 (WHEREUPON, court recessed at 2:38 p.m. and reconvened at
17 3:13 p.m.)

18 (WHEREUPON, the third jury panel is seated in the courtroom
19 at 3:13 p.m.)

20 (WHEREUPON, the Clerk of Court conducted roll call, and the
21 Court conducted exemptions and transfers necessary to qualify the
22 third jury panel.)

23 JURY VOIR DIRE and QUALIFICATION

24 THE COURT: Ladies and gentlemen, you are now generally
25 qualified, so we're going to shift gears. And I'm going to call

1 on our solicitor to call on your first case for trial. But a bit
2 of a civics lesson. South Carolina, being one of the 13 original
3 colonies, Carolina, we are a product of English jurisprudence.
4 We have held on to our roots from England, and we are the only
5 state now in the union that continues to call our prosecutors
6 solicitors. You've heard district attorney, you've heard state's
7 attorney, and I'm sure there's some other terms. But we're the
8 only state where we call our prosecuting attorney, our state's
9 attorney, solicitor.

10 So I am going to call on our solicitor's office, and
11 Solicitor Osborne, to please call our first case for trial.

12 ATTORNEY OSBORNE: Thank you, Your Honor. This is the State
13 versus Elijah Green and Devonte Major. Both Mr. Green and
14 Mr. Major have the same charges. And they are, starting with
15 Mr. Green, he's been charged with murder. The indictment
16 number's 2019-GS-18-0423; the next charge is attempted murder at
17 0426; next charge is burglary in the first degree, 0424; the next
18 charge, possession of a firearm during the commission of a
19 violent crime, 0427; and the last charge, ill-treatment of
20 animals, 0429.

21 As for Mr. Major, the first charge, murder, 2019-GS-18-0430;
22 next, attempted murder; 0432; burglary in the first degree, 0433;
23 possession of a firearm during the commission of a violent crime,
24 0434; and ill-treatment of an animal, 0436.

25 And, Your Honor, may I approach?

1 THE COURT: Yes.

2 THE COURT: Ladies and gentlemen, what has just occurred is
3 that the solicitor has called to my attention the first case for
4 trial this week. And he has done so by calling my attention and
5 passing up what are called indictments.

6 So I want to tell you what an indictment is and I want to
7 tell you what it is not. First of all, it's a piece of paper, a
8 piece of paper; it's a notice document; it is a document that is
9 used to notify a citizen that the state alleges that that citizen
10 has violated one or more of the criminal laws of the state of
11 South Carolina.

12 Now let me tell you what an indictment is not. It is not
13 evidence of any of the allegations that it contains.

14 Now, I want to tell you that, to each of the indictments,
15 each of these defendant have pled not guilty to each of the
16 indictments involving him. That places the burden of proof on
17 the state to prove each allegation of each indictment beyond a
18 reasonable doubt. And it will be the jury's duty to determine
19 whether the state has met that burden.

20 Now, ladies and gentlemen, one of the reasons that I wanted
21 to talk about indictments and explain that to you about them is
22 that I need to have a means of finding out whether any members of
23 our jury panel know or think you may know, or have you heard or
24 think you may have heard, anything about these allegations. It's
25 important that that information be imparted.

1 So the way that I'm going to go about that is that I am
2 going to read to you some of the allegations of the indictments.
3 The reason that I'm doing that is to find out whether or not any
4 of you know or think you may know, or have you heard or think you
5 may have heard, anything about these allegations.

6 Now, just as Solicitor Osborne has said, there are
7 indictments which apply to each of these defendants. But, for
8 the sake of time and efficiency, I'm going to address the
9 defendants together as I address the charge. And again, I do
10 that for efficiency and time. These gentlemen must be treated
11 independently with regard to each indictment and in regards to
12 each other. So I share that with you, I'm simply doing that for
13 the efficiency of time.

14 Now, ladies and gentlemen, when I have concluded going over
15 the allegations of the indictments, the question that I'm going
16 to have for you is this. Do any of you know or think you may
17 know, have you heard or think you may have heard, anything about
18 these allegations?

19 I am going to begin with the indictments on -- or, the
20 indictments for murder. They are Indictments 2019-GS-18-0423 and
21 0430. The indictments allege that, in Dorchester County, South
22 Carolina, on or about January the 28th, 2019, with malice
23 aforethought the Defendant Elijah Quinlin Diante Green, the other
24 indictment says Devonte Trevon Major, did kill one Joe Weaver, by
25 means of shooting the victim. The victim did die as a proximate

1 result thereof. This offense being in violation of the common
2 law and Section 16-3-10 of the South Carolina Code of Laws, as
3 amended.

4 Ladies and gentlemen, the indictments which are numbered
5 2019-GS-18-0426 and 0432 are the indictments for attempted
6 murder, and they allege as follows: That, in Dorchester County
7 on or about January the 28th, 2019, the Defendant Quinlin Diante
8 Green -- excuse me, Elijah Quinlin Diante Green, the other
9 indictment, the Defendant Devonte Trevon Major, did, with the
10 intent to kill, attempt to kill one Marcus Porter with malice
11 aforethought, by shooting the victim. This offense, in violation
12 of Section 16-3-20 of the South Carolina Code of Laws, as
13 amended.

14 Ladies and gentlemen, Indictments 2019-GS-18-0433 and 0424
15 allege the offense of burglary in the first degree, and allege as
16 follows: That, in Dorchester County, on or about January the
17 28th, 2019, the Defendant Elijah Quinlin Diante Green, the other
18 indictment, 0433, alleges the Defendant Devonte Trevon Major, did
19 willfully and unlawfully enter the dwelling of Marcus Porter
20 without consent and with the intent to commit a crime therein and
21 when, in effecting entry or while in the dwelling or in immediate
22 flight, the defendant or another participant in the crime is
23 armed with a deadly weapon or explosive, causes physical injury
24 to a person who is not a participant in the crime, uses or
25 threatens to use the use of a dangerous instrument, displays what

1 is or appears to be a knife, a pistol, a revolver, rifle,
2 shotgun, machinegun or other firearm, or the entering or
3 remaining occurs in the nighttime. This offense being in
4 violation of Section 16-11-311 of the South Carolina Code of
5 Laws, as amended.

6 Ladies and gentlemen, Indictment 2019-GS-18-0427 and 0434,
7 which are indictments alleging possession of a firearm or knife
8 during the commission of a violent crime, allege that, in
9 Dorchester County, on or about January the 28th, 2019, the
10 Defendant Elijah Quinlin Diante Green, and 0434 alleges that the
11 Defendant Devonte Trevon Major, and those indictments both go on
12 to say, did visibly display or have in his possession a handgun
13 during the commission of a violent crime as defined by Section
14 16-1-60, Code of Laws of South Carolina, 1976, as amended; to
15 wit, burglary in the first degree and murder, thereby violating
16 Section 16-23-490 of the Code of Laws of South Carolina, 1976, as
17 amended.

18 And, ladies and gentlemen, Indictments 2019-GS-18-0436 and
19 0429, which allege ill-treatment of animals, in general, torture,
20 allege that, in Dorchester County, South Carolina, on or about
21 January the 28th, 2019, the Defendant Elijah Quinlin Diante
22 Green, and 0436 alleges that the Defendant Devonte Trevon Major,
23 they both go on to say, did torture, torment, needlessly
24 mutilate, cruelly kill or inflict excessive or repeated
25 unnecessary pain or suffering upon an animal or by omission or

1 commission did cause the acts to be done, in that the defendant
2 did cruelly kill a dog by shooting it. This offense being in
3 violation of Section 47-1-40(B) of the South Carolina Code of
4 Laws, as amended.

5 Ladies and gentlemen, again let me say that, to each and
6 every allegation of each of these indictments, the defendants
7 have pled not guilty.

8 Ladies and gentlemen, do any of you know or think you may
9 know, or have you heard or think that you may have heard,
10 anything about these allegations? If so, please stand.

11 (No response.)

12 THE COURT: And I find no one standing.

13 Ladies and gentlemen, please allow me to introduce you to
14 Solicitor Osborne. And he is going to introduce folks who are
15 going to be assisting him in this matter, as well as introduce
16 the folks in his office.

17 You're going to hear me ask this question during this
18 portion of the qualification. Are you related, by blood or
19 marriage, or acquainted with. Let me define acquainted with for
20 you. I intend a very general definition of acquainted with. I
21 am trying to find out if you have any connection with these folks
22 at all. Let me give an example. You may have gone to school
23 with someone who I will mention 20 years ago, and you had not
24 thought about that person, you had not seen that person, in 20
25 years but you know you went to school with him 20 years ago.

1 Well, if I mention that person and you know you went to school
2 with him 20 years ago, you would stand and you would tell me
3 that.

4 Likewise, you may work at the same location with someone
5 whose name I'll mention, and maybe you just occasionally wave at
6 each other across the parking lot. Believe it or not, those
7 relationships, as limited as they are, would be encompassed
8 within my definition of acquainted with, and you would stand and
9 you would share that information with me.

10 Again, I am trying to find out if you have any connection
11 with the folks that I'll be introducing you to. And without
12 further ado, Solicitor Osborne.

13 ATTORNEY OSBORNE: Thank you, Judge. Again, my name is
14 David Osborne. Good afternoon. I'm a prosecutor, or assistant
15 solicitor. And this is Nick Young, he is also a prosecutor,
16 he'll be helping out with the trial. This is Carrie Huff, she's
17 our courtroom administrator.

18 Throughout the trial you'll see another gentleman seated at
19 our desk. His name is Detective/Sergeant Jonathan Davis, he's
20 the case agent. We'll have Rebecca Durr and Stacy Cook, who are
21 legal assistants, they'll be helping us bring in and out
22 witnesses.

23 My boss is David Pascoe, he's the First Circuit Solicitor.
24 Working in the Dorchester office is Kelly LaPlante, Mike Speers,
25 John Rivers, Baker Allen, Meagan Chinnis, Jillian Frederick and

1 Vergil Deas.

2 THE COURT: Ladies and gentlemen, are you related, by blood
3 or marriage, or acquainted with Mr. Osborne or any of the
4 attorneys or employees in the First Circuit Solicitor Office? If
5 so, please stand at this time.

6 (No response.)

7 THE COURT: And I find no one standing. Now, ladies and
8 gentlemen, please allow me to introduce you to Mr. Elijah Quinlin
9 Diante Green. Thank you, Mr. Green. This is Mr. Green. And you
10 may be seated.

11 Ladies and gentlemen, are you related, by blood or marriage,
12 or acquainted with Mr. Elijah Green? If so, please stand.

13 (No response.)

14 THE COURT: And I find no one standing.

15 Now, ladies and gentlemen, Mr. Green is represented by
16 Ms. Melisa Gay, and this is Ms. Gay. Earlier today Mr. Michael
17 Coleman was here for a bit, he has assisted her in this matter to
18 some extent. And so I ask if you are related, by blood or
19 marriage, or acquainted with or have you or any member of your
20 immediate family, to your knowledge, been represented by Ms. Gay,
21 she goes by Lisa Gay, Melisa but she goes by Lisa Gay, or
22 Mr. Coleman? If so, please stand at this time.

23 (No response.)

24 THE COURT: Thank you so much. Thank you, Ms. Gay.

25 All right. Now, ladies and gentlemen, please allow me to

1 introduce you to Mr. Devonte Major. And this is Mr. Major.

2 Thank you, Mr. Major. Ladies and gentlemen, are you related, by
3 blood or marriage, or acquainted with Mr. Devonte Major? If so,
4 please stand at this time.

5 (No response.)

6 THE COURT: And I find no one standing. Now, ladies and
7 gentlemen, Ms. Major is represented by Ms. Laree Hensley. This
8 is Ms. Hensley. Ladies and gentlemen, are you related, by blood
9 or marriage, or acquainted with, or have you or any member of
10 your immediate family been represented by Ms. Hensley? If so,
11 please stand at this time.

12 (No response.)

13 THE COURT: And I find no one standing.

14 Now, ladies and gentlemen, at this point in a trial the
15 lawyers help me, and they give me a list of potential, potential
16 witnesses. Because this is my opportunity to ask whether or not
17 any of the members of the jury panel know anyone. And so in just
18 a moment I am going to be reading to you a list of potential,
19 potential witnesses. My question as to each and every one of
20 these folks is, Are you related, by blood or marriage, or
21 acquainted with any of these individuals?

22 Now, I'm going to go through this list. If you need me to
23 repeat the list, I want you to know that I am absolutely happy to
24 do that. Just raise your hand and let me know. What was that
25 name; Can you go over this list once more? I'm happy to do that.

1 But again, are you related, by blood or marriage, or
2 acquainted with any of the following individuals. Leta Boehler;
3 Joshua Scarborough; Jacob Cramer; Dylan Reynolds; Matthew Brooks;
4 Kenneth Driscoll; Christopher Flynn; Scott Kunce; Phillip Moy;
5 Jonathan Davis; Rachel Nguyen; Ryan DeWane; Nicole Hardin; James
6 Green; James, nickname Cord, King; Dr. Nicholas Batalis; David
7 Swibaker; Marcus Porter; Salina Sheppard; Muanah Fortune; Polo
8 Salazar; Jamie Hall; Bethany Davidson; Vera Martinez; Charlotte
9 Pitts; Jackie Davis; Daniel Greene; Christina Denson; Marie
10 Wearing; Christopher Flynn; Christopher Hirsch; Taylor Jackson;
11 Megan Wade; Jonathan James; Jaquavious Washington; Wade Rollings;
12 Bernard Seabrook; Shaneka Wright.

13 Are you related, by blood or marriage, or acquainted with
14 any of these individuals? If so, please stand at this time.

15 (A juror stands.)

16 THE COURT: All right. First of all, your number?

17 JUROR 183: 183.

18 THE COURT: Now let me tell you what I need you to do. I
19 need to control your responses. We're not going into a
20 narrative. I need to control your responses. So I'm going to
21 ask you to just answer what I ask. First of all, tell me who you
22 know and that's all, just the name.

23 JUROR 183: Wade Rollings.

24 THE COURT: Do you visit in each other's homes?

25 JUROR 183: No.

1 THE COURT: Would you describe your relationship that is one
2 that is personal or professional?

3 JUROR 183: Personal.

4 THE COURT: All right. And is it a friendship or an
5 acquaintanceship?

6 JUROR 183: A little bit of both.

7 THE COURT: Okay, all right. As a result, if this person
8 was a witness in this case, would the fact that you have that
9 relationship, just as you have indicated, would that have an
10 impact, positively or negatively, would it have an impact on your
11 ability to be completely fair and impartial to the state and each
12 of these defendants?

13 JUROR 183: No, ma'am.

14 THE COURT: Can you set that relationship, just as it is,
15 can you set it completely aside and make up your mind based upon
16 what you hear in court while court is in session?

17 JUROR 183: Yes, ma'am.

18 THE COURT: And can you evaluate the testimony of this
19 individual as you would anyone else?

20 JUROR 183: Yes.

21 THE COURT: Very well. Please stay with us.

22 Now, ladies and gentlemen, I have some additional questions
23 to ask of you. Ladies and gentlemen, are you a former law
24 enforcement officer, and do you have any immediate family members
25 who are law enforcement officers? If so, please stand.

1 (Jurors stand.)

2 THE COURT: Are you a former law enforcement officer? Do
3 you have any immediate family members who are law enforcement
4 officers?

5 Yes, sir, your number?

6 JUROR 179: My number is 179.

7 THE COURT: And are you a former law enforcement officer?

8 JUROR 179: No.

9 THE COURT: Do you have a family member who's in law
10 enforcement?

11 JUROR 179: Yes.

12 THE COURT: And that law enforcement agency is?

13 JUROR 179: New York City Police Department.

14 THE COURT: And that person is your?

15 JUROR 179: Both my parents; mother and father.

16 THE COURT: Your mother and your father. And are they
17 currently law enforcement officers, or are they retired?

18 JUROR 179: They're both retired now.

19 THE COURT: Okay. Thank you so much. All right.

20 Yes, ma'am, your number?

21 JUROR 247: 247.

22 THE COURT: All right. Now, are you a former law
23 enforcement officer?

24 JUROR 247: No.

25 THE COURT: You have a family member?

1 JUROR 247: Brother-in-law.

2 THE COURT: You have a brother-in-law. What agency?

3 JUROR 247: I think -- I don't have any idea.

4 THE COURT: What state?

5 JUROR 247: South Carolina, Charleston.

6 THE COURT: Somewhere in Charleston?

7 JUROR 247: Yes.

8 THE COURT: Very well. And you gave me your number; right?

9 JUROR 247: 247.

10 THE COURT: All right. Very well, thank you. All right.

11 Yes, ma'am? Are you a former law enforcement officer?

12 JUROR 310: No, I'm not.

13 THE COURT: You have a family member?

14 JUROR 310: Yes. My niece, a sheriff in Illinois, Satony

15 (phonetic sp)?

16 THE COURT: Thank you.

17 ATTORNEY HENSLEY: Your Honor, could we get her number?

18 THE COURT: Yes, of course. And your number?

19 JUROR 310: 310.

20 THE COURT: 310, thank you. All right.

21 Ladies and gentlemen, I'm going to ask three -- this is

22 going to be three, questions, it could be four, but three

23 questions together. And I don't want you to respond to any of

24 them until I've asked all of them. And then I'm going to have

25 you approach and disclose the information.

1 Question number one is, Are you or any member of your
2 immediate family, to your knowledge, members of groups such as
3 Darkness to Light, Citizens Against Violent Crime, which is CAVE,
4 People Against Rape, which is known as PAR, Mothers Against Drunk
5 Driving, which is MADD, and there's another, Persons Empowered to
6 Save Teens, which is PEST, or any other type of community or
7 neighborhood program like the ones I just mentioned? That's
8 question number one.

9 Question number two is, Have you or any member of your
10 immediate family, to your knowledge, ever been the victim of a
11 violent crime?

12 And the third question is, Have you or any member of your
13 immediate family ever been arrested and/or convicted of a violent
14 crime?

15 If you need to respond to any of those questions, I'm going
16 to ask you to please approach.

17 (Jurors stand.)

18 THE COURT: Okay.

19 THE BAILIFF: Juror no. 6.

20 THE COURT: All right. I'm just going to tell everyone
21 who's here, I need enough volume for my court reporter to hear.
22 Everybody else has just got to gather around. I do not want the
23 rest of the panel to hear.

24 (WHEREUPON, an in camera colloquy is conducted outside the
25 presence of the jury as follows:)

1 JUROR 6: My father spent several years in prison. I don't
2 know the exact charges. I know it was burglary and some other
3 things.

4 THE COURT: Some time ago?

5 JUROR 6: A long time ago.

6 THE COURT: Would that have an affect on your ability to be
7 completely fair and impartial to the state, as well as to these
8 two defendants?

9 JUROR 6: No, ma'am.

10 THE COURT: Can you set that experience aside and make up
11 your mind based on what you hear in court while court is in
12 session?

13 JUROR 6: Yes, ma'am.

14 THE COURT: Thank you. Please stay with us.

15 THE BAILIFF: Juror no. 174.

16 (WHEREUPON, an in camera colloquy is conducted outside the
17 presence of the jury as follows:)

18 THE COURT: Yes, sir.

19 JUROR 174: I'm a pharmacist. I was a victim of armed
20 robbery of the pharmacy.

21 THE COURT: Okay. And how long ago was that?

22 JUROR 174: That was about five years ago.

23 THE COURT: And would that have an affect on your ability to
24 be completely fair and impartial to the state, as well as to each
25 of these defendants?

1 JUROR 174: I can be impartial.

2 THE COURT: Can you set that experience aside and make up
3 your mind based upon what you hear in court while court is in
4 session, setting that experience completely aside?

5 JUROR 174: Yes, ma'am.

6 THE COURT: Thank you.

7 JUROR 174: Thank you.

8 THE BAILIFF: Juror no. 310.

9 (WHEREUPON, an in camera colloquy is conducted outside the
10 presence of the jury as follows:)

11 THE COURT: Yes, ma'am.

12 JUROR 310: My older brother passed away many years ago. A
13 shooting.

14 THE COURT: Your older brother what, now? I'm so sorry,
15 could you say it again?

16 JUROR 310: My older brother, but this was many years, he
17 was the victim of a shooting.

18 THE COURT: Of a shooting many years ago?

19 JUROR 310: Yes.

20 THE COURT: And would that experience have an affect on your
21 ability to be completely fair and impartial to the state, as well
22 as to each of these defendants?

23 JUROR 310: I think so.

24 THE COURT: You think so?

25 JUROR 310: (Nods) .

1 THE COURT: I'm going to ask you then to sit this one out.

2 JUROR 310: Uh-huh.

3 THE COURT: Thank you.

4 THE BAILIFF: Juror no. 109, 109.

5 (WHEREUPON, an in camera colloquy is conducted outside the
6 presence of the jury as follows:)

7 JUROR 109: My son, 29 years ago, was murdered by the
8 baby-sitter in Guatemala Bay, Cuba, when we were stationed there.

9 THE COURT: Okay. And would that experience have an affect
10 on your ability to be completely fair and impartial to the state,
11 as well as to each of these defendants?

12 JUROR 109: Yes, I can be fair.

13 THE COURT: And can you set that experience completely
14 aside, making up your mind in this case based upon what you hear
15 in court while court is in session?

16 JUROR 109: Yes, ma'am.

17 THE COURT: All right. Very well.

18 JUROR 310: Thank you.

19 THE BAILIFF: Juror no. 175.

20 (WHEREUPON, an in camera colloquy is conducted outside the
21 presence of the jury as follows:)

22 THE COURT: Yes, sir.

23 JUROR 175: My uncle, he, had a home invasion about six -
24 seven years ago.

25 THE COURT: All right. And he was the victim?

1 JUROR 175: He was.

2 THE COURT: All right. And would that experience have an
3 affect on your ability to be completely fair and impartial to the
4 state, as well as to these defendants?

5 JUROR 175: No, ma'am.

6 THE COURT: And could you set that completely aside and make
7 up your mind based upon what you hear in court while court is in
8 session, setting that experience completely aside?

9 JUROR 175: Yes, ma'am.

10 THE COURT: Okay. Thank you.

11 JUROR 310: Thank you.

12 THE BAILIFF: 307.

13 (WHEREUPON, an in camera colloquy is conducted outside the
14 presence of the jury as follows:)

15 THE COURT: Yes, ma'am.

16 JUROR 307: The victim, or one of the witness's, names
17 sounded familiar.

18 THE COURT: Sure. Sure.

19 JUROR 307: It was something that happened a long, long time
20 ago. But the name sounds familiar and it might be related. So I
21 just don't know.

22 THE COURT: You're concerned about one of the names?

23 JUROR 307: Yes, ma'am.

24 THE COURT: Do you remember?

25 JUROR 307: James King.

1 THE COURT: James King. James King, okay.

2 JUROR 307: I don't know if it's for sure him, but, like, I
3 would have to see a picture. So I don't know.

4 THE COURT: You'd have to see a picture. And Jim, he goes
5 by a nickname Cord.

6 JUROR 307: Okay. I don't know.

7 THE COURT: That's not ringing so much of a bell?

8 JUROR 307: No, ma'am.

9 THE COURT: And I don't know that I've got my list. Would
10 it help you if you knew what it was that this person maybe did,
11 would that maybe help?

12 JUROR 307: Probably not.

13 THE COURT: I might have that. May have that; may not.
14 This person is an investigator. Is that helpful?

15 JUROR 307: No, not really. Okay.

16 THE COURT: All right. Let's just presume this. Presume
17 that this is that person. Would that have an affect on your
18 ability to be fair and impartial and assess this person's
19 testimony as you would anyone else?

20 JUROR 307: If he was a witness?

21 THE COURT: Yes.

22 JUROR 310: Maybe.

23 THE COURT: Okay. You're concerned, okay. And I don't know
24 how to help you beyond that, you know. Here's what I think
25 probably makes sense. I think it probably makes sense for me to

1 ask you to just ---

2 JUROR 307: I could talk to you about it, like, privately.

3 THE COURT: I know you've got to see him, but they're not
4 here, and I don't want to seat you and then you're like, Oh my
5 gosh. Do me a favor. Step, go step, right back there. Just go
6 don't go so far. I'm going to talk to these lawyers real quick.

7 (WHEREUPON, an off-the-record discussion was held at
8 sidebar.)

9 THE COURT: Here's what we think. There's no need to put
10 you in a position. And I don't have enough -- I'm not satisfied
11 that I have enough information that I can satisfy one way or the
12 other. I don't want to put you in that position. I'm going to
13 ask you just to transfer to another term. Pick a few months, and
14 then come on back.

15 JUROR 307: Okay, thank you.

16 THE COURT: Yes. Going to transfer.

17 Ladies and gentlemen, do you or any member of your immediate
18 family, to your knowledge, live near, and you know, that's such a
19 difficult term, near, let's say, I don't know, three, four, five,
20 six blocks, live near, let's say six blocks, in the area of ■■■
21 Myrtle, ■■■ Myrtle in Summerville? ■■■ Myrtle. Anybody, do you
22 live within, say, six blocks of ■■■ Myrtle or your immediate
23 family member, to your knowledge, live near ■■■ Myrtle? If so,
24 please stand.

25 (No response.)

1 THE COURT: And I find no one standing.

2 Now, ladies and gentlemen, have you had any discussions
3 about or overheard any conversations about or have had any
4 contact with anybody who mentioned/had conversations/discussed
5 anything about a term of court on or around the date of May the
6 12th, 2021? If so, please stand.

7 (No response.)

8 THE COURT: Counsel, let me see you aside.

9 (WHEREUPON, an off-the-record discussion was held at
10 sidebar.)

11 THE COURT: Ladies and gentlemen, last two questions
12 together. Have you ever been arrested, have you had a family
13 member arrested and/or convicted of a violent crime? That's
14 question number one.

15 Question number two is, Are you a member of the NRA, or the
16 National Rifle Association? If you need to respond to either one
17 of those questions, please come forward.

18 (Juror stands.)

19 THE BAILIFF: Juror no. 299.

20 THE COURT: 299.

21 (WHEREUPON, an in camera colloquy is conducted outside the
22 presence of the jury as follows:)

23 JUROR 299: Hi.

24 THE COURT: Yes?

25 JUROR 310: Member of National Rifle Association.

1 THE COURT: The what?

2 JUROR 299: Member of National Rifle Association.

3 THE COURT: Thank you. Thank you so much. All right.

4 (WHEREUPON, an off-the-record discussion was held at
5 sidebar.)

6 THE COURT: Ladies and gentlemen, this is my concluding
7 question. And it is general, and I mean it to be general, just
8 so you know. Do you know any reason why you ought not/should
9 not/could not be a juror in this case, being ready, willing and
10 able to listen to the evidence and to listen to my charge on the
11 law and make up your mind based solely, based solely, only on
12 what you hear in court while court is in session, being
13 unaffected by matters -- the case law talks about matters --
14 extraneous to the Court, in other words, other things; that you
15 make up your mind based solely on what you hear in court while
16 court is in session, being completely fair and impartial to the
17 state, as well as to each of these two defendants?

18 If you have concerns about your ability to do that, if these
19 particular allegations cause you concern, or if you have just
20 remembered that the tickets to Disney World really aren't on the
21 refrigerator, they're in the drawer next to the refrigerator, and
22 how are you supposed to tell me now you're supposed to leave
23 Thursday afternoon at 2:00?

24 Or if you're sitting there and you remember that you needed
25 to response respond to a question and now you're uncomfortable

1 because you just remembered it, and how do you do that, now is
2 the time for you to do that.

3 Because if you serve on this jury, ladies and gentlemen, you
4 must be able to the make up your mind based solely on what you
5 hear in court while court is in session. You must be fair and
6 impartial to the state and to each of these two defendants.

7 If you have any concerns whatsoever, or need to come up for
8 any reason, come on up.

9 (A juror stands.)

10 THE BAILIFF: Juror no. 152.

11 (WHEREUPON, an in camera colloquy is conducted outside the
12 presence of the jury as follows:)

13 THE COURT: Yes, sir.

14 JUROR 152: My daughter and your daughter went to high
15 school together, Nancy and Edey.

16 THE COURT: Oh, okay. That's it?

17 JUROR 310: That's it.

18 THE COURT: Well, thanks for letting me know. That's
19 wonderful. Thank you.

20 JUROR 310: Okay.

21 THE BAILIFF: Juror no. 299.

22 (WHEREUPON, an in camera colloquy is conducted outside the
23 presence of the jury as follows:)

24 THE COURT: All right. Yes.

25 JUROR 299: I was arrested in, like, 2005.

1 THE COURT: Okay.

2 JUROR 299: I think it might have been off the record to
3 some degree.

4 THE COURT: Yeah. What were you arrested for, do you
5 remember?

6 JUROR 299: CDV.

7 THE COURT: CDV. It does not show up. You're good.

8 JUROR 299: All right.

9 THE COURT: All right. Right.

10 Now, ladies and gentlemen, you are now qualified to be
11 selected as a juror in this case, which we are going to do
12 tomorrow morning at 9:30, at 9:30.

13 Now, but I do need to give you some instruction before we
14 leave each other. First of all, anybody working at night,
15 anybody going in normally? Not tonight. And the reason is, you
16 can't possibly give the appropriate attention to these matters
17 during the day and work at night. When are you going to sleep?
18 You can't do that. If your employer has any concern about that,
19 get me a name and number and I'll be happy to make a phone call,
20 okay, because I do need you to rest.

21 Now, each time that jurors will leave the courtroom once we
22 begin the trial, we give them this instruction. Do not discuss
23 this matter and do not allow anyone to discuss it with you. And
24 that will apply to your fellow jurors, your family, your friends,
25 anyone that has anything to do with this case. And I'll explain

1 that to those of you who are selected to serve on the jury.

2 For your purposes, though, you cannot talk about this matter
3 because you have a tiny bit of information. So I'm going TO ask
4 that you not talk about this case.

5 Now, you're going to be going home, and that's not fair to
6 you to go home and somebody in your life is going to say, Well,
7 how was your day? I can't tell you. Next thing you know, you've
8 got all kind of issues. I'm not going to do that to you. You
9 can certainly say, I showed up for my juror summons; yes, it took
10 a long time; and I must return in the morning at 9:30; the jury
11 hadn't been selected, but we're going to select the jury in the
12 morning at 9:30; and the trial will begin at that time; and it's
13 a criminal term as opposed to a civil term. And that's usually
14 what people are interested in knowing.

15 Beyond that, I'm going to ask you not to discuss this matter
16 or allow anyone to discuss it with you, because you have a little
17 bit of information. And I think that it is, for those that will
18 serve on the jury, I think it is important that they keep their
19 own counsel. So I'm going ask you not to discuss the particulars
20 of the matter.

21 Now, I'm going to ask you to leave your cellphone or other
22 communication device somewhere other than the courthouse. If you
23 forget -- and don't worry about it, if you forget, it's not a
24 problem, you know we're tether to these things. Just let one of
25 our bailiffs know, and they'll take good care of it until either

1 one of the breaks where you'll take it to the car, or maybe
2 lunch, or at end of the day. It doesn't matter, they'll take
3 good care of it. You cannot have a cellphone or other
4 communication device with you while you're serving on the jury.
5 So please keep that in mind, as well.

6 And, ladies and gentlemen, again, it's almost 5:00, but
7 anyone that needs something for your employer for today, we'll be
8 happy to get that for you in the clerk's office, which is located
9 just directly below where we are. Once your service over this
10 term, once it has ended, you'll get compensated in the mail. But
11 if you need something quicker than that, you can get that down in
12 the clerk's office.

13 With regards to all of you, I look forward to seeing you in
14 the morning at 9:30. If you'll report to your jury room -- not
15 jury room, to your jury assembly room, in the morning at 9:30.
16 What will occur? We'll have jury selection. We are then going
17 to get right into the trial of this case.

18 Have a very good evening. I'll see you in the morning.
19 Thank you.

20 (WHEREUPON, the third jury panel is excused for the day at
21 4:43 p.m.)

22 (WHEREUPON, the fourth jury panel is seated in the courtroom
23 at 4:51 p.m.)

24 (WHEREUPON, the Clerk of Court conducted roll call, and the
25 Court conducted exemptions and transfers necessary to qualify the

1 fourth jury panel.)

2 JURY VOIR DIRE and QUALIFICATION

3 THE COURT: All right. I find that our jury panel is now
4 generally qualified.

5 Ladies and gentlemen, in South Carolina the district
6 attorney, the state's attorney, as that person/that position is
7 called in other states, in South Carolina, we call them
8 solicitors. And at this time I'm going call on the solicitor to
9 please call our first case for trial this week. Solicitor
10 Osborne.

11 ATTORNEY OSBORNE: Thank you, Judge. The case is the State
12 versus Elijah Green and Devonte Major. They both have been
13 charged with the same charges.

14 I'll start with Elijah Green. The first charge is murder,
15 and the indictment number's 2019-GS-18-0423; same charge,
16 attempted murder, at 0426; then burglary in the first degree,
17 0424; possession of a firearm during the commission of a violent
18 crime, 0427; and lastly, ill-treatment of animals, 0429.

19 And Mr. Devonte Major has been charged with murder, that's
20 2019-GS-18-0430; attempted murder, 0432; burglary in the first
21 degree, 0433; possession of firearm during the commission of a
22 violent crime, 0434; and ill-treatment of animals, 0436.

23 And may I approach, Your Honor?

24 THE COURT: Yes. Ladies and gentlemen, let me explain to
25 you what has just occurred. What has just occurred is that

1 Solicitor Osborne has called to my attention the first case for
2 trial, and he has published the indictments. And there are
3 indictments against each of these defendants.

4 Now, ladies and gentlemen, I want to talk about what an
5 indictment is and what an indictment is not. First of all, it's
6 a piece of paper, it's a piece of paper; it's a notice document;
7 it is a document whereby the state gives notice to a citizen that
8 the state is alleging that that citizen has violated one or more
9 of the criminal laws of the state of South Carolina. And the
10 state has prepared an indictment for each charge and against each
11 of these defendants.

12 Now let me tell you what an indictment is not. An
13 indictment is not evidence of any of the allegations that it
14 contains. It is a notice document. I want to tell you, that to
15 each allegation in each of these indictments against him, that
16 each of these defendant have pled not guilty. And that places
17 the burden on the state to prove each and every allegation of
18 each indictment beyond a reasonable doubt. And it will be the
19 jury's duty to determine whether the state has met that burden
20 with regards to each indictment, with regards to each defendant.
21 And as each indictment is considered independently and
22 separately, each defendant is to be considered independent and
23 separate.

24 Now, ladies and gentlemen, in just a moment I am going to be
25 reading to you some of the allegations contained in these

1 indictments. And the reason that I'm going to be doing that is
2 that I'm going to ask, Do any of you know or think you may know,
3 or have you heard or think you may have heard, anything about
4 these allegations? And so in order to ask that question, I'm
5 going to read the allegations to you. And that will be the
6 question at the conclusion of my having read them to you.

7 Now, I'm going to give you the indictment numbers. But
8 rather than read each of the indictments as they apply to each
9 defendant, I am going to include them together. I do that for
10 efficiency purposes only. These gentlemen are to be considered
11 separately and independently. However, in interest of time I am
12 going to read the indictments, the allegations. They are the
13 same as to each, and so I will read them together.

14 Now I will begin with Indictment 2019-GS-18-0423 and
15 2019-GS-18-0430. These are the indictments that the state
16 alleges murder. And the state alleges that, in Dorchester
17 County, South Carolina, on or about January the 28th, 2019, with
18 malice aforethought Elijah Quinlin Diante Green, and Indictment
19 0430 alleges that Devonte Trevon Major, and then they both go on
20 to say, did kill Joe Weaver, by means of shooting the victim.
21 The victim did die as a proximate result thereof. This offense
22 being in violation of the common law and Section 16-3-10 of the
23 South Carolina Code of Laws, 1976, as amended.

24 Ladies and gentlemen, the next indictment, or indictments,
25 that I will address, the indictments alleging attempted murder,

1 they are 2019-GS-18-0426 and 0432. They allege that, in
2 Dorchester County, South Carolina, on or about January the 28th,
3 2019, the Defendant Elijah Quinlin Diante Green, and 0432 alleges
4 that the Defendant Devonte Major, and they each go on to say,
5 did, with the intent to kill, attempt to call one Marcus Porter
6 with malice aforethought, by shooting the victim. This offense
7 being in violation of Section 16-3-29 of the South Carolina Code
8 of Laws, 1976, as amended.

9 The next indictments which I will address will be the
10 indictments alleging burglary in the first degree, the
11 Indictments 2019-GS-18-433 and 0424. And they allege that, in
12 Dorchester County, South Carolina, on or about January the 28th,
13 2019, the Defendant Elijah Quinlin Diante Green, and 0433 alleges
14 that the Defendant Devonte Trevon Major, and they both go on to
15 say, did willfully and unlawfully enter the dwelling of Marcus
16 Porter without consent and with the intent to commit a crime
17 therein, and when, in effecting entry or while in the dwelling or
18 in immediate flight, the defendant or another participant in the
19 crime is armed with a deadly weapon or explosive, causes physical
20 injury to a person who is not a participant in the crime, uses or
21 threatens the use of a dangerous instrument, displays what is or
22 appears to be a knife, pistol, revolver, rifle, shotgun,
23 machinegun or other firearm, or the entering or the remaining
24 occurs in the nighttime. This offense being a violation of
25 Section 16-11-311 of the South Carolina Code of Laws, as amended.

1 The next indictments I will address allege possession of a
2 firearm or a knife during the commission of a violent crime, and
3 they are Indictment 2019-GS-18-0434 and 0427, that allege that,
4 in Dorchester County, South Carolina, on or about January the
5 28th, 2019, the Defendant Elijah Quinlin Diante Green and,
6 Indictment 0434 alleges that the Defendant Devonte Trevon Major,
7 and both go on to say, did visibly display or have in his
8 possession a handgun during the commission of a violent crime as
9 defined by Section 16-1-60 of the Code of Laws of South Carolina,
10 1976, as amended, to wit, burglary, first degree and murder,
11 thereby violating Section 16-23-490 of the Code of Laws of South
12 Carolina, 1976, as amended.

13 And finally I will address indictments which allege
14 ill-treatment of animals, in general, torture. They're
15 Indictments 2019-GS-18-0426 and 0429, which allege that, in
16 Dorchester County, South Carolina, on or about January the 28th,
17 2019, the Defendant Elijah Quinlin Diante Green, and Indictment
18 0436 alleges that the Defendant Devonte Trevon Major, and they go
19 on to say, did, torture, torment, needlessly mutilate, cruelly
20 kill or inflict excessive or repeated unnecessary pain or
21 suffering upon an animal or by omission other commission did
22 cause the act to be done in that the defendant did cruelly kill a
23 dog by shooting it, this offense being in violation of Section
24 47-1-40(c) of the South Carolina Code of Laws, as amended.

25 Again, ladies and gentlemen, to each and every allegation of

1 each of these indictments, each of these defendants have pled not
2 guilty. The burden of proof of beyond a reasonable doubt lies
3 with the state.

4 Ladies and gentlemen, do any of you know or think you may
5 know, or have you heard or think you may have heard, anything
6 about these allegations? If so, please stand.

7 (No response.)

8 THE COURT: And I find no one standing. Ladies and
9 gentlemen, allow me to introduce you, please, to Solicitor
10 Osborne, who will introduce you to the solicitors in his office
11 and those who will be assisting him during the trial. Yes, sir.

12 ATTORNEY OSBORNE: Thank you, Judge. Good afternoon. My
13 name's David Osborne. I am a prosecutor, or assistant solicitor
14 as we're called here in South Carolina. This is Nick Young, he's
15 also a prosecutor, and he will be helping me out with this case.
16 This is Carrie Huff, she is our courtroom administrator. When
17 the trial starts, you'll also see Detective/Sergeant Jonathan
18 Davis, he's with Summerville Police Department, he'll be seated
19 at our desk. We're also going to have Stacy Cook and Rebecca
20 Durr, they're legal assistants. They're going to be helping
21 bringing out the witnesses during trial.

22 Our boss, your First Circuit Solicitor, is David Pascoe.
23 Working here in the Dorchester, also prosecutors who are
24 assistant solicitors, Kelly LaPlante, Mike Speers, John Rivers,
25 Baker Allen, Meagan Chinnis, Jillian Frederick and Vergil Deas.

1 Thank you, Judge.

2 THE COURT: Ladies and gentlemen, you're going to hear the
3 term, are you acquainted with. I want to define that term for
4 you. I'm trying to find out if you have any connection with
5 these folks that I'll be introducing you to or asking you about.
6 I intend a very, very general definition of acquainted with.

7 Let me give you an example. You may have gone to school
8 with someone, who I'll ask you about, 20 years ago; you haven't
9 thought about him and you haven't seen him in 20 years. Well,
10 believe it or not, that relationship, as old and limited as it
11 is, would be encompassed within my definition of acquainted with.
12 Please keep that definition in mind.

13 It may be that you simply work at the same location with
14 someone who I'll ask you about. Maybe you wave at each other
15 across the parking lot. Believe it or not, that relationship, as
16 limited as it is, would be encompassed within my definition of
17 acquainted with. So, please, again, keep that in mind.

18 My question to you now is, Are you related, by blood or
19 marriage, or acquainted with Solicitor Osborne, Solicitor Young
20 or any of the employees or attorneys at the First Circuit
21 Solicitor's Office? If so, please stand at this time.

22 (A juror stands.)

23 THE COURT: Yes, ma'am. Your number?

24 JUROR 239: 239.

25 THE COURT: Now, let me tell you, I need to control pretty

1 tightly your responses. And just answer what I'm going to ask
2 you, okay? Don't sound, in other words. Tell me who you know.

3 JUROR 239: Kelly LaPlante.

4 THE COURT: And do you visit in each other's homes?

5 JUROR 239: No.

6 THE COURT: And would you describe your relationship as a
7 friendship or an acquaintanceship, or professional?

8 JUROR 239: Friendship. Acquaintance. Acquaintance.

9 THE COURT: All right. Would the fact that Ms. LaPlante
10 works in the solicitor's office, would that have an affect on
11 your ability to be completely fair and impartial to the state, as
12 well as to each of these defendants?

13 JUROR 239: No, ma'am.

14 THE COURT: And can you set that relationship completely
15 aside and make up your mind based upon what you hear in court
16 while court is in session?

17 JUROR 239: Yes, ma'am.

18 THE COURT: Stay with us. Yes, sir. Tell me who you know.

19 JUROR 380: Carrie Huff.

20 THE COURT: Carrie Huff. Do you visit in each other's
21 homes?

22 JUROR 380: Yes.

23 THE COURT: Yes, all right. And would the fact that
24 Ms. Huff is an employee of the solicitor's office, would that
25 have an affect on your ability to be completely fair and

1 impartial to the state, as well as these two defendants? The
2 question must be answered yes or no.

3 JUROR 380: No.

4 THE COURT: Can you set that relationship completely
5 aside ---

6 JUROR 380: Yes.

7 THE COURT: --- and make up your mind based upon what you
8 hear in court while court is in session, being completely
9 unaffected by that relationship?

10 JUROR 380: Yes.

11 THE COURT: And would you have any concern if you believe
12 the state had not met its burden of proof? Would the fact that
13 you know Ms. Huff enter into your decision-making at all?

14 JUROR 380: No.

15 THE COURT: Very well. Please stay with us.

16 ATTORNEY GAY: Your Honor, could we get his juror number?

17 THE COURT: Yeah. Your juror number is?

18 JUROR 380: 380.

19 THE COURT: 380. Thank you.

20 Now, ladies and gentlemen, please allow me to introduce you
21 to Mr. Elijah Green. Mr. Green, thank you. Thank you,
22 Mr. Green. And you may be seated. Ladies and gentlemen, are you
23 related, by blood or marriage, or acquainted with Mr. Elijah
24 Green? If so, please stand.

25 (No response.)

1 THE COURT: All right. And just for the -- just to be
2 absolutely clear, his full name is Elijah Quinlin Diante Green.
3 I just wanted to be sure I said that name as I was going through
4 the indictments. Are you related, by blood or marriage, or
5 acquainted with Mr. Green? If so, please stand.

6 (No response)

7 THE COURT: And I find no one standing.

8 Now, ladies and gentlemen, Mr. Green is represented by
9 Ms. Melisa Gay, or Lisa Gay. Earlier today Mr. Coleman,
10 Mr. Michael Coleman, was also present assisting for a little bit,
11 Ms. Gay, while she was tending to other matters. She's now done
12 tending to other matters. And so I ask, are you related, by
13 blood or marriage or acquainted with, or have you or any member
14 of your immediate family ever been represented by Ms. Gay,
15 Mr. Coleman? If so, please stand.

16 (No response.)

17 THE COURT: And I find no one standing. Thank you so much,
18 Ms. Gay. Now, ladies and gentlemen, please allow me now to
19 introduce you to Mr. Devonte Trevon Major. And this is
20 Mr. Major.

21 And thank you so much, Mr. Major. You may be seated.
22 Ladies and gentlemen, are you related, by blood or marriage, or
23 acquainted with Mr. Major? If so, please stand at this time.

24 (No response.)

25 THE COURT: And I find no one standing. And Mr. Major is

1 represented by Ms. Laree Hensley. Allow me to introduce you to
2 Ms. Hensley. And I would ask if you are related, by blood or
3 marriage, or acquainted with, or have you or any member of your
4 immediate family, to your knowledge, been represented by
5 Ms. Laree Hensley? If so, please stand.

6 (No response.)

7 THE COURT: Very well. I find no one standing. Thank you,
8 Ms. Hensley.

9 Now, ladies and gentlemen, I have some additional questions
10 to ask of you. Ladies and gentlemen, you told us what your
11 current employment is. Have you ever been employed formerly,
12 have you ever been employed, as a law enforcement officer? If
13 so, please stand.

14 (A juror stands.)

15 THE COURT: All right. And your number?

16 JUROR 406: 406.

17 THE COURT: All right. And how long ago?

18 JUROR 406: Twenty years ago.

19 THE COURT: Twenty years ago where?

20 JUROR 406: North Charleston.

21 THE COURT: Thank you so much. And your number, you gave us
22 your number; right?

23 JUROR 406: 406.

24 THE COURT: Got it. Now, ladies and gentlemen, do you have
25 family members, immediate family members, who are employed as a

1 law enforcement officer or for a law enforcement agency? If so,
2 please stand.

3 (Jurors stand.)

4 THE COURT: Your number?

5 JUROR 239: 239.

6 THE COURT: What agency?

7 JUROR 239: Berkeley County. He's a reserve sheriff's
8 deputy.

9 THE COURT: And that would your?

10 JUROR 239: Husband.

11 THE COURT: Your husband. Thank you so much.

12 All right. Ladies and gentlemen, I'm going to ask three
13 questions together. I don't want you to respond to any one of
14 the three until I've asked all three. And then I'm going to have
15 you approach if you need to respond.

16 Question number one is, Are you a member or, to your
17 knowledge, your immediate family member a member of organizations
18 such as Darkness to Light, Citizens Against Violent Crime, also
19 known as CAVE, People Against Rape, also known as PAR, Mothers
20 Against Drunk Driving, known as MADD, Persons Empowered to Save
21 Teens, or PEST, or such organizations such as these? That's
22 question number one, are you a member or, to your knowledge, an
23 immediate family member.

24 Question number two, Are you or any member of your immediate
25 family, to your knowledge, the victim of a violent crime?

1 And question number three, Have you ever been arrested for a
2 violent crime or do you have a family member, immediately family
3 member, that has been arrested and/or convicted of a violent
4 crime?

5 If you need to respond to any of these questions, I'm going
6 to ask you to please stand and come forward.

7 (Jurors stand.)

8 THE BAILIFF: Juror no. 41, 41.

9 THE COURT: Was That 41?

10 (WHEREUPON, an in camera colloquy is conducted outside the
11 presence of the jury as follows:)

12 JUROR 41: Forty-one, yes, ma'am.

13 THE COURT: Yes, sir. Here's what I want. I want enough
14 volume for my court reporter to hear you.

15 JUROR 41: Okay.

16 THE COURT: And the rest of us will just have to gather
17 around.

18 JUROR 41: My brother was convicted of a criminal sexual
19 assault. But he's passed away, he's no longer with us.

20 THE COURT: Quite some time ago, I gather?

21 JUROR 41: Yes, ma'am. It was back in the early '90s.

22 THE COURT: And would that, in any way, interfere with your
23 ability to be completely fair and impartial to the state, as well
24 as to each of these defendants?

25 JUROR 41: No.

1 THE COURT: And can you make up your mind based on what you
2 hear in court, unaffected by that?

3 JUROR 41: Yes, ma'am.

4 THE COURT: Thank you, sir.

5 JUROR 41: Thank you.

6 THE COURT: Please stay with us.

7 THE BAILIFF: Juror no. 171.

8 THE COURT: Got it.

9 (WHEREUPON, an in camera colloquy is conducted outside the
10 presence of the jury as follows:)

11 THE COURT: Yes, sir.

12 JUROR 171: I was a victim of a violent crime.

13 THE COURT: And ---

14 JUROR 171: In 1987 I was a victim, myself and some other
15 people. I was shot.

16 THE COURT: And was that ---

17 JUROR 171: In Charleston.

18 THE COURT: In Charleston. Would that have an affect on
19 your ability to be completely fair and impartial to the state, as
20 well as to each of these two defendants?

21 JUROR 171: No.

22 THE COURT: All right. Can you set that experience
23 completely aside and make up your mind based upon what you hear
24 in court while court is in session?

25 JUROR 171: Yes, I can set every -- I can do that.

1 THE COURT: Okay, all right. And, all right. Very well.
2 Thank you.

3 JUROR 171: Okay.

4 (WHEREUPON, an off-the-record discussion was held at
5 sidebar.)

6 THE COURT: Can you all hear me if I stay down here? Yeah.
7 Now, if my voice drops, y'all let me know.

8 Ladies and gentlemen, what I'm going to do next is I am
9 going to read to you another list. And let me tell you what list
10 it is. At this point the lawyers give to me the list of
11 potential witnesses, because this is my chance to ask if anybody
12 knows anybody. So my question as to each and every one of these
13 individuals is, Are you related, by blood or marriage, or
14 acquainted with any of the folks whose names I'm going to give
15 you in just a moment. There are -- it's not an exhaustive list,
16 but it's got a few names on it. So if you need me to repeat the
17 list, or some of it, just let me know.

18 And the question again, Are you related, by blood or
19 marriage, or acquainted with any of the following individuals?
20 Leta Boehler; Joshua Scarborough; Jacob Cramer; Dylan Reynolds;
21 Matthew Brooks; Kenneth Driscoll; Christopher Flynn; Scott Kuncce;
22 Phillip Moy; Jonathan Davis; Rachel Nguyen; Ryan DeWane; Nicole
23 Hardin; James Green; James -- and I got his nickname -- Cord,
24 King; Dr. Nicholas Batalis; David Swibaker; Marcus Porter; Salina
25 Sheppard; Muanah Fortune; Polo Salazar; Jamie Hall; Bethany

1 Davidson; Vera Martinez; Charlotte Pitts; Jackie Davis; Daniel
2 Greene; Christina Denson; Marie Wearing; I think I've already
3 mentioned Christopher Flynn, but Christopher Flynn; Christopher
4 Hirsch; I may have mentioned Taylor Jackson, but Taylor Jackson;
5 Meagan Wade; Jonathan James; Jaquavious Washington; Wade
6 Rollings; Bernard Seabrook; Shaneka Wright.

7 Are you related, by blood or marriage, or acquainted with
8 fully of those individuals? If so, please stand.

9 (No response.)

10 THE COURT: And I find no one standing.

11 Ladies and gentlemen, I'm going to ask two questions
12 together. Number one, Are you a member of the NRA, the National
13 Rifle Association? That's the first question.

14 The second question is, Have you had occasion to have a
15 conversation or hear a conversation or think you may have heard a
16 conversation or a discussion regarding a term of court on or
17 about May the 12th of 2021?

18 If you need to respond either of those questions, I'm going
19 ask you to please stand and come forward.

20 (No response.)

21 THE COURT: And I find no one standing. And, ladies and
22 gentlemen, do you or any member of your immediate family, to your
23 knowledge, live in the vicinity -- and let's say, I don't know,
24 several blocks, four, five, six blocks, in the vicinity of [REDACTED]
25 Myrtle, Summerville, South Carolina? If so, please stand, if you

1 live near ■■■ Myrtle in Summerville.

2 (No response.)

3 THE COURT: I find no one standing.

4 All right. Ladies and gentlemen, this is my concluding
5 question. It is general, and I mean it to be general. Do you
6 know any reason why you ought not/should not/could not be a juror
7 in this case?

8 If you are a juror in this case, you must be ready, willing
9 and able to listen to the evidence, listen to the law; you must
10 make up your minds based solely, based only, on what you hear in
11 court while court is in session, being completely unaffected by
12 matters extraneous, is what the case law talks about, matters
13 outside the Court. You must be ready, willing and able to be
14 completely fair and impartial to the state and to each of these
15 defendants.

16 If you have any concern whatsoever about your ability to do
17 that, it may be that given the nature of these offenses you have
18 concerns; it may be that you really earlier sat there and debated
19 about whether you needed to disclose certain information and
20 maybe you would just feel better now if you disclosed it. Come
21 on forward and do that. You may have just remembered something
22 in response to a question that I asked earlier. You may have
23 just remembered that the tickets to Disney World are in the
24 console in your car and you just remembered that. How are you
25 supposed to tell me you're supposed to go to Disney World

1 Wednesday afternoon at 3:00? It could be any reason. If you
2 have any concern, I'm going to ask you to please approach at this
3 point.

4 I've got to tell you a story really quick. I hadn't done
5 this all day, but I've got to tell you. And it happened years
6 ago. And the fellow was sitting right there. And we had reached
7 this point in jury qualifications, and this young man stood up
8 and said, Judge? I said, Yes, sir? Could I go be with my wife
9 at Trident Hospital while she gives birth to our first child? Is
10 anyone in labor? Is anyone's spouse in labor? Okay. It was a
11 moment, like, almost like, it was a moment.

12 Anyway, if anyone needs to approach, please approach and let
13 us talk.

14 (No response.)

15 THE COURT: Very well. I find that our jury is qualified.

16 Now let me tell you what happens next. Ladies and
17 gentlemen, I need you to be here at 9:30 in the morning. And I
18 need to give you some instruction, though, prior to your arrival.
19 The folks who are actually selected to serve on the jury, I'm
20 going to tell them each time we leave each other, Do not discuss
21 this matter or allow anyone to discuss it with you. I'm actually
22 going to tell you that, as well.

23 You a very little bit of information. I read you some of
24 the allegations; I've introduced you to some folks. You've got a
25 little bit of information. It is appropriate that I tell you, Do

1 not discuss this matter, do not allow anyone to discuss it with
2 you.

3 You have to receive all of the information for which you
4 will make up your minds while court is in session. You cannot
5 talk about this matter.

6 That's not -- that can't be the whole conversation I have
7 with you, because you're going to be going home and I can't have
8 you going home and have your, the person in your world say, Well,
9 how was your day?, and you have to say, Oh, I can't tell you.
10 That would be terrible. Then I've created all kinds of upset.
11 So you certainly can say you reported for your jury duty; that
12 you have been asked to return; the jury selection's going to be
13 in the morning at 9:30; you can say that it's a criminal matter
14 as opposed to a civil matter. But beyond that, please do not
15 discuss this matter or allow anyone to discuss it with you. And
16 that really is a requirement, so please be mindful of it.

17 Do not bring your cellphone or other communication device
18 with you in the morning. You cannot have your cellphone with you
19 while you are serving on the jury. And if you forget, we're
20 tether to these things. If you do forget, just let one of our
21 bailiffs know, and they'll take good care of it until you are
22 prepared to remove it from the courthouse.

23 Does anybody work at night, anybody here work at night?
24 Okay, good, because I don't want you to work at night, I want to
25 you rest. You cannot work all night and then be a proper and

1 attentive juror during the day, I am afraid. So I don't want
2 anybody working at night because you need to rest.

3 Ladies and gentlemen, I don't -- well, our clerk's office is
4 closed at this point. Please know, though, that we certainly are
5 able to and will document your participation here at the
6 courthouse during your jury service. We're certainly prepared do
7 that. Anyone that needs it right now, do we have something we
8 can give folks?

9 CLERK OF COURT: Yes, ma'am. There's probably still
10 somebody downstairs.

11 THE COURT: Okay. Go to the clerk's office down below where
12 we are, and there's probably somebody there that can give it to
13 you. You're going to receive that for your service. But if you
14 have to have it right now for today, we certainly can get that
15 for you, and I'm happy to do that.

16 Yes, sir?

17 JUROR: Will we receive something to give to our office
18 proving that we're ---

19 THE COURT: Indeed. That is exactly we're talking about.
20 You're going to get that in the mail with your big, fat jury
21 check. But if you need it now, if you need it now, you can get
22 it now.

23 JUROR: Yes, ma'am.

24 THE COURT: If you need it now, you can certainly get it
25 now.

1 JUROR: Okay.

2 THE COURT: And Ms. Westbury thinks that there's someone
3 probably still in the clerk's office that can help you with that.
4 And the clerk's office is right below where we are. I should
5 tell you, that's what that is.

6 Now, we're going to select a jury at 9:30 in the morning,
7 and then we'll get right into the trial of this case.

8 So have a very good evening. Thank you for every tick of
9 the clock. And I look forward to seeing you in the morning.
10 Thank you so much.

11 (WHEREUPON, the fourth jury panel is excused for the day at
12 5:57 p.m.)

13 MATTER(S) OF LAW

14 THE COURT: Anything from the state?

15 ATTORNEY OSBORNE: No. No, Your Honor.

16 THE COURT: All right. On behalf of Mr. Green?

17 ATTORNEY GAY: Well, Your Honor, we did file a specific voir
18 dire, and some of those questions were not answered. I would
19 take exception to the fact that you didn't ask all my questions,
20 but you answered what you wanted to -- you asked what you wanted
21 to, I understand that. But we did have some questions that I
22 thought were pertinent, that could have been helpful and provide
23 due process in this jury qualification. But I just would take
24 exception to the fact that you answer.

25 THE COURT: Okay. I reviewed them, and some of them, I

1 chose not to ask. For example, do you think COVID is a hoax? I
2 chose not to ask that one. I don't think that has any relevance
3 to this particular case. The statute certainly doesn't require
4 that that would be something that the Court would ask as voir
5 dire for this case.

6 And we certainly can go through the ones I did not ask and
7 put the reasoning on that. But I certainly think that certainly
8 the highest points were, I think, met.

9 ATTORNEY GAY: Well, Your Honor, specifically with regard to
10 asking the jurors if they had watched Live 5 News is something
11 that Ms. Hensley and I discussed. There is a footage that came
12 out after the last defendants' trial that was on Live 5 News that
13 was very prejudicial, is the best way to say it, you know. Had
14 you asked the question, Did you watch something that was
15 prejudicial to this case, without kind of asking too much, which
16 is why we had fashioned the question as, Do you watch Live 5
17 News, to identify who may have been a juror who had seen that.

18 Now, certainly that could have been covered in some of your
19 other questions. But that was a question that we specifically
20 asked.

21 THE COURT: Got it. You know, there gets to be a point that
22 when you begin to ask such personal questions like, Well, do you
23 watch Live 5 News, you know, I think that really goes around the,
24 goes around the bend to get to the real question, Do you know
25 anything about this; have you heard anything about this; do you

1 have any information whatsoever about this matter? And that's
2 why I take the time to read them the indictments and ask them
3 that.

4 And I think that asking them if you watch Live 5 News, that
5 isn't any information, to my mind, about whether or not they know
6 anything about this particular matter.

7 So, got it, though, and note your exception. But that was
8 certainly my thought process ---

9 ATTORNEY GAY: Thank you.

10 THE COURT: --- was to ask it directly instead of
11 indirectly. All right. Very well. Anything further before we
12 take our break?

13 ATTORNEY GAY: No, ma'am.

14 THE COURT: Anything?

15 ATTORNEY HENSLEY: The same exceptions with regard to the
16 voir dire that we submitted and filed. That the questions that
17 weren't asked, your Honor, we would just ask that you note the
18 exceptions.

19 THE COURT: Sure.

20 ATTORNEY HENSLEY: I was also wondering, is there a
21 consolidated list of all the jurors that I could transfer all my
22 notes to instead of having to go back and forth through four
23 different panels? Or do they not have it?

24 CLERK OF COURT: They're all in those four different time
25 slots.

1 ATTORNEY HENSLEY: Right. But like the fourth list has
2 every single person's name on it, but you just blacked out all
3 the people who we had already done. Can I have a list that ---

4 THE COURT: An unredacted list, so to speak?

5 ATTORNEY HENSLEY: An unredacted list so I could -- I just
6 would like to have one list instead of having to flip through.

7 THE COURT: Get it, if they can.

8 ATTORNEY HENSLEY: If they can give it to me.

9 CLERK OF COURT: We may be able to.

10 ATTORNEY HENSLEY: Thank you. I'm not trying to make it
11 harder than it has to be.

12 THE COURT: If they can, I know they will. All right.
13 Anything else?

14 ATTORNEY HENSLEY: No.

15 THE COURT: Very well. Okay. I will see everybody in the
16 morning. And thank you very much.

17 (WHEREUPON, an off-the-record discussion was held in open
18 court.)

19 (WHEREUPON, court recessed for the day on Monday, July 12,
20 2021, at 6:05 p.m., and reconvened on Tuesday, July 13, 2021, at
21 9:54 a.m.)

22 (WHEREUPON, the jury panel was seated in various locations
23 within the courthouse at 9:38 a.m.)
24
25

JURY SELECTION

(WHEREUPON, an off-the-record discussion was held at sidebar.)

THE COURT: We are about to begin our jury selection, ladies and gentlemen. I need to put one eye here and one eye over here, because I want to speak to both groups. I want to go over what is going to occur. Can y'all hear me now? Yes? Perfect.

So here's what will occur. We have jurors who are upstairs; obviously we have jurors who are in the jury assembly room. What will occur is that our Clerk of Court, Ms. Graham, she will call a juror number, and she will identify whether that juror is upstairs or in the jury assembly room. If your number's called and you're up here in the courtroom, just stand where you are and put on your shield. You know, take your mask down and put your shield on, but just stand where you are.

If you are downstairs, what we're going to ask you to do is to, of course, put on your shield, take your mask off, put your shield on, and approach the camera. I think there's a little spot. Melissa's down there, and she'll show where you to stand. And then we can say hi, and the attorneys can get one more look at you.

And the Clerk of Court, our Clerk of Court, will, of course, turn to the state and she will say, What says the state? And you're going to hear one of two things. You will hear either, Present the juror, or, Excuse the juror. And irrespective of

1 what -- and then you'll stand there, and she will say, if the
2 state says, Excuse the juror, then you will simply, if you're
3 upstairs, sit back down. If you are downstairs, you'll just take
4 your seat.

5 If you hear, Present the juror, then you'll then hear our
6 Clerk of Court say, What says Mr. Green, or Defendant Green?
7 Then you will hear from Ms. Gay, who will say either, Present the
8 juror, or, Excuse the juror. If you hear, Present the juror, you
9 continue, you're downstairs, just stand where you are; if you're
10 upstairs, just continue to stand. And you will then -- excuse
11 me. There's a frog, when I came, across that jumped in my throat
12 this morning.

13 You'll then hear from Mr. Major. You'll then hear either,
14 Present or seat the juror, or, Excuse the juror. If you hear,
15 Excuse the juror, take your -- if you're downstairs, take your
16 seat; if you're upstairs, just simply sit down.

17 Now, if you hear from -- excuse me, y'all. If you hear,
18 Seat the juror, then at that point, again you will take your seat
19 if you're downstairs; if you're upstairs, you're going to sit
20 down. But you'll have, you'll be given, a sticker that's going
21 to say JUROR, and you're going to put that on your right side, or
22 you can put it on your left side, but you're going to go ahead
23 and just affix that sticker so we will, at that point, know
24 you're a juror. And then if you're excused, you just keep your
25 seat.

1 Now, let me tell you, there are probably hundreds of
2 different considerations that go through an attorney's mind as
3 they select a juror on a case. But I can tell you one
4 consideration that does not go through these attorneys' minds,
5 and that is any intention whatsoever to cause you any
6 embarrassment. That, I can assure you.

7 So if you are excused, please don't take any embarrassment
8 whatsoever, because I can assure you that that is one
9 consideration that these lawyers would never, ever consider.
10 While there may be hundreds of others, that isn't one of them.

11 Now, ladies and gentlemen, if you have any questions, just
12 know that Melissa is downstairs, she will assist you; and the
13 clerk's office will assist upstairs, as well.

14 And I would just simply ask, Are you ready to select the
15 jury on behalf of the state?

16 ATTORNEY OSBORNE: Yes, Your Honor.

17 THE COURT: And on behalf of Mr. Green?

18 ATTORNEY GAY: Yes, ma'am.

19 THE COURT: And Mr. Major?

20 ATTORNEY HENSLEY: Yes, Your Honor.

21 THE COURT: Thank you all so much. All right. Madam Clerk,
22 I will turn it over to you.

23 MADAM CLERK CHERYL GRAHAM: As I call your name, please
24 stand. And if you're in Courtroom D, where you're seated; and
25 down in the first floor in the jury assembly room, please go to

1 the mark on the floor. And, Melissa, can you hear me?

2 CLERK OF COURT: Cheryl, we don't have a strike sheet yet.

3 MADAM CLERK CHERYL GRAHAM: Okay. Tell me when you get it.

4 CLERK OF COURT: Got it. We're good.

5 MADAM CLERK CHERYL GRAHAM: Okay. Juror no. 120, Tobias
6 Goodwine. And he's in the jury assembly room.

7 What sayeth the state?

8 ATTORNEY OSBORNE: Please present this juror.

9 MADAM CLERK CHERYL GRAHAM: The Defendant Green?

10 ATTORNEY GAY: Please seat the juror for the trial of this
11 case.

12 MADAM CLERK CHERYL GRAHAM: And the Defendant Major?

13 ATTORNEY HENSLEY: Please seat Mr. Goodwine.

14 MADAM CLERK CHERYL GRAHAM: Mr. Goodwine is seated as one of
15 our jurors.

16 Juror no. 292, Dillon Poe. Mr. Poe is in the jury assembly
17 room.

18 THE BAILIFF: He's here.

19 MADAM CLERK CHERYL GRAHAM: Oh, he's here. I'm sorry.
20 Mr. Poe is in the courtroom.

21 What sayeth the state?

22 ATTORNEY OSBORNE: Please present this juror.

23 MADAM CLERK CHERYL GRAHAM: The Defendant Green?

24 ATTORNEY GAY: Please seat juror for the trial this case.

25 MADAM CLERK CHERYL GRAHAM: And the Defendant Major?

1 ATTORNEY HENSLEY: Please seat Mr. Poe.

2 MADAM CLERK CHERYL GRAHAM: Mr. Poe is seated as one of our
3 jurors.

4 Juror no. 247, Tamra Miller. Ms. Miller's in the courtroom.
5 What sayeth the state?

6 ATTORNEY OSBORNE: Please present this juror.

7 MADAM CLERK CHERYL GRAHAM: Defendant Green?

8 ATTORNEY GAY: Please excuse the juror from the trial of
9 this case.

10 MADAM CLERK CHERYL GRAHAM: You may have a seat. You're
11 excused. Juror 391, Charles Weeks, Jr. Mr. Weeks is in the
12 courtroom.

13 What sayeth the state?

14 ATTORNEY OSBORNE: Please present this juror.

15 MADAM CLERK CHERYL GRAHAM: The defense, Mr. Green?

16 ATTORNEY GAY: Please seat the juror.

17 MADAM CLERK CHERYL GRAHAM: And the defense, Mr. Major?

18 ATTORNEY HENSLEY: Please excuse Mr. Weeks.

19 MADAM CLERK CHERYL GRAHAM: Mr. Weeks has been excused from
20 this trial.

21 Juror no. 201, Stephanie Kerstetter. And she is in the jury
22 assembly room.

23 What sayeth the state?

24 ATTORNEY OSBORNE: Please present this juror.

25 MADAM CLERK CHERYL GRAHAM: Present the juror?

1 ATTORNEY OSBORNE: Present the juror.

2 MADAM CLERK CHERYL GRAHAM: The defense, Mr. Green?

3 ATTORNEY GAY: Please seat the juror for the trial of this
4 case.

5 MADAM CLERK CHERYL GRAHAM: And the defense, Mr. Major?

6 ATTORNEY HENSLEY: Please seat the juror.

7 CLERK OF COURT: Cheryl, we didn't understand that last ---

8 MADAM CLERK CHERYL GRAHAM: Ms. Kerstetter is seated as one
9 of our jurors.

10 CLERK OF COURT: Thank you.

11 MADAM CLERK CHERYL GRAHAM: Juror no. 92, Melinda Driggers.
12 And Ms. Driggers is in the jury assembly room.

13 What sayeth the state?

14 ATTORNEY OSBORNE: Please present the juror.

15 MADAM CLERK CHERYL GRAHAM: I'm sorry, I'm having a
16 problem ---

17 ATTORNEY OSBORNE: Please present the juror. Present the
18 juror.

19 MADAM CLERK CHERYL GRAHAM: The defendant, Mr. Green?

20 ATTORNEY GAY: Please excuse the juror from the trial of
21 this case.

22 MADAM CLERK CHERYL GRAHAM: Ms. Driggers has been excused
23 from this case.

24 Juror 194, Ryan Jones. Mr. Jones is in the jury assembly
25 room.

1 What sayeth the state?

2 ATTORNEY OSBORNE: Please present the juror.

3 MADAM CLERK CHERYL GRAHAM: Present the juror.

4 The Defendant Mr. Green?

5 ATTORNEY GAY: One moment, please. Please seat the juror
6 for the trial of this case.

7 MADAM CLERK CHERYL GRAHAM: The Defendant Major?

8 ATTORNEY HENSLEY: Please seat Mr. Jones.

9 MADAM CLERK CHERYL GRAHAM: Mr. Jones is seated as our
10 juror.

11 Juror no. 39, Janeka Ryans. Ms. Ryans is in the jury
12 assembly room.

13 What sayeth the state?

14 ATTORNEY OSBORNE: Please present the juror.

15 MADAM CLERK CHERYL GRAHAM: Defendant Mr. Green?

16 ATTORNEY GAY: Please seat the juror for the trial of this
17 case.

18 MADAM CLERK CHERYL GRAHAM: Defendant Major?

19 ATTORNEY HENSLEY: Please seat the juror.

20 MADAM CLERK CHERYL GRAHAM: Ms. Ryans is seated as one of
21 our jurors.

22 Juror 289, Chad Pitre. Mr. Pitre's in the jury assembly
23 room.

24 What sayeth the state?

25 ATTORNEY OSBORNE: Please present the juror.

1 MADAM CLERK CHERYL GRAHAM: Thank you. Defendant Green?

2 ATTORNEY GAY: Please seat the juror for the trial of this
3 case.

4 MADAM CLERK CHERYL GRAHAM: And Defendant Major?

5 ATTORNEY HENSLEY: Please excuse Mr. Pitre.

6 MADAM CLERK CHERYL GRAHAM: Mr. Pitre has been excused from
7 this trial.

8 Juror 375, Cynthia Wade. Ms. Wade is in the jury assembly
9 room.

10 What sayeth the state?

11 ATTORNEY OSBORNE: Please present this juror.

12 MADAM CLERK CHERYL GRAHAM: The defense, Mr. Green?

13 ATTORNEY GAY: Please seat the juror for the trial of this
14 case.

15 MADAM CLERK CHERYL GRAHAM: And defense, Mr. Major?

16 ATTORNEY HENSLEY: Please seat Ms. Wade.

17 MADAM CLERK CHERYL GRAHAM: Ms. Wade is seated as one of our
18 jurors.

19 Juror no. 82, Roberta Davis Gailes. She is in the jury
20 assembly room.

21 What sayeth the state?

22 ATTORNEY OSBORNE: Please excuse this juror.

23 MADAM CLERK CHERYL GRAHAM: Ms. Gailes is excused from the
24 trial of this case.

25 Juror no. 54, Amanda Collins. Ms. Collins is in the

1 courtroom.

2 What sayeth the state?

3 ATTORNEY OSBORNE: Please present this juror.

4 MADAM CLERK CHERYL GRAHAM: Defense, Mr. Green?

5 ATTORNEY GAY: Please seat the juror for the trial of this
6 case.

7 MADAM CLERK CHERYL GRAHAM: And the defense, Mr. Major?

8 ATTORNEY HENSLEY: Please seat Ms. Collins.

9 MADAM CLERK CHERYL GRAHAM: Ms. Collins is seated as one of
10 the jurors on this case.

11 Juror 287, Rosemarie Peoples. Ms. Peoples is in the jury
12 assembly room.

13 What sayeth the state?

14 ATTORNEY OSBORNE: Please present this juror.

15 MADAM CLERK CHERYL GRAHAM: The defense, Mr. Green?

16 ATTORNEY GAY: One moment, please. Please excuse the juror
17 from the trial of this case.

18 MADAM CLERK CHERYL GRAHAM: Ms. Peoples has been excused
19 from this case.

20 JUROR: Thank you.

21 MADAM CLERK CHERYL GRAHAM: Juror no. 225, Angelia Lutz.
22 Ms. Lutz is in the courtroom.

23 What sayeth the state?

24 ATTORNEY OSBORNE: Please present this juror.

25 MADAM CLERK CHERYL GRAHAM: The Defendant Mr. Green?

1 ATTORNEY GAY: One moment, please. Please seat the juror
2 for the trial of this case.

3 MADAM CLERK CHERYL GRAHAM: The Defendant Mr. Major?

4 ATTORNEY HENSLEY: Please excuse Ms. Lutz.

5 MADAM CLERK CHERYL GRAHAM: Ms. Lutz has been excused from
6 this trial.

7 Juror 169, D'Ann Horne. Ms. Horne is in the courtroom.
8 What sayeth the state?

9 ATTORNEY OSBORNE: Please present this juror.

10 MADAM CLERK CHERYL GRAHAM: The Defendant Mr. Green?

11 ATTORNEY GAY: One moment, please. Please excuse the juror
12 from the trial of this case.

13 MADAM CLERK CHERYL GRAHAM: Ms. Horne has been excused from
14 this case.

15 Juror 158, Elizabeth Hazen. Ms. Hazen is in the courtroom.
16 What sayeth the state?

17 ATTORNEY OSBORNE: Please present this juror.

18 MADAM CLERK CHERYL GRAHAM: The Defendant Mr. Green?

19 ATTORNEY GAY: Please seat the juror for the trial of this
20 case.

21 MADAM CLERK CHERYL GRAHAM: And Mr. Major?

22 ATTORNEY HENSLEY: Please seat Ms. Hazen.

23 MADAM CLERK CHERYL GRAHAM: Ms. Hazen is a juror on this
24 case.

25 Juror no. 28, Dahlia Rivera Brewer. Ms. Brewer's in the

1 courtroom.

2 What sayeth the state?

3 ATTORNEY OSBORNE: Please present this juror.

4 MADAM CLERK CHERYL GRAHAM: The Defendant Green?

5 ATTORNEY GAY: Please seat the juror for the trial of this
6 case.

7 MADAM CLERK CHERYL GRAHAM: And Defendant Major?

8 ATTORNEY HENSLEY: Beg the Court's indulgence. Please
9 excuse Ms. Brewer.

10 MADAM CLERK CHERYL GRAHAM: Ms. Brewer has been excused from
11 this case.

12 Juror 190, Norman Johnson. Mr. Johnson is in the courtroom.

13 What sayeth the state?

14 ATTORNEY OSBORNE: Please excuse this juror.

15 MADAM CLERK CHERYL GRAHAM: Mr. Johnson has been excused
16 from this case.

17 Juror 406, Christopher Wren. Mr. Wren is in the jury
18 assembly room.

19 What sayeth the state?

20 ATTORNEY OSBORNE: Please present this juror.

21 MADAM CLERK CHERYL GRAHAM: The defense, Mr. Green?

22 ATTORNEY GAY: Please excuse the juror for the trial of this
23 case.

24 MADAM CLERK CHERYL GRAHAM: Ms. Wren has been excused from
25 this trial.

1 Juror no. 380, Jamie Walters. Mr. Walters is in the
2 courtroom.

3 What sayeth the state?

4 ATTORNEY OSBORNE: Please present this juror.

5 MADAM CLERK CHERYL GRAHAM: Defendant Green?

6 ATTORNEY GAY: Please seat the juror for the trial of this
7 case.

8 MADAM CLERK CHERYL GRAHAM: And Defendant Major?

9 ATTORNEY HENSLEY: Please excuse the juror.

10 MADAM CLERK CHERYL GRAHAM: Mr. Walters has been excused
11 from this trial.

12 Juror no. 18, Lori Bisceglia. Ms. Biscglia is in the
13 courtroom.

14 What sayeth the state?

15 ATTORNEY OSBORNE: Please present this juror.

16 MADAM CLERK CHERYL GRAHAM: The Defendant Green?

17 ATTORNEY GAY: Please seat the juror for the trial of this
18 case.

19 MADAM CLERK CHERYL GRAHAM: And Defendant Major?

20 ATTORNEY HENSLEY: Please seat the juror.

21 MADAM CLERK CHERYL GRAHAM: She's seated as one of our
22 jurors.

23 Juror 175, Donald Hydar. Mr. Hydar is in the courtroom.

24 What sayeth the state?

25 ATTORNEY OSBORNE: Please excuse this juror.

1 MADAM CLERK CHERYL GRAHAM: Mr. Hydar's excused from this
2 trial.

3 Juror 102, Christine Felesky. Ms. Felesky's in the
4 courtroom.

5 What sayeth the state?

6 ATTORNEY OSBORNE: Please present this juror.

7 MADAM CLERK CHERYL GRAHAM: The defense, Mr. Green?

8 ATTORNEY GAY: Please seat the juror for the trial of this
9 case.

10 MADAM CLERK CHERYL GRAHAM: And defense, Major?

11 ATTORNEY HENSLEY: Please seat Ms. Felesky.

12 MADAM CLERK CHERYL GRAHAM: Ms. Felesky is seated as one of
13 our jurors.

14 Juror 174, Russell Huiet. Mr. Huiet is in the jury assembly
15 room.

16 What sayeth the state?

17 ATTORNEY OSBORNE: Please present this juror.

18 MADAM CLERK CHERYL GRAHAM: What sayeth the Defendant Green?

19 ATTORNEY GAY: Please excuse the juror from the trial of
20 this case.

21 MADAM CLERK CHERYL GRAHAM: Mr. Huiet is excused from this
22 case.

23 Juror 121, James Gordon. Mr. Gordon is in the jury assembly
24 room.

25 What sayeth the state?

1 ATTORNEY OSBORNE: Please present this juror.

2 MADAM CLERK CHERYL GRAHAM: The Defendant Mr. Green?

3 ATTORNEY GAY: Please seat the juror for the trial of this
4 case.

5 MADAM CLERK CHERYL GRAHAM: And Defendant Mr. Major?

6 ATTORNEY HENSLEY: Please seat Mr. Gordon.

7 MADAM CLERK CHERYL GRAHAM: Mr. Gordon is seated as one of
8 our jurors.

9 Juror 109, Deborah Fuqua. Ms. Fuqua is in the courtroom.
10 What sayeth the state?

11 ATTORNEY OSBORNE: Please excuse this juror.

12 MADAM CLERK CHERYL GRAHAM: Excused from this trial.

13 Juror no. 41, Patrick Cain. Mr. Cain is in the jury
14 assembly room.

15 What sayeth the state?

16 ATTORNEY OSBORNE: Please present this juror.

17 MADAM CLERK CHERYL GRAHAM: The defense, Green?

18 ATTORNEY GAY: One moment, please. Please excuse the juror
19 from the trial of this case.

20 MADAM CLERK CHERYL GRAHAM: Mr. Cain is excused from this
21 trial.

22 Juror no. 347, Kimeta Stewart. Ms. Stewart is in the jury
23 assembly room.

24 What sayeth the state?

25 ATTORNEY OSBORNE: Please present this juror.

1 MADAM CLERK CHERYL GRAHAM: Defendant Mr. Green?

2 ATTORNEY GAY: Please seat the juror for the trial of this
3 case.

4 MADAM CLERK CHERYL GRAHAM: And Defendant Mr. Major?

5 ATTORNEY HENSLEY: Please seat Ms. ...

6 MADAM CLERK CHERYL GRAHAM: Stewart. Ms. Stewart is seated
7 as one of our jurors. Ms. Stewart.

8 THE COURT: Now to the alternate. Counsel, we'll now move
9 to alternate no. 1.

10 MADAM CLERK CHERYL GRAHAM: Now we move to the alternate
11 now. Is that correct with your record?

12 CLERK OF COURT: Yes, ma'am.

13 MADAM CLERK CHERYL GRAHAM: Thank you. Juror no. 31, Karen
14 Brown. Ms. Brown is in the jury assembly room.

15 What sayeth the state?

16 ATTORNEY OSBORNE: Please present this juror.

17 MADAM CLERK CHERYL GRAHAM: Defendant Green?

18 ATTORNEY GAY: Hold on. One moment, please. Please excuse
19 the juror from the trial of this case.

20 MADAM CLERK CHERYL GRAHAM: Ms. Brown is excused from this
21 trial.

22 Juror 198, Joshua Keenan. Ms. Keenan is in the jury
23 assembly room.

24 What sayeth the state?

25 ATTORNEY OSBORNE: Please present this juror.

1 MADAM CLERK CHERYL GRAHAM: The defense, Mr. Green?

2 ATTORNEY GAY: Please seat the juror for the trial of this
3 case.

4 MADAM CLERK CHERYL GRAHAM: And the defense, Mr. Major?

5 ATTORNEY HENSLEY: Please seat Mr. Keenan.

6 MADAM CLERK CHERYL GRAHAM: Mr. Keenan is seated as one of
7 our jurors.

8 THE COURT: One of our alternates.

9 MADAM CLERK CHERYL GRAHAM: One of our alternate jurors.

10 THE COURT: Alternate no. 1.

11 MADAM CLERK CHERYL GRAHAM: Juror 112, Douglas Garrett.
12 Mr. Garrett is in the jury assembly room.

13 What sayeth the state?

14 ATTORNEY OSBORNE: Please present this juror.

15 MADAM CLERK CHERYL GRAHAM: The Defendant Mr. Green?

16 ATTORNEY GAY: Please seat the juror.

17 MADAM CLERK CHERYL GRAHAM: Defendant Major?

18 ATTORNEY HENSLEY: Please excuse Mr. Garrett.

19 MADAM CLERK CHERYL GRAHAM: Mr. Garrett's excused from this
20 trial.

21 Juror no. 29, Rosemary Brezden. Ms. Brezden's in the jury
22 assembly room.

23 What sayeth the state?

24 ATTORNEY OSBORNE: Please present this juror.

25 MADAM CLERK CHERYL GRAHAM: The Defendant Mr. Green?

1 ATTORNEY GAY: Please seat the juror for the trial of this
2 case.

3 MADAM CLERK CHERYL GRAHAM: And Defendant Major?

4 ATTORNEY HENSLEY: Please seat Ms. Brezden.

5 MADAM CLERK CHERYL GRAHAM: Ms. Brezden is seated as one of
6 our alternate jurors.

7 One more?

8 THE COURT: Yes, please.

9 MADAM CLERK CHERYL GRAHAM: Juror 261, Danyelle Nelson.
10 Ms. Nelson is in the jury assembly room.

11 ATTORNEY GAY: What's that number again, ma'am?

12 MADAM CLERK CHERYL GRAHAM: Juror 261.

13 What sayeth the state?

14 ATTORNEY OSBORNE: Please present this juror.

15 MADAM CLERK CHERYL GRAHAM: Defense, Mr. Green?

16 ATTORNEY GAY: One moment. Please seat the juror for the
17 trial of this case.

18 MADAM CLERK CHERYL GRAHAM: And defense, Mr. Major?

19 ATTORNEY HENSLEY: Please seat Ms. Nelson.

20 MADAM CLERK CHERYL GRAHAM: Ms. Nelson is seated as one of
21 our jurors. And that is alternate no. 3.

22 THE COURT: Alternate no. 3. Thank you.

23 Are there any matters regarding the qualification or the
24 selection of the jury from the state?

25 ATTORNEY OSBORNE: None, Your Honor.

1 THE COURT: From Mr. Green?

2 ATTORNEY GAY: One moment, Your Honor. I have no issues
3 with this jury panel, Your Honor.

4 THE COURT: Very well. And with regards to Defendant
5 Mr. Major?

6 ATTORNEY HENSLEY: No issues, Your Honor.

7 THE COURT: Very well. Very well. All right.

8 MADAM CLERK CHERYL GRAHAM: Can I just go over this list out
9 loud to make sure?

10 THE COURT: What we're going to do to be absolutely clear
11 for our record -- and counsel, I'm going to ask if you would
12 kindly pay attention to be sure who we have seated as jurors so
13 everyone's notes, and our alternates, that we are all, what do
14 they say, on the same page. Yes, ma'am.

15 MADAM CLERK CHERYL GRAHAM: Okay. Melissa, can you hear me
16 downstairs?

17 CLERK OF COURT: Yes, ma'am.

18 MADAM CLERK CHERYL GRAHAM: All right. Please check with
19 me. These are the jurors that are seated. Juror 120, Tobias
20 Goodwine; juror 292, Dillon Poe; juror 201, Stephanie Kerstetter;
21 juror 194, Ryan Jones; juror 319, Janeka Ryans; juror 375,
22 Cynthia Wade; juror 54, Amanda Collins; juror 158, Elizabeth
23 Hazen; juror 18, Lori Bisceglia; juror 102, Christine Felesky;
24 juror 121, James Gordon; juror 347, Kimeta Stewart. Alternates
25 are juror 198, Joshua Keenan; juror no. 29, Rosemary Brezden,

1 and; juror no. 261, Danyelle Nelson. Is that correct?

2 ATTORNEY OSBORNE: Yes.

3 ATTORNEY GAY: Yes.

4 ATTORNEY HENSLEY: Yes.

5 THE COURT: Thank you.

6 MADAM CLERK CHERYL GRAHAM: Thank you.

7 THE COURT: Very well. Thank you so much, Ms. Graham.

8 All right. Ladies and gentlemen, those -- again, I'm
9 talking here, a frog in here. Ladies and gentlemen, those of you
10 who have been selected as jurors, meaning you have a juror badge,
11 I'm going to ask you to please stand for me, upstairs and
12 downstairs. Wonderful.

13 Ladies and gentlemen, one of our bailiffs or clerks are now
14 going to escort you to your used-to-be courtroom, but now, in
15 COVID days, it is your jury room. So remembering to just
16 exercise your social distancing, first of all, I'm going to ask
17 you, jurors, if you will please follow our bailiff to your jury
18 room. Upstairs and downstairs.

19 MADAM CLERK CHERYL GRAHAM: Jurors in the jury assembly
20 room, Theresa, will you take them up with the bailiff.

21 THE COURT: Counsel, let me see you.

22 (WHEREUPON, an off-the-record discussion was held at
23 sidebar.)

24 THE COURT: Melissa, have all of our jurors and alternates
25 left the jury assembly room?

1 CLERK OF COURT: Yes, ma'am, they have.

2 THE COURT: Very well. And is the door closed?

3 CLERK OF COURT: Not quite.

4 THE COURT: All right. I can see it. There, we go. All
5 right.

6 Ladies and gentlemen, you are now known as our remaining
7 jurors.

8 (WHEREUPON, an off-the-record discussion was held in open
9 court.)

10 THE COURT: Ladies and gentlemen, those of you downstairs
11 and upstairs, you are now known as our remaining jurors. I am
12 about to dismiss you for the balance of the day. Now, keep your
13 voices low. That's why I wanted the jurors to go and be in the
14 room as I excused you for the balance of the week.

15 Ladies and gentlemen, I want to remind you, if you will
16 recall yesterday when we were going over the exemptions for your
17 jury service and the qualifications for your jury service, I need
18 to remind all of you that you are now not eligible to serve on a
19 jury in a court of record for the balance of 2021. I know you're
20 upset. I'm so sorry. But there's hope in magistrate's court and
21 municipal court.

22 I also want to remind you that you have an exemption, should
23 you choose to exercise that exemption in a court of record, in
24 circuit court, for the calendar years 2022 and 2023. So remember
25 that. When you receive your big, fat jury check, that will be a

1 good record for you to hold on so you'll remember, because it's
2 surprising how quickly time does pass. But that will certainly
3 remind you of when you served.

4 Ladies and gentlemen, I used to tell jurors that the check
5 is in the mail. And Ms. Graham stopped me and said, It's not in
6 the mail; don't tell the jurors that, that's not true; stop,
7 you're a judge, cut that out. So the check's not in the mail.

8 MADAM CLERK CHERYL GRAHAM: It will be.

9 THE COURT: But it will be sent. Our trip to Disney World,
10 it will get you to Jedburg. It is a very small token of all that
11 you have given to us, and that is absolutely your dear and
12 precious time. And for every single, solitary tick of the clock,
13 we are truly so grateful to each and every one of you.

14 Those of you that are dashing off to work, down in the
15 clerk's office we have got the documents for you that will let
16 whomever is curious to know where you have been and what you have
17 been up to over the last two days. So please know that.

18 If we can improve, as we continue with our COVID court, if
19 you can give think of ways that we can improve, please don't keep
20 it to yourself; leave us a note, email the clerk's office, and
21 share that with us. Because we're so grateful to your precious
22 time that you have given to us, we want to be better, we want to
23 make this process as easy for you as we possibly can. So please
24 don't keep your comments to yourself; please share them with us,
25 we're happy to have them, and we'll certainly take them

1 seriously.

2 Again, you go with our thank you. Those of you that are
3 downstairs, as you exit the jury assembly room, you know that the
4 clerk's office is all the way down to the end towards the parking
5 lot, and they will have those notes for you, if you need, for
6 your employer. Upstairs, remember the clerk's office is directly
7 below it.

8 Now, for my remaining jurors upstairs, no cheering when you
9 go out, because my jurors are next-door. Calm, quiet, no happy,
10 no laughter. Quite frankly, we are about to begin our trial.
11 And I think it's appropriate that you all be excused for the
12 balance of the week.

13 I want to again thank all of you for every tick of the clock
14 on behalf of all of us. And at this time, if you'll do so for me
15 quietly, you are free to go back about your business. And thank
16 you all so very much.

17 (WHEREUPON, the remaining members of the jury panel are
18 excused at 10:48 a.m.)

19 (WHEREUPON, court recessed at 10:48 a.m. and reconvened at
20 11:08 a.m.)

21 THE COURT: Anything from the state before we invite our
22 jury in?

23 ATTORNEY OSBORNE: No, Your Honor.

24 THE COURT: All right. On behalf of Mr. Green?

25 ATTORNEY GAY: No, ma'am.

1 THE COURT: Ms. Hensley?

2 ATTORNEY HENSLEY: No, Your Honor.

3 THE COURT: Very well. All right. Are you ready to swear
4 our jury in, Ms. Westbury?

5 CLERK OF COURT: Yes, Your Honor.

6 THE COURT: Wonderful. Let us have our jury, please.

7 (WHEREUPON, the jury is seated in the courtroom at
8 11:13 a.m.)

9 (WHEREUPON, an off-the-record discussion was held at
10 sidebar.)

11 THE COURT: Ladies and gentlemen, I don't know if you have
12 noticed, but those benches get kind of hard after a while. Y'all
13 notice that? We have some cushions, and we're going to get them.
14 I apologize. But I'm going to be passing out the cushions, and
15 then you can position the cushion as it suits you. Because I know
16 those benches get hard. And we do have them, so I've sent for
17 them.

18 And I have also sent for notepads and pens. I'm going to
19 give you some instruction with regards to the taking of notes,
20 but I want to wait until you get them, because we make a note on
21 the notepads so that you have got your notepad and it identifies
22 your notepad. So we'll wait until you get them.

23 And here come the cushions. And so before I call on
24 Ms. Westbury to swear you in as the jury, I do want you to at
25 least have the cushions.

1 (WHEREUPON, cushions are distributed to the jury.)

2 (WHEREUPON, an off-the-record discussion was held in open
3 court).

4 THE COURT: Very well. In just a little bit we're going to
5 have notepads. But at this time I'm going to ask that you please
6 stand and raise your right hand. And Ms. Westbury is going to
7 swear you in as the jury in this case.

8 (WHEREUPON, the Clerk of Court administrators oath to the
9 jury.)

10 CLERK OF COURT: If you accept this oath, please say I do,
11 and be seated.

12 (Jury responds.)

13 CLERK OF COURT: Thank you.

14 THE COURT: And do we have any of our jurors who did not
15 take the oath? If so, I'm going to ask you to please stand.

16 (No response.)

17 THE COURT: And I find no one standing.

18 THE COURT'S INSTRUCTIONS

19 Now, ladies and gentlemen, I have a few preliminary remarks
20 that I am going to make to you. These remarks are not intended
21 to be a charge on the law applicable to this case. I will have
22 an opportunity to instruct you regarding the law applicable to
23 this case at the conclusion of the presentation of the evidence
24 and the arguments of counsel. I'll have an opportunity to give
25 you the charge applicable to the law with regards to this case.

1 Now, what these remarks are intended to do, ladies and
2 gentlemen, is really just outline for you the procedure that we
3 will be following.

4 Now, ladies and gentlemen, we don't have our notes present
5 yet, or our notepads, but they're going to be here in just a
6 moment, and I do want to go ahead and address those. You're
7 going to have a notepad and a writing implement in just a few
8 moments. They are getting those now.

9 What I'm going to ask you to do is I'm going to go ask you,
10 on the cover page, on the first page of the notepad, I'm going to
11 ask you to either put your juror number or your name, or both, so
12 that you can identify that notepad as being your notepad. And
13 know, I want to you know, that when you leave the courtroom, we
14 are going to secure your notepads for you. And I want you to
15 keep your notepad throughout the trial.

16 Now, there is a debate that's ongoing about the taking of
17 notes by jurors, and I want to talk to you about that. The
18 concern about note-taking is that a juror can miss something
19 that's coming from the witness stand as they take a note.

20 I'm going to tell you that it is much more important that
21 you listen to the evidence and that you pay close attention to
22 these matters, and that is much more important than taking a
23 note.

24 The notepads and the pencils and pens are there for those
25 who simply are note-takers. But I will tell you that it's much

1 more important for you to be sure that you're listening and
2 paying attention, observing the witnesses, that's more important
3 than the taking of notes. But for those of you who are
4 note-takers, they are there for you to do that.

5 The other criticism of note-taking is that during
6 deliberations there can be an undue amount of influence placed
7 upon a note. I'm just going to tell you this. Those notes that
8 you take, they are for you, they are only for you. They are not
9 to be shared with anyone. They are to allow you the ability to
10 refresh your recollection, to assist your recollection, in your
11 deliberation. And they are not to be held and up say, I have
12 this note, or anything like that. They simply are to allow you
13 to refresh your recollection.

14 Now does everyone have a writing implement and a notepad?
15 Now they do? Again, on the first page, just put either your name
16 or your juror number. And then when you have done that, I want
17 you to take that top page and turn it over. That will be your
18 cover sheet and your identifying information. And then you'll
19 start your notes on the next page.

20 Now, and again, don't feel compelled to take notes. Some
21 people are note-takers and some people are not note-takers.
22 Those are there for you to take notes should you wish to take
23 notes.

24 Now, let me share with you that during the trial when you go
25 to your jury room you're going to leave your notepads here in the

1 courtroom. And they will be guarded, and they will be obviously
2 returned to you each time you return to the courtroom. And at
3 night they're going to be secured and then they'll be placed back
4 for you in the morning.

5 When this trial has concluded and you have finished your
6 deliberations, you will be at liberty at that point to take your
7 notes with you if you want to.

8 If you do not take your notes with you, I want you to know
9 what's going to happen with them. Upon the conclusion of the
10 trial, your notepads, if you do not, you choose not to, take them
11 with you, those notepads are brought to my chambers and I tear
12 them up and I destroy them. They come to me, and they are
13 destroyed by me. And I want you to know that, that that's what
14 happens to them. They don't go anywhere other than to my
15 chambers. And then I do lots of tearing up, and they go into
16 the -- and are destroyed, and go to the trash. So I wanted you
17 to know that.

18 Now, ladies and gentlemen, in this case there are several
19 indictments and there are two defendants. I want you to
20 understand that each of these indictments is to be considered
21 separately and independently. I want you to understand that each
22 of these defendants is to be considered, and the evidence against
23 that defendant, is to be analyzed and considered, separately and
24 independently. And that is very important for you to keep in
25 mind throughout this trial and throughout your deliberations.

1 Ladies and gentlemen, each of these defendants are charged
2 with the crimes of murder; attempted murder; burglary in the
3 first degree; possession of a weapon during the commission of a
4 violent crime; and ill-treatment of animals, in general, torture.

5 Ladies and gentlemen, as I told you yesterday, these
6 defendants, each of these defendants, have pled not guilty to
7 each of these indictments. And that plea places the burden of
8 proof upon the state to prove each element of each offense
9 against each, of these defendants, beyond a reasonable doubt.
10 The elements of these offenses, I will go over with you later.

11 Now, as we discussed yesterday, indictments are simply the
12 charges, the notice documents, the charge by which the case is
13 brought into court. And an indictment is not, in any sense,
14 evidence of any of the allegations that it contains.

15 As I say, each of these defendant have pled not guilty to
16 each of these indictments. The state, therefore, has the burden
17 of proving each of the elements of each of these charges with
18 regards to each of these defendants beyond a reasonable doubt.

19 Ladies and gentlemen, it will be your duty as jurors to
20 decide whether the state has met that burden. You will do that
21 separately and independently with regards to each of these
22 indictments and with regards to each of these defendants.

23 Now, in order to determine whether the state has met its
24 burden, necessarily you must find and determine the facts. You
25 are the sole judges of the facts. Under our system of justice,

1 you are the only judge of the facts. The facts, as determined by
2 a trial jury, are the facts for all time.

3 Ladies and gentlemen, please understand that our law does
4 not allow me to comment, intimate, make any comment whatsoever
5 regarding the facts. If I do anything over the course of this
6 trial that you think may be some indication or comment with
7 regards to the facts, I'm going ask you right now, please
8 disregard whatever that might be because, ladies and gentlemen, I
9 don't have an opinion regarding these facts. That is your duty.

10 So if I do or say anything and you think that that is, in
11 some way, a comment on the facts, please disregard that. Maybe I
12 had too much lunch or something, because I can assure you I am
13 not commenting on the facts, and I'm going to ask you now, if you
14 think some gesture or comment is, please disregard that because I
15 don't have an opinion regarding these facts.

16 Now, you are to determine the facts from the sworn testimony
17 that you hear and other evidence which will be introduced into
18 court. It is up to you to determine what, if any, inferences you
19 feel may properly be drawn from the evidence. It is especially
20 important that you perform your duty of determining the facts
21 diligently and conscientiously because, you see, ordinarily there
22 is no way to correct an erroneous determination of the facts by a
23 trial jury. As I say, that's as determined by the trial jury.
24 Those are the facts for all time.

25 Now, on the other hand and with equal emphasis, the same law

1 that makes you the judge of the facts makes me the judge of the
2 law. The law, as given to you by the Court, is the only law that
3 you may consider. You must accept and follow it, even though you
4 may disagree with it.

5 I cannot tell you what the facts are, and you cannot
6 disagree with me about what the law is or should be. Maybe you
7 want to have a meeting with your legislature. But for our system
8 to work correctly, you must accept and you must apply the law
9 exactly as I state it to you.

10 Your job is to take the law as I give it to you, and apply
11 it to the facts as you find them to be from the evidence and the
12 testimony of the witnesses, and render your verdicts, which will
13 be a determination of whether the state has met its burden of
14 proof.

15 Now, until I advise you to begin your deliberations, you
16 must not discuss this case with anyone, including your fellow
17 jurors, your friends, your family members or anyone involved in
18 the case. This includes discussions face-to-face and those that
19 could occur by telephone, email, text, blogs, Facebook, MySpace,
20 LinkedIn and, goodness gracious, all those other platforms that
21 people now utilize for communication purposes.

22 You may not use a computer, a cellphone or other electronic
23 device with communication capabilities at any time while in the
24 courtroom or during your deliberations.

25 During your breaks for meals or overnight, if necessary, you

1 may use these devices. However, you may not, at any time, use
2 these devices to get or send information about this case. This
3 includes information about a party, a witness, an attorney or a
4 court officer. What you cannot -- you know, I don't know those
5 of who you remember Columbo, that television show that was on for
6 a very long time, no Columbo; no investigation. You cannot look
7 for any news accounts, you cannot do any research on any topics
8 raised or any topics that you think might be helpful in deciding
9 the case, or to evaluate the testimony presented by any witness.
10 No Columbo; no investigation. You cannot use the internet for
11 any of those purposes.

12 You must receive all of the information from which you'll
13 make up your mind here in court while court is in session.

14 Ladies and gentlemen, I do not know whether there will be
15 any kind of news accounts or otherwise about this particular
16 case. I don't know. But in an abundance of precaution, I urge
17 you to be on the lookout, because you must not, you must not,
18 read or listen to or watch any news reports about this case.
19 That, of course, includes anything that would be on the
20 television, newspapers or on the internet, the radio and the
21 like. You must not consider anything that you may have read or
22 heard about the case outside the courtroom. And that would be
23 before or during the trial.

24 Now, after the case is submitted to you, meaning that I have
25 instructed you to begin your deliberations -- and I promise you

1 there will be no question in your mind that that time has come,
2 because I'm going to tell you directly -- you must discuss this
3 case only in the jury room with your fellow jurors when you have
4 been instructed to begin your deliberations.

5 Ladies and gentlemen, please know that the attorneys and the
6 parties in this case, they know that they are not to talk to you
7 at all. So if you happen to see someone associated, one of the
8 attorneys or someone, coming and going from the courthouse and
9 you come within their space, if you will, and they don't even say
10 hello to you, I want you to understand they're not being rude,
11 they know that they are not supposed to talk to you, they're not
12 supposed to interact with you.

13 As a matter of fact, should anyone try to contact you about
14 this case or talk to you about this case, I ask that you get
15 their name; if you cannot get their name, a description, and
16 report that to me immediately upon your return to the courthouse,
17 and I will deal with that matter.

18 Now, ladies and gentlemen, it is very important that you
19 keep an open mind and that you not decide any issue, any issue in
20 this case, until all of the evidence has been presented, the
21 parties have made their closing arguments to you and I have
22 instructed you on the law applicable to this case.

23 It is your solemn responsibility to determine whether the
24 state has met its burden of proof. And your determinations must
25 be based solely on the evidence as it is presented to you in this

1 trial and on the law as I instruct you during and at the close of
2 the trial.

3 Now, ladies and gentlemen, in just a moment the solicitor's
4 office, one of our solicitors who are present, will make what is
5 called an opening statement. And in that opening statement the
6 solicitor making the opening will explain to you what he believes
7 the issues are in this case. You will then hear the opening
8 statement on behalf of Mr. Green, and then on behalf of
9 Mr. Major, and, likewise, they will have an opportunity to
10 discuss with you what they believe the issues are in this case.

11 Ladies and gentlemen, I want to address the statements of
12 counsel. Ladies and gentlemen, what the attorneys say in this
13 case is very important. Please give them your undivided
14 attention. But understand that what the attorneys say is not
15 evidence. Evidence will come from the testimony and exhibits in
16 this case.

17 Now, ladies and gentlemen, I want to discuss with you a
18 process that occurs in every trial so that you'll understand
19 what's going on.

20 You have learned now over the course of the last two days
21 that a trial is an organized proceeding. And in sports or
22 business or in any other organized proceeding, there are certain
23 rules that all parties must obey. And that is true when
24 presenting evidence. These rules are called the rules of
25 evidence, and they apply to this trial.

1 These attorneys have an obligation on behalf of their client
2 to raise a possible violation of the rules of evidence to my
3 attention. The ruling on the admissibility of evidence is a
4 matter of law. It is their duty to raise a possible violation of
5 the rules of evidence to my attention.

6 Because it is their duty, ladies and gentlemen, you must not
7 hold an attorney's objection against her or his client, because
8 it is their duty.

9 Now I want to talk about how those objections will be
10 handled. And that's how they will do it, they will raise a
11 possible violation of these rules in one of three ways.

12 They may simply stand and say, Objection. And I may know
13 what the objection is about, or they may give me a word or two,
14 Objection, hearsay, for example. I'll know what that objection
15 is about, and I'll be able to make a determination.

16 Sometimes I will ask the attorneys to approach. And this is
17 what you're going to hear when that happens. (plays audio) We're
18 going to the beach. Y'all hear the ocean? No? The reason that
19 I'm playing that noise is absolutely so you cannot hear the
20 conversation up here. That is exactly why it's being played.
21 And what is occurring -- I'll tell you what is occurring -- what
22 is happening is that I'm having just a word or two with the
23 attorneys so that I can understand the objection, and it will
24 help me be able to make a determination. And, yes, I don't want
25 you to hear that conversation, because I would not want anything

1 that I might say in ruling on the admissibility of evidence to be
2 determined by you or thought by you to be a comment on the facts.
3 It just lets me do my job. And so that's what's happening.

4 There may be times, and we'll certainly keep it to a
5 minimum, that I will ask you to leave the courtroom and go to
6 your jury room. And that's simply because I need to have more of
7 a conversation, more of a discussion, with the attorneys. And
8 again, I just wouldn't want anything that I might say in ruling
9 on the admissibility of evidence to be deemed by you to be a
10 comment on the facts. Again, it just lets me do what I must do
11 and fulfill my duty. So that's what's happening with regards to
12 objections.

13 Now, ladies and gentlemen, in determining the facts of this
14 case, you must decide whether or not the testimony of a witness,
15 each witness, is believable. Again, it is my responsibility to
16 rule, as a matter of law, as to whether certain testimony is
17 admissible at all or not. Whether or not, once it's admitted,
18 whether you believe it, the weight you give to it and the
19 inferences you draw from that, those are matters solely for you
20 to determine.

21 And in deciding whether to believe a witness, you have the
22 right to consider the interest of any witness, the bias of any
23 witness, the prejudice of any witness, the opportunity for the
24 witness to have seen the matters and things about which the
25 witness may testify, and the way the witness acts on the witness

1 stand. You have the right to consider anything that is in the
2 record that would help you evaluate the testimony of the
3 witnesses.

4 All this goes to emphasize that it is your duty to pay close
5 attention to these witnesses. Observe them, listen to them, and
6 pay close attention to the attorneys and to the Court. Do not
7 let your thoughts wander, but give the strictest attention to
8 these matters so that, at the end of the testimony and the
9 arguments of counsel and the charge on the law by the Court, you
10 will be in a position to perform your solemn duty and determine
11 the facts, and determine whether the state has met its burden of
12 proof with regards to each of these of indictments and each of
13 these defendants.

14 Now, ladies and gentlemen, our law also provides that there
15 should be one of your members, one of your number, who serves as
16 a presiding juror. During one of our breaks I'm going to ask you
17 to select your presiding juror.

18 And the presiding juror has three additional tasks. Number
19 one, the presiding juror is the writer, I suppose I should say,
20 for the jury in the event that the jury needs to communicate with
21 me for whatever reason. For example, It sure is cold in here;
22 Could we get some coffee in the jury room; Sure would like some
23 cookies. Things such as that. It is the presiding juror's
24 responsibility to just write that down on a piece of paper, give
25 to one of our bailiffs, who will, in turn, give that to me.

1 At the conclusion of the deliberations, it will be the
2 presiding juror's responsibility to write the verdict on the
3 verdict form and just to insist during the deliberation in the
4 forum to be sure that everybody has a chance to speak.

5 Ladies and gentlemen, it is not the presiding juror's
6 responsibility to, in any way, interfere with deliberations, to
7 somehow try to guide them or dominate them in any way. It really
8 is, if you will, the presiding juror is that person that can
9 communicate, through writing, with the Court when that is
10 necessary.

11 And when the presiding juror has been selected, I need to
12 know that. And you can tell me when you come in, I've been
13 selected as the presiding juror, and I'm juror number whatever.
14 You can give me a note with that written down. Give it to the
15 bailiff. The bailiff will give that to me, and then I'll know
16 who the presiding juror is. Or, you can keep this seat right
17 here, front row, I guess it's what, your left? It's my right, so
18 it is your left. Yeah, your spot, exactly. That is the
19 presiding juror's spot. You don't have to move. Sometimes
20 jurors say, hey, that is the number-one talent, for the presiding
21 juror, you have that spot. But in any event, you can just keep,
22 whoever the presiding juror is selected to be, you can just see
23 if I figure it out if you keep the spot. Any one of those
24 messages is perfectly fine. Just prior to your deliberations, I
25 just need to know who that presiding juror is.

1 Now, in order to preserve everyone's rights, it is necessary
2 that I give the parties an opportunity to object to anything that
3 I have said in these preliminary remarks. On behalf of the
4 state?

5 ATTORNEY YOUNG: Not from the state, Your Honor.

6 THE COURT: How about Mr. Green?

7 ATTORNEY GAY: Nothing from Mr. Green, Your Honor.

8 ATTORNEY HENSLEY: Nothing for Mr. Major, Your Honor.

9 THE COURT: Ladies and gentlemen, I'm going to ask that you
10 please draw close as we listen to the opening statements.

11 ATTORNEY YOUNG: Thank you, Your Honor.

12 THE COURT: Yes, sir, Mr. Young.

13 OPENING STATEMENT ON BEHALF OF THE STATE

14 ATTORNEY YOUNG: Malice. Malice is an act of intentional
15 violence, it is an act of a depraved heart and a person voiding
16 social responsibility.

17 On the night of January 27th, 2019, and the late hours
18 morning early morning of January 28th, 2019, the defendants
19 seated in this courtroom, Mr. Devonte Major and Elijah Green,
20 broke into the home of Marcus Porter and they robbed him of
21 gunpoint. And when it was all said and done, 47-year-old Joe
22 Weaver was left dead after being shot eight times, he was fatally
23 shot eight times.

24 At the conclusion of this trial, all the state is asking is,
25 that if you are so firmly convinced based on the evidence that

1 you have seen and heard, that you hold these defendants
2 accountable for their heinous actions.

3 My name is Nicholas Young, and I, along with Assistant
4 Solicitor David Osborne, will be prosecuting this case on behalf
5 of state. Also seated at our table is Detective Davis of the
6 Summerville Police Department, he will be seated with us through
7 the duration of this trial.

8 Before I get into the facts of this case, I want to briefly
9 go over the law that will be in issue in this case. As you heard
10 from Judge Goodstein when she was reading the indictments, these
11 defendants are charged with murder, attempted murder, burglary in
12 the first degree, possession of a firearm during the commission
13 of a violent crime, and ill-treatment towards animals.

14 With regards to murder, that is simply defined as the
15 unlawful killing of another person with malice afterthought.
16 That's it, very simply, just the killing of another person with
17 malice afterthought.

18 Malice is simply, again, an act of intentional violence, is
19 the act of a depraved heart, and a person voiding social
20 responsibility.

21 Attempted murder is almost identical. It is essentially the
22 same but, obviously, as it is defined, the attempted killing of
23 another person with malice afterthought.

24 Burglary in the first degree is nothing more than the
25 unlawful entry into the dwelling of another person without their

1 consent and with intent to commit a crime therein. And in the
2 course of committing that act, it either occurs at nighttime or
3 that the perpetrators, who are armed with a deadly weapon, they
4 display what appears to be a firearm or a knife, or they harm a
5 person who is not a participant in the crime.

6 With regards to possession of a firearm during the
7 commission of a violent crime, it is also, as the name would
8 imply, in the state of South Carolina, the legislature has
9 defined certain offenses to be violent offenses, and those
10 include murder, attempted murder and burglary in the first
11 degree.

12 Ill-treatment of animals, very simply put, is to inflict or
13 to cause to be inflicted unnecessary pain, suffering, or the
14 cruelly killing of an animal.

15 And the last issue of law I want to briefly discuss would be
16 the principle, The hand of one is the hand of all. In the state
17 of South Carolina -- this is also in other states, it's
18 accomplice liability. But in South Carolina they call this, The
19 hand of one is the hand of all. And what that simply means is
20 that if two people set out to commit a crime together and, in the
21 course of committing that crime, each person is responsible for
22 the actions of their accomplice, just the same as they are liable
23 for their own actions; hence, The hand of one is the hand of all.

24 The evidence will show in this case that on the night of
25 January 27th, 2019, leading into the early morning hours of

1 January 28th, 2019, that the defendants, Devonte Major and Elijah
2 Green, decided that night that they wanted some marijuana, and so
3 they set out from Beaufort, South Carolina, to Summerville, South
4 Carolina.

5 And they sought to obtain that from the victim in this case,
6 Mr. Marcus Porter. They broke into his home, and they, in an
7 effort to seek what Mr. Porter had -- he is currently facing
8 pending charges right now for the sale of illegal drugs. But
9 that does not give them the right to break into his home, to
10 shoot him, to fatally shoot his dog, and to fatally shoot
11 47-year-old Joe Weaver eight times, and then leaving him there to
12 die on the floor.

13 Within four minutes of this incident occurring Summerville
14 Police Department was engaged in a high-speed chase with a
15 vehicle that was occupied by the defendants. This chase lasted
16 for approximately 30 minutes, and it ended in a neighboring
17 county only after law enforcement deployed stop sticks to deflate
18 the tires on the car and, thus, the end of the chase.

19 In the course of this chase, the defendants left a trail of
20 evidence for the crime that they had committed that night. Law
21 enforcement quickly retraced the route that was taken by the
22 defendants, and they recovered numerous items of evidence. Joe
23 Weaver's wallet was recovered along that route. A ski mask as
24 recovered. A jumpsuit was recovered. And four handguns were
25 also recovered along that route, having been discarded from that

1 vehicle.

2 Over the course of this trial you will hear from many
3 witnesses. They will all come up here individually, and they
4 will take the stand, and they will testify under oath as to what
5 they know.

6 No single person is going to come up here and testify to the
7 entirety of the event that took place that night. Rather, each
8 witness will come up here and provide a piece of the puzzle that,
9 at the conclusion of this trial, when it is assembled, will
10 result in a picture that will lead to only one conclusion.

11 The burden of proof throughout this proceeding resides on
12 the state. It is our responsibility to prove to you beyond a
13 reasonable doubt that these defendants are guilty as charged. It
14 does not mean beyond all possible doubt. That simply means that,
15 at the conclusion of this trial, after you've seen and heard the
16 evidence, that you are firmly convinced of the defendants' guilt.

17 We thank each and every one of you for your jury service.
18 It's one of the more important civic duties that you can perform.
19 You have been chosen by both sides in this matter because we know
20 that you will pay attention throughout these proceedings; that
21 you will abide by your oath to set aside any possible bias
22 towards either the state or the defendants; and that you will
23 render your truthful verdict based only on two things, and that
24 is the evidence and that is the law that applies in this matter.

25 I submit to you, at the conclusion of this trial, that you

1 will be more than firmly convinced based on the evidence and the
2 testimony that you will hear. Thank you.

3 THE COURT: Thank you, Mr. Young. And on behalf of
4 Mr. Green, Ms. Gay.

5 ATTORNEY GAY: Thank you, Your Honor. May it please the
6 Court.

7 THE COURT: Yes.

8 OPENING STATEMENT ON BEHALF OF DEFENDANT GREEN

9 ATTORNEY GAY: Jurors; solicitors; Madam Hensley. So, it's
10 taken a long time to get here. And that's really part of what
11 I'm going to talk about this morning, how important the process
12 is for you to be selected for this jury.

13 You know, we all have to, at some time in our lives, step up
14 for our civic duty. And many of us, ourselves, have been called
15 on jury duty at different times. But today what you're doing in
16 this courtroom is the most important part of being an American
17 citizen, because in our country we must have juries determine the
18 facts and determine whether or not the state has proven beyond a
19 reasonable doubt that, in fact, Mr. Green, my client, committed
20 this offense.

21 And what you noted many times, as Judge Goodstein was
22 describing this process, and she read the indictments to you on
23 more than one occasion, on those occasions she said, The
24 defendants in this case have pled not guilty.

25 And that's significant because at the moment my client is

1 what they call cloaked in innocence. One of the judges would
2 say, He's as innocent as I am; it's as if the cloak of innocence
3 is on there, and that is only to be taken off if you, the jury in
4 this case, determine that he, that the state, has proved their
5 burden.

6 So my client is thrilled that we are finally here today,
7 thrilled that you are the jury that we took so much time and
8 effort to select. As you know, some people weren't chosen, some
9 people were. And he believes that you're going to give him a
10 fair trial. And he believes that you are people, that, after you
11 hear the evidence of this case, you will find that the state
12 hasn't met its burden and you will find him not guilty.

13 And this special day for him, the most important day of
14 Elijah Green's life, is right now, this minute, with you. And so
15 I just want you to know, as we welcome you to this process and
16 everything we talk about today, today is the most important day
17 of Elijah Green's life.

18 And so the Judge is going to instruct you, as she did, she
19 explained some opening argument/opening statements, and she's
20 responsible for telling us the law, and she's responsible for the
21 format of how we do this.

22 And she did a great job explaining to y'all that you are the
23 finders of fact. And, you know, one of the things that is
24 interesting, this isn't TV, it's not nearly as interesting
25 sometimes as TV because TV is processed to get through a trial.

1 And I may make a mistake and, on Mr. Green's behalf, please
2 don't hold that against Mr. Green. You know, I'm just a person
3 trying to do my job up here, trying to help y'all understand what
4 this case is about. And so anything that I do that you don't
5 like or that offends you or distracts you, please don't hold it
6 against my client, because I'm not perfect, I'm just trying to
7 get through this process, as well.

8 And so when the Judge instructs you that you're the finders
9 of the facts and you'll always be the finders of the facts, I
10 might do something wrong or something legally may occur that got
11 some kind of issues in the future. But the decision about the
12 facts never changes. Even if the case goes through the appellate
13 process or whatever, your decision about the facts is always the
14 most important one.

15 So we're going to focus today, this week, on providing
16 information to you and providing witness information and
17 documents and pictures and things for you to ultimately decide
18 because, as I said, you're the most important people in this
19 room.

20 And one of the things that we talk about is that, as
21 Mr. Young said, that, you know, what is reasonable doubt? And
22 reasonable doubt is considered a term of art. It's one of those
23 things that's going to be defined and described to you by the
24 Judge at the end of this trial. And what I always tell people is
25 that reasonable doubt is something that you, you know, have that,

1 you know, Am I sure of my myself, Am I firmly convinced. But
2 it's beyond that you have to be, beyond that, in order convict
3 somebody in America. And so just keep that in mind as your
4 mission to figure out, as we go through this process, what you
5 believe, what you don't believe.

6 As the Judge said, you can believe a part of a client -- of
7 a witness's testimony, none of the witness's testimony, all of
8 the witness's testimony. It's your decision what the weight or
9 the credibility of the witness's testimony is. And so ultimately
10 it's going to be up to you.

11 I keep coming back to the same place. You to decide, in the
12 end, what you think of this. And I will tell you that if it's as
13 easy as Mr. Young said, we would not be having a trial. If it
14 was a puzzle that all the pieces were going to come together and
15 at the end we were going to have a map of the United States, we
16 would not be having this trial.

17 And there is always a reason why, when we start picking
18 things apart and when we start revealing what's really going on,
19 I refer to it as peeling the onion. You know, here is a
20 situation that looks like one thing on the front but, as you peel
21 the onion, it starts looking completely different. And that's
22 what we're here to show you.

23 Ms. Hensley and I will work together to explain to you what
24 the problems are in this case, what the solicitor isn't showing
25 you in this case, what is going on, so that you'll get the chance

1 to decide, Hey, is this really as straightforward as the
2 solicitor said, or is there something else really going on here?

3 And I will assert to you that at the end of this case you're
4 going to smell a rat; you're going to believe that something else
5 was going on, and that none of these pieces are fitting together.

6 And, as I say, we're not going from California to New York
7 on a straight path. We will find, at the end, that there are
8 problems with this case, and that you will find that you will not
9 be able to convict my client because there will not be evidence
10 beyond a reasonable doubt in this case. Thank you.

11 THE COURT: Thank you, Ms. Gay. Yes, ma'am, Ms. Hensley.

12 ATTORNEY HENSLEY: Thank you, Your Honor.

13 THE COURT: Yes.

14 ATTORNEY HENSLEY: May it please the Court.

15 THE COURT: Yes.

16 OPENING STATEMENT ON BEHALF OF DEFENDANT MAJOR

17 ATTORNEY HENSLEY: Good afternoon. My name's Laree Hensley,
18 and it is my pleasure and honor to represent Devonte Major in
19 this case.

20 As Ms. Gay has told you, we don't think this case is as
21 straightforward and easy as Mr. Young has defined for you.
22 That's the reason why we're here. We're here relying on you.

23 And I think, for me, knowing what I know about this case and
24 having seen what I've seen about this case, I think the most
25 important thing for you all to do this week is to look at

1 credibility, believability.

2 When I graduated from law school my dad gave me a plaque,
3 and it says -- it's in my office, and it says -- If you tell the
4 truth, you never have to remember anything. So I want you to
5 listen to the things, the way the truth changes through many of
6 these witnesses.

7 I believe the state will show -- I believe the evidence will
8 show that these witnesses have told multiple stories; that their
9 stories changed; that their stories are not consistent; that they
10 outright lied. And I think that's important when you're judging
11 the credibility of a witness, especially when that witness, that
12 witness's testimony, to be the core of this trial.

13 Because this trial is obviously very important. Mr. Major
14 has waited and waited for this day. You know, we had COVID, for
15 a year we didn't have any trials. And so we are anxious to put
16 up the evidence, to show you the holes in the evidence.

17 I would suggest that you use your notes and say, this
18 inconsistency, that inconsistency. Keep track of it, because
19 there will be a lot of it. And I will submit to you, at end of
20 all of those inconsistencies, you will find the reasonable doubt
21 to find my client not guilty. Thank you.

22 THE COURT: Thank you. All right. Call your first witness,
23 please.

24 ATTORNEY YOUNG: The state calls Deputy Leta Boehler.

25 CLERK OF COURT: If you'll please raise your right hand, and

1 state your full name for the record.

2 THE WITNESS: Leta Danielle. Boehler.

3 CLERK OF COURT: If you'll spell your last name for the
4 record.

5 THE WITNESS: B-o-e-h-l-e-r.

6 LETA D. BOEHLER,

7 having first been duly sworn, was examined and testified as
8 follows:

9 THE COURT: Your witness.

10 ATTORNEY YOUNG: Thank you, Your Honor.

11 **DIRECT EXAMINATION**

12 BY ATTORNEY YOUNG:

13 Q Good morning, Deputy Boehler.

14 A Good morning.

15 Q If you would, please, just formally state your name for the
16 record.

17 A Leta Boehler.

18 Q Where do you currently work?

19 A Dorchester County Sheriff's Office.

20 Q And where have you worked at during your law enforcement
21 career?

22 A Prior to this, I worked with Summerville Police Department.
23 And I also did dispatch with Charleston County Sheriff's Office.

24 Q Okay. How long was that?

25 A I dispatched from 2007 to 2014. And from 2014 to September

1 I worked for Summerville Police Department. And then I started
2 here in September of last year.

3 Q Okay. What are your patrol -- or I should say, what are
4 your duties and assignments?

5 A Since I've been in law enforcement on this, I have been a
6 patrol officer.

7 Q And going back to the evening of, late evening, of
8 January 28th, 2019, and January 29th of 2019, what was your
9 assignments at that point in time?

10 A I was a patrol officer on night shift.

11 Q And what was your rank at that time?

12 A A corporal.

13 Q On that evening did you have the occasion to respond to [REDACTED]
14 Myrtle Place?

15 A I did.

16 Q Is [REDACTED] Myrtle Place located in Summerville?

17 A It is.

18 Q Is that in the county of Dorchester?

19 A Yes.

20 Q What was the nature of call for service that evening?

21 A There was reference to a shooting.

22 Q Were you the first officer to arrive on scene?

23 A Yes.

24 (WHEREUPON, State's Exhibit 1 is marked for identification.)

25 Q I'm going to show you State's Exhibit 1 here.

1 ATTORNEY YOUNG: Your Honor, may I approach the witness?

2 THE COURT: You may.

3 Q Do you recognize that?

4 A Yes.

5 Q What is that?

6 A It's an aerial photo of the area of Robynwyn.

7 Q And how do you recognize this?

8 A The streets that are in here, I'm familiar with the roads in
9 that area.

10 Q Is that a fair and accurate representation of that
11 subdivision at the time of the incident?

12 A Yes.

13 ATTORNEY YOUNG: Your Honor, at this time the state would
14 motion to admit State's Exhibit 1 into evidence, and also to
15 publish to the jury.

16 ATTORNEY GAY: May I see it?

17 THE COURT: Any objection?

18 ATTORNEY YOUNG: I'm sorry.

19 ATTORNEY GAY: I don't know. I mean, I think I know what it
20 is, but I would like to see it.

21 THE COURT: All right.

22 ATTORNEY GAY: No objection from Mr. Green.

23 ATTORNEY HENSLEY: Without objection, Your Honor.

24 THE COURT: Thank you. It's admitted.

25 (WHEREUPON, State's Exhibit 1 is entered into the record.)

1 ATTORNEY YOUNG: Thank you, Your Honor.

2 Q Did you go directly to [REDACTED] Myrtle first once you responded?

3 A When I came into the neighborhood I stopped further towards
4 the front of the cul de sac, and I actually responded to a house
5 next to it where I was flagged down.

6 Q When you got to that location what did you see?

7 A I met with Mr. Porter. He was outside. And he had a
8 gunshot wound and had advised that he was shot and that his
9 friend was shot and his dog was shot, and that they were at the
10 residence next-door, and showed me to where his house was on
11 Myrtle Place.

12 Q So Mr. Porter was able to relay to you what had happened?

13 A Yes.

14 Q And after that how many suspects were you looking for?

15 A Four.

16 Q And after talking to him, what did you do at that point?

17 A I told him to wait there in the driveway at that house for
18 EMS. And then I proceeded on to his house where he had shown me,
19 to the front door.

20 Q And when you arrived there could you tell the jury what you
21 saw.

22 A When I approached, the glass door was shut but the front
23 door as open, so I could see through the glass door. And I could
24 see one person on the ground and another one near him. And that
25 was the person I was assuming that was shot. Then I was able to

1 go inside and assess him and establish that Mr. Swibaker was
2 standing there with him and Mr. Weaver was the individual on the
3 floor, attending to him.

4 Q What was his condition at that time? Do you recall?

5 A At that time he was laying on his back, he had blood coming
6 from his mouth. I could see that, while I was looking over him
7 and assessing him, that he had several, what appeared to be,
8 gunshot wounds to his chest area. And I was trying to clear his
9 airway to see if I could try to do CPR.

10 Q Was EMS called at that point?

11 A Yes. They were outside, and I advised them that they could
12 come in. And they came in. And Mr. Porter was still out in the
13 driveway, and he had been told to wait, to flag them down. And
14 so that they also came into the house ---

15 Q Okay.

16 A --- and took over with Mr. Weaver.

17 Q At that point what did you do?

18 A After EMS got there I did a complete check of the house to
19 make sure that there was no one else in the house. There was a
20 dog that was in the back bedroom that was deceased. And I took
21 Mr. Swibaker and had him, escorted him out of the house to meet
22 with another officer to give a statement.

23 Q Did you locate any suspects at that residence?

24 A No.

25 Q At that point what did you do?

1 A Once he was taken out to meet with the other officers for,
2 further with him, I secured the house and made sure no one else
3 came in or out except EMS with Mr. Weaver, and waited for
4 detectives.

5 Q Earlier you mentioned that David Swibaker was attending to
6 Mr. Weaver. What exactly do you mean by that?

7 A When I came to the residence, he was assessing him. He had
8 said that he had been shot. And he was able to give me a towel
9 and help me with CPR. Or, as I did CPR, he was there with me.

10 Q Okay. All right. Thank you. Please answer any questions
11 that defense counsel might have.

12 ATTORNEY YOUNG: Nothing further, Your Honor.

13 THE COURT: All right. Cross-examination, Ms. Gay?

14 ATTORNEY GAY: I have no questions for this witness, Your
15 Honor.

16 THE COURT: All right. Ms. Hensley, cross-examination?

17 ATTORNEY HENSLEY: Thank you, Your Honor.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY HENSLEY:

20 Q Ms. Boehler, I'm sorry, is it still corporal?

21 A No. I'm with the county now. I'm just a PFC.

22 Q So PFC?

23 A PFC.

24 Q Okay. Boehler; right?

25 A Yes.

1 Q My name's Laree Hensley, and I'm Devonte Major's lawyer. I
2 just have a few questions. So you arrived and met Mr. Porter in
3 the driveway; right?

4 A At first, yes.

5 Q A the 107, nextdoor to [REDACTED] on Myrtle Place; right?

6 A Yes.

7 Q And he told that you someone had kicked in the back door;
8 right? Is that right?

9 A Yes.

10 Q And that he had been shot?

11 A Uh-huh (yes).

12 Q And that he thought there were four of them?

13 A Yes, I believe. Yeah.

14 Q Then you went into the house and met with Mr. Swibaker;
15 right?

16 A You.

17 Q And you did some other things besides just the EMS, just the
18 CPR; right? You assessed the scene?

19 A From where I was, I kind of did a quick, just, look-around
20 of things. I could, from where he was positioned, Mr. Weaver was
21 positioned on the floor, I could kind of see down the hallway and
22 see towards the back door. So I could see around, but I didn't
23 do a complete check of everything at that time.

24 Q But eventually you did; right?

25 A Yes.

1 Q Because at first you were the only officer there. Right?

2 A Yes.

3 Q And that's pretty unusual for a scene like this, right, to
4 be the only officer at the scene?

5 A Sometimes you can be the first one to get there by yourself,
6 but usually other officers come and back up.

7 Q And that's what happened this time; right?

8 A Yeah.

9 Q You were the first one?

10 A Yeah.

11 Q You were kind of stuck there by yourself. EMS came, and
12 then eventually other officers came. Right?

13 A Yes.

14 Q And you were making those phone calls while that was going
15 on; right?

16 A To?

17 Q You were making calls to Lieutenant Peterson and to other
18 people to get people there. Right?

19 A Once some other officers got there and could kind of secure
20 it, then, yeah, I started making phone calls to the supervisors
21 for those detectives and things like that.

22 Q And you had some interaction with Mr. Swibaker; right?

23 A Uh-huh, yes.

24 Q He told you he thought two or three guys came in the back
25 door; right?

1 A At one point, he did.

2 Q And he also told you that he wasn't injured; right?

3 A Yes.

4 Q And you had a chance to look at that back door; right?

5 A I don't recall if I went in and inspected it. Like, I could
6 see it from where I was. I believe he told me he secured it
7 again.

8 Q But you actually looked at back door and said you didn't
9 think it looked like it had been -- hang on a second, I've got to
10 get these. Give me one second. You thought that it didn't look
11 like it had been kicked open. Isn't that right?

12 A I don't recall what I said as far as that. I know from what
13 I recall, I believe he had told me that he had resecured the
14 door, because I think he saw me watching, kind of, my
15 surroundings. And I believe he told me he secured the door. But
16 I don't recall completely walking over there and inspecting it
17 myself. I just don't.

18 Q You don't recall saying ---

19 A I do not.

20 Q --- the door doesn't look like it's been kicked open?

21 A I do not recall. As far as a doorframe, I don't recall any
22 damage in that manner.

23 Q You don't recall that the door was damaged?

24 A I don't know.

25 Q There were other officers there and you were assessing with

1 them what had happened after they arrived, right, what you had
2 been told?

3 A Uh-huh.

4 Q Yes?

5 A Possibly, yes.

6 Q Well, other officers came to the scene; right?

7 A Yes.

8 Q And when they came in the house, you told them what you had
9 been told. Right?

10 A You.

11 Q And you told them what people had told you. Right?

12 A Yes.

13 Q You saw some marijuana laying on the table. You made note
14 of that. Right?

15 A Uh-huh.

16 Q You actually had a camera; right?

17 A I'm not sure if I took pictures. I may have.

18 Q Well, you tried to. I think ---

19 A I think I tried to take pictures when I got there, but
20 usually the detectives, once they got there, took more.

21 Q And I think you were having a problem with the camera;
22 right? Do you remember that?

23 A I don't ---

24 Q Well, I know it's been two years.

25 A It's been two years. I go out on a lot of these calls.

1 Q And I watched the body camera last night.

2 A Yes. Yes.

3 Q So I have a good recollection of what I saw. You haven't
4 reviewed that body camera prior to your testimony today?

5 A I have not, no. I don't have access to it.

6 Q I understand. You work for a whole different agency now,
7 right. But that's probably why you don't remember saying you
8 don't think the door looked like it had been kicked in. Correct?

9 A Correct.

10 Q And I think I asked you, Mr. Swibaker told you that he
11 wasn't injured. Right?

12 A If that's what you replied to.

13 Q Mr. Weaver, you attempted to do CPR on him until the EMS
14 came; right?

15 A I did do CPR on him.

16 Q Right. And the EMS came in and took over; right?

17 A Right.

18 Q So at some point the EMS transported Mr. Weaver and
19 Mr. Porter? They were gone; right?

20 A Yes. They were taken, I believe, to Trident Hospital.

21 Q And you took Mr. Swibaker outside so that he could give some
22 other officer statements?

23 A Yes.

24 Q You didn't take any written statements from him?

25 A They were going to get that while I kind of held down the

1 fort, so to speak.

2 ATTORNEY HENSLEY: Beg the Court's indulgence.

3 THE COURT: All right.

4 Q One thing. Mr. Porter did not know who had shot him.
5 Right?

6 A I don't believe so.

7 Q I mean, you asked him, Do you know who shot you?, and he
8 said, No, I don't know who shot me. Right?

9 A Yeah, I believe so. It was a while ago.

10 Q And neither did Mr. Swibaker; right?

11 A They did not provide any names to me.

12 Q Neither of them gave you any indication of why this may have
13 happened to them; is that true?

14 A As I was speaking with them, no, they did not.

15 Q And just in your limited interaction with them; right?

16 A Not directly to me that I know of, not that I recall.

17 ATTORNEY HENSLEY: Your Honor, I believe that's all the
18 questions I have.

19 THE COURT: Very well. Redirect, Mr. Young?

20 ATTORNEY YOUNG: Yes, Your Honor, very briefly.

21 **REDIRECT EXAMINATION**

22 BY ATTORNEY YOUNG:

23 Q Did crime scene come out there that night?

24 A Yes.

25 Q Is it fair to say they took photographs of the scene,

1 documented the scene?

2 A Yes. That's their thing. Usually with incidents like that,
3 sometimes as being a first unit on scene, I'll try to take some
4 pictures just to preserve what I have before it's disturbed. But
5 usually they come out and do their own photographs.

6 Q Okay. Thank you very much.

7 ATTORNEY YOUNG: No further questions, Your Honor.

8 THE COURT: All right. Ms. Gay, any cross?

9 ATTORNEY GAY: No.

10 THE COURT: All right. Yes, ma'am?

11 ATTORNEY HENSLEY: Nothing further, Your Honor.

12 THE COURT: Very well. Is this witness free to leave, and
13 is there any objection? Hearing none, thank you. You are free
14 to go. Call your next witness, please.

15 ATTORNEY YOUNG: The state calls Christina Denson.

16 CLERK OF COURT: Ms. Denson, if you'll please raise your
17 right hand, and state your full name for the record.

18 THE WITNESS: Christina Denson.

19 CLERK OF COURT: If you'll spell your last name for the
20 record.

21 THE WITNESS: D-e-n-s-o-n.

22 **CHRISTINA DENSON,**

23 having first been duly sworn, was examined and testified as
24 follows:

25 ATTORNEY YOUNG: May it please the Court, Your Honor.

1 THE COURT: Yes.

2 ATTORNEY YOUNG: Thank you.

3 **DIRECT EXAMINATION**

4 BY ATTORNEY YOUNG:

5 Q Good morning, Ms. Denson.

6 A Good morning.

7 Q Where are you currently employed at?

8 A Summerville Police Department.

9 Q And how long have you been employed there?

10 A Seven years.

11 Q And what are your duties at Summerville Police Department?

12 A I keep arrest, incident information, police officer videos
13 and audio recordings.

14 Q And have you had any other jobs with law enforcement, such
15 as a 911 dispatcher?

16 A I was a 911 dispatcher with Summerville Police Department.

17 Q How long ago was that?

18 A It's been about three years ago.

19 Q And do you currently keep records in your position?

20 A Yes, sir.

21 Q What kind of records do you typically keep?

22 A Incident reports, police officer videos, audio recordings.

23 (WHEREUPON, State's Exhibit 3 is marked for identification.)

24 Q I'm going to show you what's marked as State's Exhibit
25 No. 3.

1 ATTORNEY YOUNG: May I approach the witness, Your Honor?

2 THE COURT: You may.

3 Q Do you recognize that?

4 A Yes, sir.

5 Q What is that?

6 A It is a computer-assisted dispatch report.

7 Q And what is it commonly referred to as?

8 A A CAD report.

9 Q And do you recognize this report?

10 A Yes, sir.

11 Q And does this particular report fairly and accurately depict
12 the call logs and events from that incident?

13 A Yes, sir.

14 (WHEREUPON, State's Exhibit 2 is marked for identification.)

15 Q Thank you. All right. What I'm also going to show you is
16 State's Exhibit No. 2.

17 ATTORNEY YOUNG: May I approach the witness, Your Honor?

18 THE COURT: Yes.

19 ATTORNEY YOUNG: Thank you.

20 Q Do you recognize that?

21 A Yes, sir.

22 Q What is that?

23 A It is a 911 CD.

24 Q Did you create that disk?

25 A Yes, sir.

1 Q And what does that particular disk contain?

2 A It contains a phone call from a female stating that her
3 neighbor came to her residence, stated that he, his dog and his
4 roommate were shot.

5 Q How often do you create these records?

6 A I create them on a weekly basis.

7 Q Are these records kept in the ordinary course of business?

8 A Yes, sir.

9 Q In your position do you normally review or have access to
10 this type of documentation?

11 A Yes, sir.

12 ATTORNEY YOUNG: Your Honor, at this time I'd like to
13 introduce State's Exhibit 2 into evidence, and publish at a later
14 time through a different witness.

15 THE COURT: Any objection?

16 ATTORNEY GAY: No objection, Your Honor.

17 THE COURT: All right. On behalf of Mr. Major?

18 ATTORNEY HENSLEY: No objection from Mr. Major, Your Honor.

19 THE COURT: No objection. Very well. So entered.

20 (WHEREUPON, State's Exhibit 2 is entered into the record.)

21 Q All right. Thank you, Ms. Denson. Please answer any
22 questions defense counsel might have for you.

23 THE COURT: Yes, ma'am, Ms. Gay?

24 ATTORNEY GAY: Thank you, Your Honor. I have no questions
25 for this witness, Your Honor. I believe it's authenticated.

1 THE COURT: Thank you. Ms. Hensley?

2 ATTORNEY HENSLEY: Thank you, Your Honor. Just a couple of
3 questions.

4 THE COURT: All right.

5 **CROSS-EXAMINATION**

6 BY ATTORNEY HENSLEY:

7 Q Ms. Denson, my name's Laree Hensley, and I'm Devonte Major's
8 lawyer. It's nice to meet you.

9 A Thank you.

10 Q So you're keeping these records in the course of what you do
11 at the Summerville Police Department; right?

12 A Yes, ma'am.

13 Q So do you take the 911 calls?

14 A No, ma'am. A dispatcher takes the phone call. We have a
15 call recording system.

16 Q And that's what shows up on that CAD report, right, the time
17 the phone calls come in?

18 A Yes, ma'am.

19 Q So you don't really know what time an incident happens; you
20 just know, on that report, you just know what time a phone call
21 came in; true?

22 A That's correct.

23 Q That's all the questions I have. Thank you so much.

24 THE COURT: All right. Any redirect?

25 ATTORNEY YOUNG: None, Your Honor.

1 THE COURT: All right. Is this witness free to leave, and
2 is there any objection?

3 ATTORNEY GAY: No objection, Your Honor.

4 ATTORNEY HENSLEY: No objection.

5 THE COURT: Very well, thank you. You're free to go.
6 Call your next witness, please.

7 ATTORNEY OSBORNE: Your Honor, may we approach briefly?

8 THE COURT: Sure.

9 (WHEREUPON, an off-the-record discussion was held at
10 sidebar.)

11 THE COURT: Ladies and gentlemen, counsel approached. It
12 appears to be a good time for us to take our lunch break, which
13 we are about to take.

14 But I do need to give you some instruction. You must not
15 discuss this matter or allow anyone to discuss it with you, first
16 and foremost.

17 And with regards to any cellphones, you know, if you have
18 your cellphone in your car and you want to go out and make a
19 cellphone call, of course that's perfectly fine. But just be
20 mindful, as I said in my preliminary remarks, you must not
21 discuss this matter with anyone, and you must not communicate on
22 your communication device, your cellphone or other computer with
23 regards to this matter or anyone that has anything to do with it.

24 And we are going to start back at 1:30. And certainly last,
25 but not least, and certainly you do not have to do this, but

1 Ms. Graham has provided your lunch. And if it is not in your
2 jury room, it will be there very shortly. And we hope,
3 certainly, that you enjoy that. But you certainly do not have to
4 have lunch in your jury room. If you have do not wish to have
5 what is provided, you're certainly free to go and have your
6 lunch.

7 I'm just going to ask you to please be back in your jury
8 room, ready to proceed with this matter, at 1:30, a little over
9 an hour, 1:30.

10 And please remember, do not discuss this matter or allow
11 anyone to discuss it with you.

12 You will go to your jury room.

13 (WHEREUPON, the jury was escorted out of the courtroom at
14 12:32 p.m.)

15 THE COURT: All right. Anything from the state before we
16 break for lunch?

17 ATTORNEY OSBORNE: No, Your Honor.

18 THE COURT: All right. On behalf of Mr. Green, Ms. Gay?

19 ATTORNEY GAY: No, ma'am.

20 THE COURT: Ms. Hensley, on behalf of Mr. Major?

21 ATTORNEY HENSLEY: No, ma'am. No.

22 THE COURT: Have a good lunch. I'll see you all right at
23 1:30.

24 (WHEREUPON, court recessed at 12:33 p.m. and reconvened at
25 1:34 p.m.)

MATTER(S) OF LAW

(WHEREUPON, Court's Exhibits 1 and 2 are marked for identification.)

THE COURT: All right. Counsel, we've had two notes from the jury. One of them states, I have a hearing deficit in one ear. Even being in front, it was difficult for me to hear the solicitor. And that is one of our jurors.

And the second note said, Can you explain what to do if you're an alternate as far as what that means exactly. Thank you. Any objection to me explaining to the alternates that what their purpose is, in the event that we lose one of our jurors, they become a juror?

ATTORNEY OSBORNE: None, Your Honor.

ATTORNEY GAY: No, Your Honor.

ATTORNEY HENSLEY: No, Your Honor.

THE COURT: All right, very well. And we'll just all be mindful of -- you might want to -- we'll just hand them to her, and I'll tell them they're there, if she wishes to have them. But we'll be mindful of volume.

(WHEREUPON, the jury is seated in the courtroom at 1:45 p.m.)

THE COURT: Thank you. All right. Ladies and gentlemen, we are about to continue with the state's case.

But before we do so, really, two things. Number one, excellent question, excellent question. What is the role of an

1 alternate? Really good question. The role of an alternate, you
2 know, is in the event that, for whatever reason, one of our
3 jurors is unable to continue, the alternate, who's heard
4 everything, been present for everything and is active in terms of
5 listening to testimony, et cetera, has been with us, that
6 alternate is then able to step into and become a juror.

7 I will tell you a story. Back many years ago I was holding
8 court in a county, not in the First Circuit but many counties
9 away, and we had tried a case, we had concluded the case. We had
10 been trying it for nearly a week, and we were concluding the
11 case. And those of you who are alternates will learn that I ask
12 alternates to remain for just a little bit as the deliberations
13 of the jury begin.

14 And I was so delighted that I had asked our kind alternates
15 in that case to remain for just a little bit because literally,
16 literally, as one of the jurors was walking into the jury room to
17 begin deliberations, she tripped and she hit her head. Of course
18 we sent for EMS and took good care of her and, thank goodness,
19 she was not hurt. But she was in no condition. She had to go to
20 the hospital and be checked out. And so at that moment, at that
21 moment, the alternate, who was present for the entire trial, was
22 able to become a juror and we were able to continue with the
23 case.

24 So I will tell you that alternates are absolutely critical
25 to our system, and it is not unusual for us to need an alternate

1 to take the role of a juror. I mean, you've got 12 people out of
2 the community. You know, life is an ever-changing, kaleidoscopic
3 experience, and things that we do not anticipate occurring
4 certainly could occur.

5 So that's why we're so thankful for our alternates, and
6 that's why alternates continue in every way as does a juror,
7 because they could become a juror at any time, if needed.

8 Now, with regards to hearing. Two things. I apologize to
9 you. If you cannot see/if you cannot hear, I need to know about
10 it. Please raise your hand, let me know. The note is perfect, I
11 am so grateful for it. But if you cannot hear and you can not
12 see, I have failed you. You have to be able to see. You have to
13 be able to hear.

14 We're going to be, I will be listening to be sure that our
15 volume is appropriate. But if anybody can't hear/can't see, let
16 me know, if you can't see or hear again.

17 With regards to the concern on hearing, though, we have some
18 extra, special things. We have headphones. And if it becomes
19 where you're more comfortable with headphones, Tonda's going to
20 hand you a headphone. Marvin has the headphones. You going to
21 let him hold them? Yeah, wonderful. And if they don't work, let
22 me know.

23 THE BAILIFF: Anybody else need one?

24 JUROR: Now, is this just connected to the Judge? Because I
25 can hear her fine. I could not hear the solicitor.

1 THE COURT: Oh, we're so, we're all, going to tease him
2 about that. Thank you so much for letting us know that. That's
3 very important.

4 All right. Now, please call your next witness.

5 ATTORNEY OSBORNE: Thank you, Judge.

6 THE COURT: Yes.

7 ATTORNEY OSBORNE: The state calls David Swibaker.

8 CLERK OF COURT: If you'll please raise your right hand, and
9 state your full name for the record.

10 THE WITNESS: David Swibaker.

11 CLERK OF COURT: If you'll spell your last name.

12 THE WITNESS: S-w-i-b-a-k-e-r.

13 DAVID SWIBAKER,

14 having first been duly sworn, was examined and testified as
15 follows:

16 THE COURT: And your witness.

17 ATTORNEY OSBORNE: Thank you, Judge.

18 **DIRECT EXAMINATION**

19 BY ATTORNEY OSBORNE:

20 Q All right, Mr. Swibaker. We're going to start off just
21 introducing yourself to the jury a little bit, okay.

22 A That's fine.

23 Q How old are you?

24 A Thirty-seven.

25 Q And where are you from?

1 A Tennessee.

2 Q Obviously you didn't live there your whole life. You moved
3 to Charleston at some point, is that fair to say?

4 A Correct.

5 Q And about how old were you when you moved to Charleston?

6 A Fifteen.

7 Q Or to the Charleston area, I guess.

8 A Fifteen.

9 Q What brought you here?

10 A My dad.

11 Q Where did you go to high school?

12 A Fort Dorchester High School.

13 Q Did you graduate?

14 A Yes, I did.

15 Q And what type of work do you do?

16 A I'm assistant maintenance supervisor at an apartment
17 complex.

18 Q Okay. Are you married?

19 A Separated.

20 Q Do you have any kids?

21 A Four.

22 Q Four kids?

23 A Yes.

24 Q Okay. All right. Let's go back to the end of January 2018,
25 going into the beginning of 2019.

1 A Okay.

2 Q Where did you live then?

3 A With Marcus.

4 Q With Marcus?

5 A Uh-huh.

6 Q Marcus Porter?

7 A Yes, sir.

8 Q And what address was that?

9 A [REDACTED] Myrtle Place.

10 Q Okay. And were you two roommates?

11 A Yes, sir.

12 Q Was this Marcus's home? I mean, did you move in with

13 Marcus, or was it ---

14 ATTORNEY HENSLEY: Your Honor, I'm just going to object to

15 leading.

16 ATTORNEY GAY: I join in that objection.

17 THE COURT: All right. Just, I guess we're transferring a

18 little bit from preliminary matters, so at that point I'll ask

19 you to please not lead. But certainly preliminary matters. But

20 at this point, probably need to stop with it.

21 Q Were you or were you not roommates with Marcus Porter?

22 A I was.

23 Q Okay. And was this your home? Did you move into it first,

24 or did Marcus move into it first?

25 A Marcus was already there, and I moved in with him.

1 Q Okay. How did you first meet Marcus?

2 A Through a mutual friend, my girlfriend.

3 Q Okay. And when was it that you moved in?

4 A I can't remember. I was there for, I think it was with him

5 for about, six months, maybe. Maybe.

6 Q Six months. I'm sorry, go ahead.

7 A I said maybe. I can't remember exactly when I moved in.

8 Q Okay. And when you say six months, you mean six months

9 prior to this incident?

10 A No. I think altogether it was six months.

11 Q Okay.

12 A I can't remember. It's been a while.

13 Q And you might want to just speak up just a little bit, or

14 move the mic a little bit closer.

15 A Is that better?

16 Q Much better.

17 A All right.

18 Q Okay. Well, let's go ahead and get this out of the way.

19 Did you know Marcus to sell marijuana?

20 A On occasions. On occasions, but not very much.

21 Q You said not very much?

22 A Yeah. That I know of, anyways.

23 Q I mean, just out of curiosity, I guess that can mean

24 anything to a bunch of people. What does that mean to you, not

25 very much?

1 A I've never really -- I personally never really saw him sell
2 the drugs. I just knew that he had a little bit of pot. But I
3 don't know how to explain it.

4 Q I mean, was it like a suitcase ---

5 A Oh, no, no, no. It was like a little bag. Something small.

6 Q Okay. Okay.

7 (WHEREUPON, State's Exhibit 178 is marked for
8 identification.)

9 ATTORNEY OSBORNE: Your Honor, may I approach?

10 THE COURT: You may.

11 Q I'm showing you what's been marked as State's Exhibit No.
12 178. Can you take a look at that and tell me if you recognize
13 that.

14 A Yes, I do.

15 Q And who is that individual?

16 A Jaquavious Washington.

17 Q And how do you know him?

18 A He worked with me through another guy named Marcus.

19 Q Okay.

20 ATTORNEY OSBORNE: Your Honor, at this time the state seeks
21 to admit State's 178 into evidence.

22 THE COURT: All right. Make sure that counsel has seen it.

23 ATTORNEY OSBORNE: I've shown all of that to them prior to
24 calling the witness.

25 THE COURT: All right. Any objection?

1 ATTORNEY GAY: No, ma'am.

2 THE COURT: Any objection?

3 ATTORNEY HENSLEY: I'm thinking.

4 THE COURT: All right.

5 ATTORNEY HENSLEY: Your Honor, I think I'd object to
6 relevance.

7 THE COURT: All right. Let me see what the document is.

8 ATTORNEY OSBORNE: Well, and, you know, Your Honor, Your
9 Honor, at this point if we can just ID it and establish it later,
10 too.

11 THE COURT: You're going to wait to enter it into later?

12 ATTORNEY OSBORNE: I can do that. Yes, Your Honor.

13 THE COURT: All right. Very well.

14 Q So, to your knowledge, the person that's depicted in 178 who
15 you identified as Jaquavious Washington, did he ever buy
16 marijuana from Marcus?

17 A One time that I know of.

18 Q Okay. All right. Let's get into the night of the incident.
19 January the 27th, going into the early morning hours of the 28th
20 of 2019, were you home that night?

21 A Yes.

22 Q And who all was home that night?

23 A It was Marcus, J.B., and me and the dog.

24 Q Marcus, J.B., and your dog?

25 A Yeah.

1 Q Let's talk about J.B. for a minute, okay.

2 A Okay.

3 Q Did J.B. live with and you Marcus?

4 A No, he did not.

5 Q What was J.B.'s relationship to you and Marcus?

6 A He was Marcus's friend, somebody I was getting to know.

7 Really good guy.

8 Q Okay. That night -- so J.B. was just visiting?

9 A Yes.

10 Q Was there anything that was on J.B.'s mind that night?

11 A He had just driven past a certain amount of miles on his
12 moped, he was breaking it in. He was able to go faster than the
13 35-mile an hour that they're actually able to book it and, you
14 know, have a good time on it. So just having a good time.

15 Q Okay. So he was just having a good time. Is it fair to say
16 that he was sort of bragging about this new moped that he had
17 broke in?

18 A Oh, yeah. Most definitely.

19 Q Okay. And you had mentioned that there was a dog in the
20 house. Whose dog was it?

21 A It was more Marcus's, but it was kind of a house dog. He
22 stumbled up on us, and we found him in the back yard. And ever
23 since, we just took him in.

24 Q Okay.

25 A He was an awesome dog.

1 Q So you said the dog stumbled up on you y'all. How long had
2 y'all had the dog ---

3 A Oh, I don't know.

4 Q --- before this incident?

5 A Maybe a month.

6 Q Maybe a month?

7 A Yes.

8 Q Dog's name?

9 A Motherfucker.

10 Q Okay.

11 A Sorry.

12 Q Well, I asked. How was it that the dog got that name?

13 A It's exactly what he was. He was just, he was something
14 else.

15 Q All right. So let's go ahead and get into the incident.
16 Just prior to the incident occurring where were you -- we'll
17 start with you. Where were you positioned in the house?

18 A I had just woken up. And then I walked into the kitchen
19 because there was a nightstand that I was working on for Marcus.
20 And I was kind of going back and forth between my bedroom and
21 into the kitchen.

22 And as soon as I came into the kitchen, then that's when
23 they broke in through the back door and came in with guns.

24 Q Prior to them breaking in the back door with guns, you said
25 you were in the kitchen?

1 A Correct.

2 Q And what did you say you were doing again?

3 A I was working on a nightstand.

4 Q Okay. And how about Marcus, where was he?

5 A He was sitting on the couch behind us.

6 Q Does the kitchen open up into the living room where the
7 couch is?

8 A It's like an open floor plan. You walk in through the front
9 door, the love seat and couch is here, a table, a TV. And then
10 you can see the whole kitchen and the dining room with appliances
11 and countertop. And at the back door you can see from where
12 you're sitting on the couch.

13 Q So when you walk in through the front door, you're basically
14 in the living room?

15 A Correct.

16 Q And you said -- what do you see off to the right?

17 A The living room, the couch, love seat and coffee table.

18 Q And straight ahead?

19 A Is the kitchen and back door.

20 Q Okay. And where was -- you said Marcus was seated on the
21 couch?

22 A Correct.

23 Q And where was J.B?

24 A J.B. was standing at the table, suiting up, about to go
25 home.

1 Q He was about to go home?

2 A Yes.

3 Q And what about your dog?

4 A He was in the living room with Marcus.

5 Q Okay. Now, you said that J.B. was about to go home.

6 A Yes.

7 Q From your perspective, is it fair to say that five minutes

8 later J.B. would have gone?

9 A He would have been gone.

10 Q All right. Well, let's get into what happened. You said

11 they kicked in the door.

12 A Yeah.

13 Q What happened then?

14 A They came in pulling guns. And then I went from the living

15 room, as soon as I seen them, I took off to the bathroom and I

16 hid inside the shower.

17 And then once I seen them come through, they was dragging

18 Marcus down the hallway, then I ran back to my room. I don't

19 know exactly why, but then I get hit in the head with the back of

20 a gun. And then I was told to lay on the ground or they was

21 going to blow my fucking brains out.

22 Q When they kicked in the door how many people did you see

23 come into your house?

24 A Personally, I saw two at a time. And that's whenever I

25 thought that it was just the two. When they took Marcus down the

1 hallway, that's when I tried to get back across.

2 Q All right. Let's talk about those two. The first one that
3 came through the door, what's the best that you can describe him,
4 what did he look like?

5 A He had colorful shoes on, kind of tall, and had hazel eyes.

6 Q Okay. Dark complexion? Light complexion?

7 A Light-skinned.

8 Q And you say kind of tall?

9 A Uh-huh.

10 Q I'm sorry. You're going to have to say yes ---

11 A Yes, sir.

12 Q --- or no. And the second individual that followed him,
13 what did he look like?

14 A He was a little bit shorter and heavysset.

15 Q Heavysset?

16 A Yes.

17 Q All right. So where I stopped you, you had two people, the
18 light-skinned, tall guy, shorter, heavysset guy, come in through
19 the back door?

20 A Yes.

21 Q And you said you did what then?

22 A I ran to the bathroom.

23 Q Okay. These first two individuals that came through the
24 door, do you know if they were armed?

25 A Most definitely had guns. The one that has -- as soon as I

1 ran by, the dog was coming up to attack them, and the dog got
2 shot.

3 Q The dog got shot?

4 A Yes.

5 Q When you say they had guns, were they rifles, were they
6 pistols?

7 A Handguns.

8 Q Handguns?

9 A Yes.

10 Q Both of them?

11 A Yes.

12 Q Do you know if they were masked or gloved?

13 A They had masks on.

14 Q Okay. When you ran into the bathroom, was your dog shot
15 before or after that, or do you know?

16 A As I was running he was getting shot.

17 Q Did you hear anything that was being said by these guys?

18 A Not a lot. I was just, I was trying to get out.

19 Q Okay. But you said, Not a lot. Do you remember anything?

20 A Not really. I mean, I just, towards the end there was stuff
21 that they said that I remembered, but as far as what was going on
22 between, I was like, I was trying to get out of there.

23 Q Okay. We'll get there then. All right. So you're in the
24 bathroom, and then I stopped you where you said you saw Marcus
25 being drug.

1 A Uh-huh.

2 THE COURT: Is that a yes or no?

3 Q It's got to be yes or no.

4 A Yes.

5 Q Explain to me. I mean, there's a lot of different ways in
6 my mind I'm seeing that. Tell me what you mean by that.

7 A They had one on one side and one on another side, and they
8 were making him go to the back room.

9 Q Would that have been to Marcus's room or would that have
10 been to your room?

11 A To Marcus's room.

12 Q Now, these two individuals that were dragging Marcus to his
13 room, were those the same two individuals, the light-skinned,
14 tall guy and the shorter, heavysset guy, or was it someone else?

15 A I'm not exactly sure. I just seen it through the crack on
16 the door, that's all I can tell you. I mean, I assume that
17 that's who it was.

18 Q I understand. So it was pretty quick that they went by?

19 A Yes.

20 Q When Marcus goes by, is that when you said that you went to
21 your bedroom?

22 A Yes.

23 Q And then what happened?

24 A I got hit on the back of the head and I got told to lay on
25 the ground or they were going to blow my brains out. And they

1 took the mattress off of my bed and flipped it over me, and they
2 were looking for stuff. And then they walked back over me and
3 back into the living room. And then that's when they said that
4 if we don't tell them where the stuff is, then they're going to
5 start lighting motherf---ers up.

6 Q Let me ask you a couple questions about that. All right.
7 So you're in your bedroom, and you get hit in the back of the
8 head.

9 A Correct.

10 Q Okay. Now, how many people are in your bedroom? Or, can
11 you tell?

12 A Two. Because one was standing, one was behind me, that I
13 got hit, and then I know one came overtop of me. Whether it was
14 the same guy that came overtop of me or the one that was holding
15 the gun on me, I'm not sure.

16 Q So is it or is it not fair to say then that there was one,
17 maybe two, in your bedroom?

18 A Correct.

19 Q Okay. And while this is going on, Marcus is in his bedroom
20 with the other two?

21 A Yes.

22 Q Okay. Your bedroom is getting ransacked, I guess.

23 A Yes.

24 Q They're searching for things. Do they take anything from
25 you? Well, I guess -- you know what? I'll get to that.

1 A Okay.

2 Q I'll get to that in a second. Okay. They're in your
3 bedroom. You're on the ground. What happens after that?

4 A I heard them pulling Marcus back from his room and into the
5 living room. And then that's when I heard them say if we don't
6 tell them where the stuff was then they was going to start
7 lighting motherf--ers up.

8 And then I heard a shot. And then I heard a bunch more
9 shots. And then they left.

10 Q When that shot and the bunch more shots occurred, were you
11 still in your bedroom?

12 A Yes. I was on the floor.

13 Q Do you have any idea who it was, who said, you know, if
14 y'all don't start talking we're going to light this Mfer up?

15 A No.

16 Q Okay, you just heard that?

17 A Yes.

18 Q And I'm sorry, you said you heard doors opening and closing,
19 or no?

20 A I heard them leave.

21 Q Oh, you heard them leave, okay.

22 A Yes.

23 Q What did you do then?

24 A I got up. I went to the living room and seen that J.B. was
25 laying on the ground. I started -- I ran outside first to try to

1 see where Marcus was, and he said that he was already calling the
2 cops. And I came back in, tried to give J.B. CPR and then till
3 the police officer came and relieved me. And then I helped her
4 out. And then they told me to go outside.

5 (WHEREUPON, State's Exhibits 33 and 67 are marked for
6 identification.)

7 ATTORNEY OSBORNE: Your Honor, may I approach?

8 THE COURT: You may.

9 Q I'm going to show you State's 33 and State's 67. Can you
10 tell me if you recognize those items.

11 A Yes.

12 Q And we'll start with 33. What is 33?

13 A That's going from the front door into the living room. And
14 that's where J.B. was.

15 Q That's the living room of your home?

16 A Yeah.

17 Q And 67?

18 A That's going down the hallway to Marcus's room.

19 Q Okay. Do 33 and 67 fairly and accurately depict how your
20 home looked on the night of the incident?

21 A Afterwards, yes.

22 Q Okay.

23 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
24 admit 33 and 67 into evidence.

25 THE COURT: All right. Any objection?

1 ATTORNEY GAY: No.

2 ATTORNEY HENSLEY: None from Mr. Major.

3 THE COURT: Very well. So admitted.

4 (WHEREUPON, State's Exhibits 33 and 67 are entered into the
5 record.)

6 Q Now, I realize, on State's 33, we're kind of looking at a
7 downward photograph here. But can you just sort of tell us,
8 like, where are we standing now inside your house?

9 A That's right inside the front door.

10 Q Okay. So the front door would be to my back?

11 A Yes, sir.

12 Q And just as the individuals made entry, where would you have
13 been standing?

14 A See where that nightstand is to the right?

15 Q Yes.

16 A Where the purple and pink thing is. I don't know what that
17 is. That's the dog toy, I think. I was standing right there.

18 Q And where would the back door have been?

19 A The refrigerator's right in front of you. It's directly to
20 the left.

21 Q And I would then assume where we have the carpet here off to
22 the right is where Marcus would have been?

23 A Yes.

24 Q Okay. And what about J.B. when they first entered?

25 A He was standing, like, right where the refrigerator is,

1 right by that table.

2 Q Up in this area?

3 A To the left. Right there.

4 Q Okay. Now I'm showing you State's 67. What am I looking at
5 now?

6 A That's at the back of the hallway. On the left was like a
7 little office, and on the right is Marcus's room.

8 Q Okay. So behind me, what would be behind me if I'm looking
9 straight ahead?

10 A On the right would be the bathroom. On the left would be my
11 room.

12 Q And then even further back behind that would be?

13 A The living room.

14 Q Okay. So when you said that you had went into the bathroom
15 first, that would have been off to the right?

16 A Yes.

17 Q And this is where you saw Marcus being drug, down this
18 hallway?

19 A Yes.

20 Q I talked to you before -- well, I asked you a question and
21 then I stopped you -- did you have anything taken.

22 (WHEREUPON, State's Exhibits 111C, 117 and 118 are marked
23 for identification.)

24 ATTORNEY OSBORNE: Your Honor, may I approach?

25 THE COURT: You may.

1 Q I'm showing you State's 117 and 118. Do you recognize --
2 well, you know what? And I also want to show you 11C, C as in
3 Charles. Can you take a look and tell me if you recognize 117,
4 118 and 111C.

5 A That's my watch.

6 Q 117 and 118 are photographs?

7 A Of my watch.

8 Q And then 111C is your actual watch?

9 A My actual watch.

10 ATTORNEY OSBORNE: Your Honor, at this time I'd seek to move
11 in 117, 118 and 111C.

12 THE COURT: Yes?

13 ATTORNEY GAY: I have no objection, Your Honor.

14 THE COURT: All right.

15 ATTORNEY HENSLEY: Without objection, Your Honor.

16 THE COURT: Very well. They're admitted.

17 (WHEREUPON, State's Exhibits 111C, 117 and 118 are entered
18 into the record.)

19 Q Start off 117. It's silly.

20 A That's my watch.

21 Q That's your watch. And then 118?

22 A The back of my watch.

23 Q Okay. After this incident occurred, did you have the
24 occasion to watch the news?

25 A Yes.

1 Q And did you see anything on the news in reference to this
2 case?

3 A Yes.

4 Q What did you see?

5 A I seen the ---

6 ATTORNEY HENSLEY: Objection, Your Honor.

7 ATTORNEY GAY: Yes. I'd object, as well, pursuant to our
8 pretrial motions, and following through our objections to this
9 line of questioning.

10 THE COURT: Counsel, let me see you for a second.

11 (WHEREUPON, an off-the-record discussion was held at
12 sidebar.)

13 Q You said you saw the news.

14 A Yes.

15 Q And is it fair to say that when you saw the news that there
16 was a report done on this incident?

17 A Correct.

18 Q And when you saw that report is it fair to say that you
19 learned that four individuals had been arrested?

20 A Yes.

21 Q And when you saw that report, isn't it fair to say that you
22 recognized one of them?

23 A Yes.

24 Q And who was that?

25 A Elijah Green.

1 Q How'd you recognize him?

2 A By his eyes.

3 Q Did that report mention anything about his height?

4 A No.

5 Q What you saw was a head shot?

6 A Yes.

7 Q All right.

8 ATTORNEY OSBORNE: No further questions.

9 THE COURT: All right. Cross-examination, Ms. Gay?

10 ATTORNEY GAY: One second, Your Honor.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY GAY:

13 Q This is all kind of unusual set up here. I'm Melisa Gay, I
14 represent Mr. Green. So I have a couple of questions about, just
15 kind of some housekeeping matters about, what happened after this
16 incident.

17 And I think that one of the things that you talked about
18 was, when you came out of the bedroom Marcus Porter was not in
19 the house anymore.

20 A When I came out of the bedroom once everybody had left?

21 Q Yes.

22 A Correct.

23 Q So Marcus Porter's out of the house?

24 A Yes.

25 Q So you're the only one in the house at that time?

1 A Me and J.B.

2 Q Yes, I understand. And your testimony was today that you
3 were providing some type of CPR to him at the time of, upon the,
4 arrival of the first officer that responded?

5 A Yes.

6 Q Okay. Now, that officer had a bodycam on.

7 A Yes.

8 Q And that body camera has picked up things, and it's been
9 provided to us as part of this evidence. And isn't it true that
10 in that bodycam you're actually smoking a cigarette ---

11 A That was afterwards.

12 Q --- at the time?

13 A That was after she relieved me and she came in. I was
14 nervous. Yes.

15 Q So your testimony would be when she first came in you were
16 giving the CPR?

17 A Yes.

18 Q And then after that, you were smoking your cigarette and
19 talking to her?

20 A Yes.

21 Q When you were talking to her, she then handed you off to
22 another officer who is a person who maybe took some kind of
23 written statement from you at the scene when this happened?

24 A Yes. Yes.

25 Q And so that written statement has also been provided in this

1 case. And do you recall about what time that statement -- what
2 time does all this happen?

3 A I'm not -- it was late, early morning. I think it was
4 around 12:00, 1:00, maybe. I'm not sure.

5 Q So maybe about 12:00, okay. So do you recall the name of
6 that officer that you spoke to?

7 A No.

8 Q But you do recall giving him a written statement?

9 A Yes.

10 Q And so do you recall in that written statement -- and if you
11 need to see it, I can show it to you to refresh your
12 recollection.

13 A Yes.

14 Q All right.

15 ATTORNEY GAY: Your Honor, I'd like to mark this for ID
16 purposes only.

17 THE COURT: Very well.

18 ATTORNEY OSBORNE: Your Honor, can we approach for a second?

19 (WHEREUPON, an off-the-record discussion was held at
20 sidebar.)

21 Q Do you recall telling them that the people in the house were
22 mad because y'all didn't have any stuff?

23 A I don't recall. I mean, I know that they were upset, yes.
24 That's the reason why they started shooting us.

25 Q And so, and it was the stuff, it was drugs, that you think

1 they were looking for?

2 A Yes.

3 Q And then do you also recall saying that the person with
4 light skin had on black shoes?

5 A No, I do not.

6 Q Okay. I would like to mark this as ---

7 (WHEREUPON, Defendant Green Exhibit 1 is marked for
8 identification.)

9 ATTORNEY GAY: Okay, thank you.

10 Q I would like to show you what's identified as Defendant's,
11 ID only, 1.

12 A Okay.

13 Q So you would agree with me then that this statement that
14 you've just read over does say that the person with light skin
15 had on black shoes?

16 A Yes.

17 Q And so this is the first statement that you gave?

18 A Yes.

19 Q The first written statement to the police. And then -- and
20 that was the night that this happened. And then I believe that
21 you testified that -- Mr. Osborne asked you whether you were
22 aware that somebody had come to the house in the past to buy
23 drugs from Marcus Porter.

24 A Yes.

25 Q And I think you identified him as somebody named

1 Mr. Washington.

2 A Yes.

3 Q And isn't it true, that in your conversations with the
4 police, that you told them that at some point Mr. Washington came
5 and that you had introduced Mr. Washington to Mr. Porter?

6 A Yes.

7 Q And I believe that you were the person who worked with
8 Mr. Washington, and that's how Mr. Porter knew him?

9 A Yes.

10 Q So when you say that you believed that Mr. Porter sold small
11 amounts of marijuana to people, are you aware of how much this
12 man may have sold to other people?

13 A No.

14 Q Okay. And so during the course of this case, or as this has
15 moved on, are you aware that Mr. Porter was arrested and charged
16 with trafficking methamphetamine?

17 A I do now.

18 Q Right, you do now.

19 A I do now.

20 Q So on that date and time you didn't know that he was
21 arrested for a very large quantity of methamphetamine and also a
22 very large quantity of marijuana?

23 A Correct. But I don't know what that has to do with this
24 case, though.

25 Q Well, I'm just asking you if you know. And you say now you

1 do?

2 A Right. Yes.

3 Q And I believe that, when you were questioned, there was some
4 information that was, it was kind of interesting, and you
5 actually had signed a waiver of rights and advisement of rights?

6 A Yes.

7 Q And that's the type of piece of paper that a person signs
8 when they're actually being questioned about potential criminal
9 activity?

10 ATTORNEY OSBORNE: Objection, Your Honor. That's beyond his
11 knowledge.

12 ATTORNEY GAY: Well, he did acknowledge that he signed a
13 waiver of rights.

14 THE COURT: Excuse me. When there's an objection, that's
15 for me. Sustained.

16 Q So during the course of this case, the first time you talked
17 to somebody was the first lady who showed up. And then the
18 second time you talked to somebody was in this piece of statement
19 right here.

20 A Okay.

21 Q And then there were other times that you also talked to law
22 enforcement after this. This wasn't the only statement that you
23 gave. You've been interviewed for this case a few times?

24 A No. Just one other time, but just before the last trial. I
25 didn't -- I can't remember.

1 Q Well, when you were -- and this is all after this incident.
2 After this incident, as this progressed, you became aware that
3 Mr. Porter actually thought that you had something to do with
4 setting up this day/this event that occurred?

5 A I didn't known until the trial.

6 Q But you do know now?

7 A I do know now.

8 Q You know that, okay. The last thing I'm going to talk to
9 you about is this time when you watched the news. And it's your
10 testimony that you believe that you saw Elijah Green on the news
11 and that he was the person that you identified as participating
12 in this because of his eyes?

13 A Yes.

14 Q Okay. And I believe you said specifically that -- and this
15 goes back to this statement, if you need to refresh -- did you
16 say the person who came into the house had hazel eyes?

17 A Yes.

18 Q And you recall that?

19 A Yes.

20 Q And black shoes?

21 A From what's written down, yes.

22 ATTORNEY GAY: Beg the Court's indulgence, Your Honor.

23 THE COURT: All right.

24 ATTORNEY GAY: I have no further questions for this witness,
25 Your Honor.

1 THE COURT: All right. And, Ms. Hensley, cross-examination?

2 ATTORNEY HENSLEY: Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 BY ATTORNEY HENSLEY:

5 Q Mr. Swibaker, I don't think we've met. I'm Laree Hensley.
6 I'm Devonte Major's lawyer.

7 A Nice to meet you.

8 Q Nice to meet you. So I just have a few questions for you.
9 You would agree with me that the statement that you gave the
10 police at 024 hours, so that's 24 minutes after midnight, you
11 were trying to be as accurate as possible in that statement;
12 right?

13 A Tried to, yes.

14 Q And it was really close in proximity of the time that this
15 incident had occurred?

16 A Yes.

17 Q Right? And you would agree with me -- you reviewed this
18 statement -- that nowhere in that statement did you say anything
19 about going in the bathroom; right?

20 A Not in that statement. N.

21 Q And nowhere in that statement did you say anything about
22 being hit in the head with a gun?

23 A No.

24 Q And nowhere in that statement did you say anybody told you
25 they were going to blow your brains out. Right?

1 A Right.

2 Q And in this statement you said that one guy was darker and
3 had red, blue and white shoes on, and shorts. Right?

4 A Yes.

5 Q So those were the two guys that you saw; correct?

6 A Right.

7 Q And the night of this incident, there was a lot going on
8 when the police started to come. Right?

9 A Most definitely, yes.

10 Q There were a lot of police there; right?

11 A You.

12 Q So after PFC Boehler -- I'm not good with ranks, but after
13 Ms. Boehler -- had gotten there, she instructed you to go
14 outside; correct?

15 A Correct.

16 Q Ask then you talked to a bunch of cops outside, more than
17 one statement; right?

18 A I can't remember. I know I at least gave one, or I talked
19 with one person for sure.

20 Q And I know it's hard with all the names. Do you have any
21 recollection of talking to Detective Hirsch right before your
22 girlfriend came to get you? Do you remember that?

23 A Is he an older gentleman with dark hair?

24 Q I'm not sure because I can only see it on the bodycam, so I
25 could only see you.

1 A I'm not sure. I remember I was talking with people. I
2 asked if I could leave. I can't remember who I asked, and he let
3 me leave.

4 Q The gentleman who you were talking to right before you left
5 and gave you permission to leave ---

6 A Yes, ma'am.

7 Q --- do you remember having a conversation with him?

8 A Yes, ma'am.

9 Q And do you remember him telling you -- I know you've told
10 this story several times but -- I have a few more questions for
11 you? Do you remember that?

12 A I can't remember. I know I was, you know, asking to leave
13 and then I was able to go. I was just wanting to get away.

14 Q I understand. You didn't want to spend the night there;
15 right?

16 A Correct.

17 Q And you have to excuse me. I'm not really playing with my
18 phone. I left my other computer at home, and my notes are on
19 this phone. So I'm not playing a game or anything.

20 A That's fine.

21 Q Do you have any recollection of telling Detective Hirsch
22 that you ran into the bathroom?

23 A No. I don't think I told anybody.

24 Q You didn't tell anybody that?

25 A No.

1 Q So it's fair to say that you told Detective Hirsch, I darted
2 to my room? Right?

3 A If I did, then I did. I don't remember.

4 Q And you don't remember saying, Detective Hirsch asking you,
5 like, if anything like this had ever happened; right?

6 A Right.

7 ATTORNEY HENSLEY: And, Your Honor, at this time I could
8 refresh the witness's recollection with his statement, if he
9 would like to listen to it.

10 ATTORNEY OSBORNE: I think he admitted.

11 ATTORNEY HENSLEY: He said he didn't remember.

12 ATTORNEY OSBORNE: I thought he just said he did. I mean,
13 maybe I misheard.

14 ATTORNEY HENSLEY: Well, I'll ask some more questions.

15 Q Do you remember telling Detective Hirsch that nothing like
16 this had ever happened to you before?

17 A Yes.

18 Q And you remember telling Detective Hirsch, This is not my
19 life; right?

20 A Right.

21 Q Detective Hirsch was asking you, Do you know if anybody had
22 been having issues with anyone? Right?

23 A I think so, yes.

24 Q And you said you were just arguing with your girlfriend?

25 A Right.

1 Q That was the only issue that had been going on, and nothing
2 like this had ever happened before; right?

3 A Right.

4 Q And you said you didn't have any idea what they were looking
5 for?

6 A Right.

7 Q Right? And then you said they were in the house five
8 minutes; they shot and left? Right?

9 A Pretty much, yes.

10 Q And it's extremely quiet right here; nobody ever messes with
11 us at all?

12 A Right.

13 Q But none of that was true; right?

14 A Right.

15 Q Every single one of those answers was a lie; right?

16 A No, not every one of the answers. No.

17 Q Okay. So when you said, Nothing like this had ever that
18 happened before, was that a lie?

19 A That was a lie.

20 Q And you said, Not in my whole life. That's a lie?

21 A Well, actually, hold on. What happened that night, I've
22 never been in anything happening like that at all. Now, as far
23 as like other disagreements and stuff throughout my life, yes,
24 stuff like that has happened.

25 But as far as like someone getting murdered and killed in my

1 home, no.

2 Q That's fair. But somebody has broken in your home before?

3 A Yes.

4 Q Somebody's kicked in your back door before?

5 A Right. But no one's ever got shot and killed.

6 Q I understand. I understand, I get the distinction. Thank
7 you. And when you said you didn't know what they were looking
8 for, that was also a lie; right?

9 A Partly, yes and no. I mean, I didn't know exactly what they
10 were looking for, but I knew they was looking for something.

11 Q And you said Marcus sold -- and I don't want to misquote
12 you, but -- a little weed, right, nothing big; right?

13 A Right.

14 Q So can you tell me how much weed you would consider a little
15 bit of weed?

16 A I don't know. Just small amounts, just little things.
17 Nothing like, no quantities.

18 Q Like a half a pound of weed would be a lot of weed?

19 A I've never seen that in that house.

20 Q What?

21 A I've never seen that in that house.

22 Q You've never seen a half a pound of weed in that house?

23 A No. No.

24 Q And you've never been in that house when somebody took a
25 half a pound of weed?

1 A No.

2 ATTORNEY HENSLEY: Beg the Court's indulgence.

3 THE COURT: All right.

4 ATTORNEY HENSLEY: I think that's all the questions I have.
5 Thank you so much, Mr. Swibaker.

6 THE WITNESS: Okay.

7 THE COURT: Redirect?

8 ATTORNEY OSBORNE: Yes, Your Honor, briefly.

9 THE COURT: All right.

10 **REDIRECT EXAMINATION**

11 BY ATTORNEY OSBORNE:

12 Q I forgot to ask you that. So one of the guys that was
13 inside the room with you had on what-color shoes?

14 A I don't remember.

15 Q But I think Ms. Hensley just showed you your statement. You
16 said red, white and blue ---

17 A Yes.

18 Q --- back on the day of the incident?

19 A Correct.

20 Q And that was one of the guys that was in the room with you?

21 A I think so. I'm not sure. I think so.

22 Q Okay. All right. I think it was Ms. Hensley, could have
23 been Ms. Gay, but asked you about Miranda warnings that were
24 issued to you. And the date was February the 6th of '21 -- or,
25 I'm sorry, of '20, that you were brought in.

1 Did you ask the police to issue you your Miranda warnings
2 before you answered any questions, or did they just do it?

3 A I guess they just did it.

4 Q Did you tell them, Look, I'm not answering any questions
5 until I hear those Miranda warnings?

6 A No.

7 Q But either way, you answered the questions then, is that
8 fair to say?

9 A Yes, sir.

10 Q On the night of the incident when the police came and talked
11 to you, what had you just seen?

12 A What do you mean?

13 Q What did you just experience?

14 A Oh. Someone breaking in the back door, just before that,
15 two weeks before.

16 Q And you witnessed -- well, you might not have seen it, but
17 you certainly saw the aftereffect, is that fair to say, of
18 somebody getting shot?

19 A Yes.

20 Q Multiple times?

21 A Yes.

22 Q And when you were questioned, just prior to being questioned
23 you said that you had tried to perform CPR to save J.B.'s life.

24 A Yes.

25 Q We didn't really ask. I mean, what exactly did you do and

1 what exactly was going on with J.B?

2 A He was gasping for air. I was doing chest compressions. I
3 tried turning him on his side.

4 Q You said he was gasping for air?

5 A Uh-huh. Yes, sir.

6 Q Was he saying anything?

7 A No.

8 THE COURT: Can you respond with your voice, please.

9 A No.

10 Q Were you being asked detailed questions on the night of the
11 incident by the Summerville Police Department like you were asked
12 on February the 6th, days later?

13 A No.

14 Q But it is fair to say, is it not, that you weren't exactly
15 thrilled or excited about telling the police that there was --
16 that your roommate was selling marijuana?

17 A Correct.

18 Q Now, Ms. Gay asked you if you said you believe you saw Green
19 on the news. But prior to that you described that individual as
20 having hazel-colored eyes.

21 A Yes.

22 Q Can you see Mr. Green from where you're sitting, seated?

23 A Yes.

24 ATTORNEY GAY: Your Honor, I would object at this time based
25 on my prior motion. Preserving my objection.

1 THE COURT: Okay. Very well. You may proceed.

2 Q Can you see him?

3 A Yes.

4 Q Can you see him well enough?

5 A Yes.

6 Q What color are his eyes?

7 A Hazel.

8 Q Is he one of the guys that came into your house?

9 A You're damn right he is.

10 ATTORNEY OSBORNE: No further questions?

11 THE COURT: I'm going to ask you not to swear in my
12 courtroom.

13 THE WITNESS: Yes, ma'am. I'm sorry.

14 ATTORNEY OSBORNE: No further questions, Your Honor.

15 THE COURT: Recross, Ms. Gay?

16 ATTORNEY GAY: No, Your Honor.

17 THE COURT: All right.

18 ATTORNEY HENSLEY: Just briefly, Your Honor.

19 **RECROSS-EXAMINATION**

20 BY ATTORNEY HENSLEY:

21 Q Can you hear me from here?

22 A Yes, ma'am.

23 Q I'm pretty loud, so. I just want to be sure I have your
24 timelines correct, right. They came in, and you ran to the
25 bathroom. Right?

- 1 A Yes.
- 2 Q And as you did that, the dog was shot as you were running;
- 3 right?
- 4 A Yes.
- 5 Q And then Marcus got drug down the hall; right?
- 6 A Yes.
- 7 Q And when Marcus came back, that's when you heard the shots
- 8 afterwards?
- 9 A The rest of the shots, yes.
- 10 Q The rest of them.
- 11 A Yes.
- 12 Q And then they went out the back door?
- 13 A Front or back. I'm not sure.
- 14 Q They left?
- 15 A But they left.
- 16 Q And then you secured the back door?
- 17 A I did not secure the back door.
- 18 Q You did not?
- 19 A No. I came straight through the living room, and then I
- 20 went out to the front to try to see where Marcus was. And he was
- 21 already getting ready to call 911. And then I came back in and
- 22 started CPR.
- 23 ATTORNEY HENSLEY: That's all the questions I have. Thank
- 24 you.
- 25 THE WITNESS: Yes.

1 THE COURT: All right. Call your next witness, please.

2 ATTORNEY OSBORNE: State calls Marcus Porter.

3 ATTORNEY HENSLEY: Your Honor, could we take a little break
4 before Mr. Porter starts?

5 THE COURT: Okay.

6 ATTORNEY HENSLEY: We came back from lunch in such a hurry,
7 I didn't get to ---

8 THE COURT: All right. Okay. All right. Ladies and
9 gentlemen, we'll take a 10-minute break. Please step to your
10 jury room. Do not discuss this matter; do not allow anyone to
11 discuss it with you.

12 And, folks, please let the jury exit before you exit the
13 courtroom, please. A 10-minute break.

14 (WHEREUPON, the jury is escorted out of the courtroom at
15 2:38 p.m.)

16 ATTORNEY OSBORNE: Your Honor, I'm so sorry, I forgot to
17 ask. Mr. Porter has exhausted all of his annual leave for these
18 trials. May he be excused?

19 THE COURT: I'm ---

20 ATTORNEY OSBORNE: Mr. Swibaker. I'm sorry. Mr. Swibaker.

21 THE COURT: Any objection, Ms. Gay?

22 ATTORNEY HENSLEY: No objection.

23 THE COURT: No objection.

24 ATTORNEY GAY: No, ma'am.

25 (WHEREUPON, court recessed at 2:38 p.m. and convened at 2:48

1 p.m.)

2 THE COURT: Anything before we bring the jury out?

3 ATTORNEY OSBORNE: For scheduling, Judge, we're going to
4 have Marcus Porter. Then we're going to do Joshua Scarborough.
5 He's the individual who passed the Honda, so it shouldn't be that
6 long, it's just a little bit of video. And then after that we
7 were going to do Cramer, which that's the whole chase, so he's a
8 little bit more meaty.

9 Our thought was we were just going to end with Scarborough
10 today, because otherwise we'd probably go over 5:00. But we can
11 certainly bring him. He just texted. Tomorrow?

12 THE COURT: Yes, I think. I think you probably have enough
13 for today. As I recall, he was quite lengthy.

14 (WHEREUPON, the jury is seated in the courtroom at
15 2:50 p.m.)

16 THE COURT: All right. Thank you so much, Mr. Jenkins.
17 Ladies and gentlemen, at this time we will continue with the
18 state's case.

19 Please call your next witness.

20 ATTORNEY OSBORNE: Thank you very much. The state calls
21 Marcus Porter.

22 CLERK OF COURT: Mr. Porter, if you'll raise your right
23 hand, and state your full name for the record.

24 THE WITNESS: Marcus Porter.

25 CLERK OF COURT: If you'll spell your last name for the

1 record.

2 THE WITNESS: P-o-r-t-e-r.

3 MARCUS PORTER,

4 having first been duly sworn, was examined and testified as
5 follows:

6 THE COURT: Your witness.

7 **DIRECT EXAMINATION**

8 BY ATTORNEY OSBORNE:

9 Q All right, Marcus. First thing we're going to do is kind of
10 introduce you to the jury and get you used to talking to the
11 jury, okay.

12 A Yes, sir.

13 Q How old are you?

14 A Forty-three.

15 Q And where were you born?

16 A Cedar Rapids, Iowa.

17 Q Iowa?

18 A Yes, sir.

19 Q Any siblings?

20 A Two, older and younger.

21 Q Brothers? Sisters?

22 A Two sisters.

23 Q And from Iowa -- did you come to South Carolina from Iowa?

24 A No. From Iowa we went to Florida, and then from Florida to
25 South Carolina.

- 1 Q Moving around for mom's job? Dad's job?
- 2 A Dad's job.
- 3 Q Okay. And do you work now?
- 4 A Yes, sir. I own my own business.
- 5 Q And what type of business is it?
- 6 A It's a tree service.
- 7 Q Okay, tree cutting?
- 8 A Yes, sir.
- 9 Q All right. So Marcus, I don't know how, any other way, to
- 10 say this except you are in a bit of trouble. Aren't you?
- 11 A Yes, sir.
- 12 Q You got a bunch of pending charges, fair to say?
- 13 A Pending, yes, sir.
- 14 Q All right. So as a result of this incident you have
- 15 possession of a pistol?
- 16 A Yes, sir.
- 17 Q Is that correct?
- 18 A Yes, sir.
- 19 Q And we'll talk about that in a second. You got distribution
- 20 of a controlled substance within close proximity to a school or
- 21 playground?
- 22 A Yes, sir.
- 23 Q Was that Alston Middle, was that the school?
- 24 A I believe so.
- 25 Q You were in Robynwyn at the time?

- 1 A I was.
- 2 Q All right. And after that I think you had a possession with
3 intent to distribute, I don't know, first offense, Schedule, like
4 Schedule I through III or something?
- 5 A Yes, sir.
- 6 Q And you had a trafficking meth?
- 7 A Yes, sir.
- 8 Q Distribution of meth?
- 9 A All pending, yes, sir.
- 10 Q Distribution, something like a controlled substance or
11 something like a pill or something, I through V, I think?
- 12 A Yes, sir.
- 13 Q Another possession of meth, or contain base, whatever?
- 14 A Yes, sir.
- 15 Q And then two charges here, I guess it's from the same gun.
16 An unlawful possession of a firearm and unlawful carrying of a
17 firearm? One gun?
- 18 A One gun; yes, sir.
- 19 Q And you're represented on those charges; right?
- 20 A I am.
- 21 Q Have you added up all the time that you're looking at?
- 22 A I just know it's a lot.
- 23 Q A lot of time?
- 24 A Yes, sir.
- 25 Q All right. So in preparation for this trial did you have

1 the occasion to meet with my predecessor, Deputy Solicitor Don
2 Sorenson, on November the 4th ---

3 A I did.

4 Q --- of 2020. That was at your attorney's office?

5 A Yes, sir.

6 (WHEREUPON, State's Exhibit 173 is marked for
7 identification.)

8 ATTORNEY OSBORNE: Your Honor, may I approach?

9 THE COURT: You may.

10 Q All right. I'm showing you State's Exhibit No. 173. Can
11 you take a look at that and tell me if you recognize that.

12 A Yes, sir.

13 Q And what is that?

14 A It's the agreement that your predecessor came up with with
15 my attorney to, like, basically saying that I am --

16 Q Don't publish it yet.

17 A Yes, sir.

18 Q I'm sorry, didn't mean to interrupt you there.

19 ATTORNEY OSBORNE: Your Honor, at this time I'd seek to
20 admit State's 173 into evidence.

21 THE COURT: Counsel, you've seen it. Ms. Gay, any
22 objection?

23 ATTORNEY GAY: The Court's indulgence, Your Honor. Hold on.
24 Your Honor, I have no objection at this time.

25 ATTORNEY HENSLEY: None from Mr. Major.

1 THE COURT: All right. So admitted.

2 (WHEREUPON, State's Exhibit 173 is entered into the record.)

3 Q Can you read that?

4 A Yes.

5 Q Oh, you can, okay. All right. Well, all right. So it
6 says -- well, here, let me just. That's kind of the top there, I
7 guess it's got the date. What's the date?

8 A November 4th, 2020.

9 Q Okay. And it's about you, Marcus Porter?

10 A Yes, sir.

11 Q So what does it say?

12 A The following constitutes an agreement between the attorney
13 for the government and Marcus Porter, hereinafter referred to as
14 client.

15 Q Okay. And what does the agreement part say?

16 A The purpose of this agreement is to provide the government
17 with an opportunity to assess the value, extent and truthfulness
18 of client's information.

19 Q And under, This is not a cooperation agreement, what does it
20 say?

21 A It says, Client has agreed to provide the government with
22 statements and information, and to respond to questions so that
23 the government may evaluate client's statements and other
24 information in making prosecutive decisions.

25 Q Okay.

- 1 A Provided client is truthful, as described above, remaining
2 terms of the agreement are as follows.
- 3 Q Okay, let me pause you right here. So now we're getting
4 into the terms of the agreement?
- 5 A Yes, sir.
- 6 Q And what are the terms?
- 7 A Terms are, No statement made or other information provided,
8 or information derived therefrom by client will be used against
9 client in any manner. Client is hereby informed and understands
10 that this agreement does not extend to any statements or other
11 information involving client being involved in a homicide or
12 other acts of extreme violence.
- 13 Q So if you admit to killing someone ---
- 14 A Bets are off.
- 15 Q --- all bets are off?
- 16 A Yes, sir.
- 17 Q So there's Don Sorenson, the previous deputy?
- 18 A Yes, sir.
- 19 Q And is that your signature?
- 20 A It is.
- 21 Q Your attorney?
- 22 A Brady Benoit; yes, sir.
- 23 Q And the date?
- 24 A Looks like ...
- 25 Q November 4th?

1 A Yes, sir.

2 Q Okay. So you are going to be asked some questions, I am
3 sure, by the defense, and I'm going to ask you some, too,
4 regarding the substance of some of these charges. Is that fair
5 to say?

6 A Yes, sir.

7 Q In particular, the distribution within close proximity,
8 because that involved where you used to live. Is that correct?

9 A Yes, sir.

10 Q But this agreement says, is it your understanding that this
11 agreement says, that as long as you're truthful, then the
12 prosecutors prosecuting those drug charges can't use what you're
13 saying right now against you.

14 A Yes, sir.

15 Q Because otherwise we'd basically be asking you to bury
16 yourself ---

17 A Right.

18 Q --- and admit. Was that your attorney's idea?

19 A Yes, sir.

20 Q Okay. All right. Back in January of 2019 where were you
21 living then?

22 A At [REDACTED] Myrtle Place.

23 Q And I think I mentioned it. The subdivision's name?

24 A Robynwyn.

25 Q And you had a roommate?

1 A I did.

2 Q David?

3 A David Swibaker.

4 Q All right. And David's already testified to how he moved

5 in. All right. At the time of this incident, we heard some

6 testimony that Joe Weaver was there.

7 A Yeah. Yes, sir.

8 Q And is that what you called him?

9 A J.B.

10 Q J.B?

11 A Yes, sir.

12 Q That was his nickname? Was J.B. more of a friend to you or

13 more of a friend to David?

14 A He was my friend.

15 Q And how did you meet J.B?

16 A Through his son, Steven.

17 Q Okay. And about what year was that?

18 A 2015 or 2016.

19 Q And you said that he was a friend. How often would it be

20 that you would hang out with him?

21 A J.B. and I, we talked a lot and then we hung out. We hung

22 out quite a bit. I'd say probably two, three, four times a week,

23 hanging out.

24 Q He'd come to your place?

25 A Yeah. He was one person I would consider a true friend.

1 Q Okay. Did you know J.B. to carry a pocketknife?

2 A Yes, sir.

3 Q Okay. So let's talk about some of your marijuana
4 involvement. Is it fair to say that you did sell marijuana back
5 then?

6 A Yes, sir.

7 Q So you can tell us. What amounts of marijuana were you
8 selling? Like, can you tell us, generally speaking?

9 A Generally speaking, I would say I wouldn't go above an ounce
10 of weed. I didn't bring in a lot of weed, so. I mean, subsidize
11 income, subsidized income. I mean, it wasn't nowhere -- in my
12 opinion, I wasn't, anyway.

13 Q So for those who don't know -- I'm not sure I do, either,
14 really -- an ounce of weed, is that like in a suitcase, is that
15 what an ounce would look like?

16 A No, sir. An ounce of weed is smaller than a quart-size bag,
17 like a sandwich baggie. Smaller than that, sir.

18 Q And how much would you sell that for, generally speaking?

19 A Like \$200.

20 Q Okay. All right.

21 (WHEREUPON, State's Exhibits 120 and 121 is marked for
22 identification.)

23 ATTORNEY OSBORNE: Your Honor, may I approach?

24 THE COURT: You may.

25

1 Q I'm showing you State's 120 and 121. Can you take a look at
2 those and tell me if you recognize those.

3 A Yes, sir.

4 Q And what are they?

5 A That is my ledger.

6 Q That's your ledger?

7 A Yes, sir.

8 ATTORNEY OSBORNE: Your Honor, at this time I'd seek to move
9 in 120 and 121.

10 THE COURT: Any objection?

11 ATTORNEY GAY: Not from Mr. Green, Your Honor.

12 THE COURT: All right.

13 ATTORNEY HENSLEY: Without objection, Your Honor.

14 THE COURT: Very well. So entered.

15 (WHEREUPON, State's Exhibits 120 and 121 is entered into the
16 record.)

17 Q All right. I'm showing you 120. You've identified this
18 before. This is your ledger?

19 A Yes, sir.

20 Q It's just like a little notepad or something?

21 A Yes, sir.

22 Q And 121. Okay. Whose handwriting is this?

23 A That would be mine.

24 Q All right. So, I mean, what are we looking at here, what
25 are these numbers?

1 A What I'd call a debt list.

2 Q A debt list?

3 A Yes, sir.

4 Q Okay. So Bri owed you 50 bucks?

5 A Yes, sir.

6 Q Ryan, 40?

7 A Yes, sir.

8 Q Audra, 134?

9 A Yes, sir.

10 Q And what about this last one here, Little Brh?

11 A Little Brh, \$100.

12 Q He owed you 100?

13 A Yes, sir.

14 Q Okay.

15 ATTORNEY OSBORNE: Your Honor, may I approach?

16 THE COURT: You may.

17 Q All right. I'm showing you state's 178, for ID purposes

18 only, this time. Do you recognize that individual?

19 A Yes, sir.

20 Q And who is that?

21 A Little Brh.

22 Q That's who you know as Little Brh?

23 A Yes, sir.

24 Q And he owed you 100 bucks?

25 A Yes, sir.

1 Q Does that 100 bucks represent one transaction or two, just
2 out of curiosity?

3 A It would be one. You know, I'm not exactly sure.

4 Q Okay. All right.

5 (WHEREUPON, State's Exhibits 179 and 180 are marked for
6 identification.)

7 ATTORNEY OSBORNE: May I approach, Judge?

8 Q I'm showing you 179 and 180. Do you recognize 179?

9 A No, sir. Well ---

10 Q You can open it.

11 A Yes, sir, I do.

12 Q And what is 179?

13 A My phone.

14 Q All right.

15 A My old phone.

16 Q I'm sorry?

17 A My old phone.

18 Q And now 180, do you recognize 180?

19 A It's a phone number. It's identified as Little Brh's phone
20 number.

21 Q Okay. That's fine.

22 A I don't have his number by heart.

23 Q Okay. You just hand them back. That's just for ID
24 purposes, 179 and 180.

25 Okay, let's get into the incident. Late night of January,

1 going into early morning hours of January the 28th, were you home
2 that night?

3 A I was.

4 Q And who else was home with you?

5 A It was -- David was there, and J.B. was over there.

6 Q And your dog?

7 A Yes, sir. And -- always.

8 Q Always?

9 A Always. Always with me.

10 Q So is it fair to say, was it more of your dog or was it more
11 David's dog, or?

12 A It would be mine.

13 Q Okay. How long had you had the dog?

14 A Anywhere from a month or two.

15 Q A month or two?

16 A Yeah.

17 Q And, I mean, is that kind of what happened, the dog just
18 sort of appeared one day?

19 A Yeah. He showed up at my neighbor's house, and my neighbor
20 called me and asked me if it was my dog. I said, No, because my
21 dog's with me. And she's like, Okay, well, this dog's out in the
22 corner, in the car. She called the animal rescue league, or the
23 -- yeah, the animal rescue league. They said that they couldn't
24 have anybody out there until the morning.

25 And so since my yard was fenced in all the way, when

1 officers came out there they left her in my back yard, seeing it
2 was tied up, and put him in my back yard. You know, me and my
3 neighbor, we were really close. And then they said that they'd
4 be out there in the morning to pick him up.

5 Well, by the time I got home, I met the dog, and the dog
6 stunk, and we had a little understanding between him and I. The
7 next thing I know, I gave him a bath, and the sucker wouldn't
8 leave.

9 And the pound called and asked if we wanted them to pick it
10 up, and I said, nah, nah, that's my little buddy now. So that's
11 how I got the dog.

12 Q Okay. So J.B. came to visit that you night?

13 A Yes, sir.

14 Q And we've heard something testimony of this. Was J.B.
15 saying anything to you that was on his mind in particular that
16 night?

17 A Yeah. He was all gassed up over his moped. He wanted to
18 share it.

19 Q All right. And so from your perspective -- I know you've
20 been in here. But, from your perspective, just prior to the
21 individuals making entry into your home, where were you seated?

22 A I was seated on the sofa.

23 Q And what was David Swibaker doing, or where were he at?

24 A He was in the kitchen area fiddling with his nightstand.

25 Q And J.B., from your recollection?

1 A J.B. was in the kitchen, as well, gearing up, ready to
2 leave. It was cold that night, so he had gloves and winter gear.

3 Q And your dog?

4 A He was sitting on the couch with me.

5 Q All right. We got where you all were at. What happened
6 then?

7 A So J.B. was getting ready. There was a big 'ole crack at
8 the door, at the back door, and individuals started piling in.
9 Defendant Green was the first one in. Defendant Major was the
10 second one in. And then I didn't see the other two come all the
11 way in the door, but there was four people that came in the
12 house. And they started demanding for weed.

13 Q Okay. All right. You say Green was the first one in; Major
14 was the second one in ---

15 A Yes, sir.

16 Q --- and you said they were demanding for weed. Do you know
17 who was saying it and what they were saying?

18 A I don't recall.

19 Q Okay. But you know ---

20 A I know what I heard.

21 Q Yeah.

22 A I don't know exactly which one was screaming it.

23 Q Is it fair to say you knew pretty quickly why they were
24 there?

25 A Yes, sir.

- 1 Q Were either subjects armed with a weapon?
- 2 A Yes, sir, all four.
- 3 Q Okay. What type of weapon?
- 4 A They were all -- all handguns.
- 5 Q All right. So Green and Major -- well, Green; then Major.
- 6 You said the other two were at the door first. What happened? A
- 7 lot of demands for weed or whatever. Then what happens?
- 8 A J.B. tried diffusing the situation and offered up, offered
- 9 up a chance for them to get some weed. Talked about, I can get
- 10 you some; I can get you some weed from North Charleston; he's got
- 11 to make a phone call or something like that. I don't know. But
- 12 I remember J.B. was just trying to diffuse the situation, or get
- 13 closer.
- 14 Q Okay. So at some point is it fair to say your dog was shot?
- 15 A Yes, sir.
- 16 Q Just so I understand temporally, in order, was the dog shot
- 17 before J.B. tried to diffuse or was the dog shot after?
- 18 A Yes, sir. The dog was shot before him. I apologize.
- 19 Q No, no, don't.
- 20 A Everything is kinda blurry. But, yeah. The dog -- whenever
- 21 the guy kicked in the door, the dog just went to attention just
- 22 like that and did what he was supposed to do and tried to protect
- 23 his owner. So -- and then he got shot.
- 24 Q Do you know who shot your dog?
- 25 A I do not.

1 Q Okay. So that's sort of the first thing? After the door
2 was kicked in, your dog attacked and then was shot?

3 A Yes, sir.

4 Q Do you know if your dog actually made contact with them? I
5 mean, would he get -- or, do you know?

6 A I'm not sure.

7 Q And I'm going to ask you these questions ---

8 A Yes, sir.

9 Q --- and I know it's going to -- if you don't know, perfectly
10 fine, okay.

11 A Yes, sir.

12 Q Don't let me or anyone else put words in your mouth. Just
13 answer, okay ---

14 A Okay.

15 Q --- as best you can answer. Do you know how many shots were
16 fired?

17 A No, sir.

18 Q Do you know if it was one or multiple?

19 A It was one or multiple. One or two, that I recall.
20 Definitely one.

21 Q Okay. So you said J.B.'s trying to diffuse the situation.

22 A Yes, sir.

23 Q What is he doing?

24 A J.B., like I said, he was standing in the living room so he
25 was closest to the guys -- or, in the kitchen, sorry. And he was

1 closest to the guys that are coming in. And when they first
2 kicked in the door, he backed up a little bit. And then when the
3 shots were fired, obviously he backed up a little bit.

4 But he just, he was like, Oh, wow, wow, just, you know,
5 hands up, trying to show like he wasn't armed or anything like
6 that, basically just trying to diffuse it, you know, trying to
7 put the guys at ease because there was a lot of tension as soon
8 as that shot was fired. Shot or shots, sorry.

9 After they shot the dog, you know, things changed then.

10 Q Was J.B. close to them at that point?

11 A Yes. Yes, sir.

12 Q Was he inching closer, or did ---

13 A Yes, sir.

14 Q --- he -- I'm sorry, go ahead.

15 A Yes, sir, he was inching closer.

16 Q What about you and David? Were you all also inching closer
17 towards them?

18 A David, I'm not sure where he went. I seen him beforehand,
19 and then I didn't see him again till the end, till everything was
20 done and over with. I was still on the couch.

21 Q You were still on the couch?

22 A Yes, sir.

23 Q All right. So what happened then? I interrupted you, with
24 J.B. was inching closer, trying to diffuse the situation.

25 A J.B. was inching closer, yes, sir. And he was being told,

1 Just back up, stand back, stand back, stand back. And then he
2 got shot.

3 Q Okay.

4 A Yes, sir.

5 Q And what happened then?

6 A Well, he dropped, he went to the ground. Yes, sir.

7 Q Do you know who shot him?

8 A Yes, sir.

9 Q Who shot him?

10 A Mr. Green.

11 Q Okay. And then what happened?

12 A My timeframe might be off a little bit, because everything
13 comes back and forth, but after J.B. got shot I remember
14 Defendant Major telling me, You know what time it is, man, just
15 give us the weed, we out of here. And I told him that there was
16 none.

17 But I took them, I told them, We can go back, I'll show you.
18 So I took them back to the room. They actually drug me back to
19 the back bedroom, which is my room. And I showed him the jar
20 that I normally keep the weed in, and there wasn't very much in
21 it, not very much at all.

22 And from then I remember, I remember Major grabbing the
23 weed, trying to get his gloved hand in the jar, and stick it in
24 his coat, which looked stupid to me, but whatever.

25 Q So you were in your bedroom?

- 1 A Yes, sir.
- 2 Q And you said that Green and Major are in your room with you?
- 3 A Yes, sir.
- 4 Q Now, the weed that was in the jar, is this like a mason jar,
5 or what type of jar is it?
- 6 A It was a mason jar, but a larger one.
- 7 Q Was the weed that was in that jar, were they, like, wrapped
8 in plastic or packaged in a particular way?
- 9 A No, sir.
- 10 Q It was just loose?
- 11 A It was loose.
- 12 Q Okay. And you said then you see Major reaching his big
13 glove in there trying to grab some or something?
- 14 A Yes, sir. But I'm going to backtrack. I remember the
15 timeframe -- like I said, I apologize for this, but it goes back
16 and forth, the timeframe. When they got me back into the back
17 room, that's when I noticed my dog was laying on my bed, you
18 know, dying, basically. And I remember I just kept saying, Man
19 you shot my dog; you killed my dog. But then you fast-forward on
20 to the jar.
- 21 Q Okay.
- 22 A Yes, sir.
- 23 Q All right. All right. Well, what happened after that?
- 24 A After that, seemed like, I don't know, they just didn't
25 believe me that there wasn't anymore. But they started pushing

1 me out the back, back into the living room. And I had just fell
2 out of a tree so I was casted up, and I remember I got shoved
3 forward and I tripped over whatever, and I landed at the base, or
4 at beginning, of the hallway, right face-to-face with J.B.

5 Q Okay.

6 A Yes, sir.

7 Q What was J.B. doing?

8 A J.B. was laying there hurting.

9 Q Was he still breathing?

10 A He was still breathing. Yes, sir.

11 Q All right. What happened then?

12 A At that point they came back down the hall right behind me
13 and started screaming. Now he's really gassed up. All of them
14 was a little, you know, on it, I'm sure. But he had, Green,
15 right there, he's like, If you don't come up with some weed I'm
16 going to start killing motherfuckers around here. And that's
17 when he shot him again, boom. And then they just went haywire,
18 they started losing it.

19 Q Prior to shooting J.B. the second time while he was on the
20 ground, was he assaulted in any way?

21 A Yes, sir, he was. Yes, sir, he was. Now, my timeframe is
22 off, like I said. He was -- I don't know the series of events
23 but I remember he got kicked in the face, and I remember hearing,
24 I know it hurts, man, I know it hurts. I don't know exactly
25 which, where at in the series of events it was.

1 Q Okay.

2 A But I remember he did get kicked in the face.

3 Q While he was on the ground?

4 A While he was on the ground. Yes, sir.

5 Q And do you know who kicked him? If you don't know ---

6 A I do not know.

7 Q Okay.

8 A I don't recall.

9 Q All right. So J.B. gets kicked, shot again. And are they
10 still there demanding the weed, or what happens then?

11 A Yes, sir. Yes, sir. Whenever he shot him the second time,
12 they just started going all throughout the house. I mean, it's
13 like something went over them. There's a different look in their
14 eyes. And they was, I mean, they was mad. Whoever, who all, was
15 in the house was mad. They was digging through everything at
16 that point.

17 There was a couple guys in the background, I heard them
18 saying, We gotta go, we gotta go, we gotta.

19 And in the midst of running back and forth from room to
20 room, I remember, it appeared to me like he tripped over J.B.,
21 and it pissed him off even more, and he shot him the third time.

22 Q Third time?

23 A Yes, sir.

24 Q All right. Was J.B. doing anything? Like, was he getting
25 up?

1 A No. No. No. He was hurt from the first one.

2 Q All right. What happened then?

3 A I managed to work my way around and start inching towards
4 the front door as all these shots -- I mean, it seems to last --
5 once he got shot the third time, they was pretty much out the
6 door, they were going out the door, but it seemed like there was
7 a whole lot of bullets coming at me and coming at us. And there
8 was. I mean, he ended up getting shot five more times, and me
9 once.

10 Q Do you know who shot you?

11 A Yes, sir.

12 Q Who?

13 A Green did.

14 Q All right. After they left, what did you do?

15 A I went to my neighbor's house, out the front door, as they
16 went out the back door, and told the neighbor that we had all
17 been shot; the house got shot up; call 911.

18 Q And you said the house next door?

19 A Yes, sir.

20 Q Okay. When ---

21 A To the right.

22 Q When they left out of your back door, did you hang around
23 your house at all ---

24 A Yes, sir.

25 Q --- or did you wait?

1 A Yes, sir. Whenever I went out the front door, they were
2 going out the back, and I heard all four -- like, there's a
3 chain-linked fence between my yard and the woods or my neighbor's
4 house, there's two fences, like a T. And I heard four sets of
5 people jumping the fence.

6 Q Either the chain-linked fence to your neighbor's yard ---

7 A Yes, sir.

8 Q --- or the chain-linked fence to the back of your yard?

9 A Yes, sir.

10 Q Now, you were outside of your house on your way to your
11 neighbor when you heard that?

12 A Yes, sir.

13 Q Did you delay at all going to your neighbor ---

14 A No.

15 Q --- or did you go straight to your neighbor?

16 A I went straight to the neighbor.

17 Q Okay.

18 A Yeah. I had just been shot.

19 ATTORNEY OSBORNE: Your Honor, at this time I'd seek to
20 publish State's 2. I think it's already admitted into evidence.

21 THE COURT: All right. Any objection, Ms. Gay?

22 ATTORNEY GAY: I believe that's the map? Correct?

23 ATTORNEY OSBORNE: The 911.

24 ATTORNEY GAY: Oh, the 911. No objection.

25 THE COURT: All right. Ms. Hensley?

1 ATTORNEY HENSLEY: No objection, Your Honor.

2 THE COURT: All right. Very well.

3 (WHEREUPON, State's Exhibit 2 is published to the jury.)

4 (WHEREUPON, State's Exhibits 26, 32, 34, 66, 69, 76, 79 and
5 80 are marked for identification.)

6 ATTORNEY OSBORNE: Your Honor, may I approach?

7 THE COURT: You may.

8 Q I'm showing you State's -- and I'm sorry, they're going to
9 be a little bit out of order, but State's -- 26, 66, 32, 34, 69,
10 79, 76 and 80. And tell me if you recognize all of those.

11 A Where do you want to start?

12 Q I don't believe we need to go through every one. What do
13 those pictures generally represent?

14 A My home.

15 Q Do they fairly and accurately represent the way your home
16 appeared after this incident? And I understand there's going to
17 be some placards and whatnot in there that you might not
18 recognize, but other than that.

19 A Yes, sir.

20 ATTORNEY OSBORNE: Your Honor, at this time I'd seek to
21 admit 26, 66, 34, 69, 79, 76, 80 and 33 into evidence.

22 THE COURT: Counsel, do you need those repeated, those
23 numbers?

24 ATTORNEY GAY: Well, I think the numbers weren't the same
25 the first time he said them. So I just kind of want to know what

1 they are.

2 THE COURT: All right.

3 ATTORNEY OSBORNE: All right. So I'll make sure I get it
4 right. At this time we'd seek to admit 26, 66, 32, 34, 69, 79,
5 76 and 80.

6 ATTORNEY GAY: I have no objection, Your Honor.

7 ATTORNEY HENSLEY: I just may have missed it, Your Honor.
8 Did he say that fairly and accurately depicted his home on the
9 night of this incident? I just didn't hear him say that.

10 THE COURT: I understand.

11 Q Do these photos ---

12 A After the fact, yes.

13 ATTORNEY HENSLEY: I'm sorry?

14 A After the fact, yes. Yes, ma'am.

15 ATTORNEY HENSLEY: Without objection then.

16 THE COURT: Very well. They're in evidence.

17 (WHEREUPON, State's Exhibits 26, 32, 34, 66, 69, 76, 79 and
18 80 are entered into the record.)

19 Q Okay. Starting with State's 26, what are we looking at
20 here?

21 A The front of my house.

22 Q Okay. And what are we looking at here where I have the
23 cursor over?

24 A That's J.B.'s moped/motorcycle.

25 Q I'm sorry, you've going to have to speak up a little bit.

1 A J.B.'s motorcycle. Moped.

2 Q And these cars that in the driveway?

3 A They're all mine.

4 Q Okay. Now I'm showing you State's 66. What are we looking

5 at here?

6 A My back door.

7 Q Is this the door to which that was kicked in and they made

8 entry?

9 A Yes, sir.

10 Q All right. Just answer yes or no. Was this back door

11 kicked in on a prior, at a prior time?

12 A Yes, sir.

13 Q Okay. Showing you State's 34. What are we looking at here?

14 A That would be the view to my living room/kitchen, coming in

15 through the front door.

16 Q Okay. So this door that I just showed you in State's 66,

17 would that be over here off to the left where I have the cursor?

18 A Yes, it's to the left, just right past that wall.

19 Q Okay. State's 69, what are we looking at here?

20 A That would be my bedroom, the back bedroom to the house.

21 Q Is this normally how you keep your bed?

22 A That's not normally how I keep the bed.

23 Q All right. State's 79, what are we looking at here?

24 A The top drawer to the dresser that was in my master bedroom

25 closet.

1 Q Okay. I mean, is it fair to say that placards L and 2
2 aren't yours, that you didn't put them there?

3 A The placards are not mine, no.

4 Q But other than that, does this fairly and accurately depict
5 the way your house looked that night?

6 A Yes, sir.

7 Q And what are we looking at here in your drawer?

8 A It appears to be some pot bagged up.

9 Q Well ---

10 A Pots in baggies.

11 Q It's your drawer, so what is it?

12 A I mean, it looks like weed to me.

13 Q All right.

14 A Yes, sir.

15 Q Now, you had mentioned earlier about this jar of marijuana.
16 Do you see it here, or did this --

17 A I do not see it there. No.

18 Q Okay. So is it -- I mean, I guess it's fair to say that
19 they missed some?

20 A Excuse me?

21 Q Did they miss some marijuana?

22 A Yes, sir.

23 ATTORNEY HENSLEY: And I object to leading, Your Honor.

24 Q Did they or did they not take all of the marijuana?

25 A They did not take all the marijuana.

1 Q All right. Showing you State's 80. And what are we looking
2 at here?

3 A It's the master bedroom. That's my dog hunched over on the
4 bed.

5 Q Now, you said that your dog, you know, was outside. Was he
6 an outside dog or was he an inside dog?

7 A No, that was my dog. Inside, he was an inside dog. He went
8 in every room with me, slept with me and hung out with me.

9 Q And that's your bed?

10 A Yes, sir.

11 Q You let him sleep with you?

12 A Yes, sir.

13 Q Okay. All right. On here, can you -- I know you can't --
14 well, can you just describe where J.B. was on the ground.

15 A Just on the other side of the fish aquarium is the entry to
16 my hallway.

17 Q Okay.

18 A And J.B. was laying right there. Where all them white
19 pieces of paper are is where J.B. was.

20 Q Okay. Was his feet or his head this direction, or do you
21 remember?

22 A Sir?

23 Q Was his feet or his head over here toward the fish tank, or
24 do you remember?

25 A His head was towards the hallway, so his feet would be

1 towards the opposite end.

2 Q Okay. And the hallway was over here off to the left behind
3 the fish tank?

4 A Yes, sir. Yes, sir.

5 Q Okay. On the 911 call I heard you say that, or at least I
6 heard in the background it sound like you said, that you saw one
7 of the -- well, one in particular, the individual's shoes?

8 A Yes, sir.

9 Q And what type of shoes were they wearing, as best you
10 remember?

11 A Well, they stood out, those purple, purple Nikes.

12 Q And who was wearing the purple Nikes?

13 A Major was.

14 Q But is this the individual that you described as being the
15 heavy-set?

16 A Heavysset. Yes, sir.

17 Q Do you remember anything else about their clothing?

18 A I remember they all had masks on. I remember Major had
19 gloves on. I remember some camouflage coming off of one of the
20 guys. Other than that, at this moment, I don't.

21 Q Okay. And I don't even know if I really asked you this, but
22 on the 911 we heard that you said you were shot in the chest.

23 A Yes, sir.

24 Q Where were you shot?

25 A I was shot (indicates), I was shot right here, right in the

1 chest.

2 (WHEREUPON, State's Exhibit 25 is marked for
3 identification.)

4 ATTORNEY OSBORNE: May I approach, Your Honor?

5 THE COURT: You may.

6 Q I'm showing you State's 25. Do you recognize that?

7 A Yes, sir.

8 Q And what is that?

9 A It was my disabled handgun.

10 Q Okay, that's your gun?

11 A Yes, sir.

12 Q Was it in your house that night?

13 A It was.

14 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
15 move in State's 25 into evidence.

16 THE COURT: Any objection?

17 ATTORNEY GAY: There is no objection from Green.

18 THE COURT: All right.

19 ATTORNEY HENSLEY: None from Mr. Major, Your Honor.

20 THE COURT: All right. Very well.

21 (WHEREUPON, State's Exhibit 25 is entered into the record.)

22 ATTORNEY OSBORNE: And, Your Honor, we have, for the record
23 we have, a gun lock, and it's secured.

24 THE COURT: Okay. Thank you.

- 1 Q And this pistol right here, you said this was your gun?
- 2 A Yes, sir.
- 3 Q And does it work?
- 4 A No, sir.
- 5 Q What's wrong with it?
- 6 A There's no firing pin.
- 7 Q But you were charged with unlawful possession of a firearm
- 8 based on this?
- 9 A Yes, sir.
- 10 Q Was that charge later dropped?
- 11 A It has not been.
- 12 Q Oh, okay. Okay. Lastly.
- 13 (WHEREUPON, State's Exhibits 111A, 111B, 113, 114, 115 and
- 14 116 are marked for identification.)
- 15 ATTORNEY OSBORNE: May I approach?
- 16 THE COURT: You may.
- 17 Q All right. I'm showing you State's 113 through 116, as well
- 18 as 111A, as in Adam, and 118. Do you recognize those?
- 19 A Yes, sir.
- 20 Q And what are they?
- 21 A They're my old watches.
- 22 Q Your old watches?
- 23 A Yes, sir.
- 24 Q Okay.
- 25 ATTORNEY OSBORNE: Your Honor, at this time I would seek to

1 admit State's 113 through 116 into evidence, as well as 111A and
2 111B.

3 THE COURT: Do you all need to see those photos? Are you
4 familiar with what they are?

5 ATTORNEY GAY: I'm familiar with them. No objection.

6 THE COURT: Any objection? All right, no objection from
7 Mr. Green. Mr. Major?

8 ATTORNEY HENSLEY: Without objection, Your Honor.

9 THE COURT: All right. Very well. They're in evidence
10 without objection.

11 (WHEREUPON, State's Exhibits 111A, 111B, 113, 114, 115 and
12 116 are entered into the record.)

13 Q Showing you 113. What is that?

14 A My old watch.

15 Q Your old watch?

16 A Yes, sir.

17 Q And 114?

18 A My other old watch.

19 Q I know actually showed you the watch. I mean, are you sure
20 that this is your watch?

21 A Yes, sir.

22 Q And 115?

23 A My watch.

24 Q That's a separate watch?

25 A Yes, sir.

1 Q Okay. And 116?

2 A The back of the other one, the watch.

3 Q Okay. Your home -- just some housekeeping matters -- you
4 had a motion detector/motion surveillance camera in your home?

5 A I did.

6 Q Was it activated?

7 A It was not.

8 ATTORNEY OSBORNE: Beg the Court's indulgence.

9 THE COURT: All right.

10 ATTORNEY OSBORNE: All right. That's why we have help.

11 Q Can I show you -- all right. I'm showing you State's 76,
12 the whole reason why we're here. Do you recognize that?

13 A Yes, sir.

14 Q And what is that?

15 A A jar. A jar of weed.

16 Q Well, is that -- take another look.

17 A A container of weed?

18 (WHEREUPON, State's Exhibit 22 is marked for
19 identification.)

20 ATTORNEY OSBORNE: Can I approach, Your Honor?

21 THE COURT: You may.

22 Q Do you recognize this?

23 A I do. I don't need to touch it.

24 Q You don't need to touch it?

25 A No, I recognize it.

1 Q What is it?

2 A It's my personal stash of weed.

3 Q This is your personal stash of weed?

4 A Yes, sir.

5 Q All right.

6 ATTORNEY OSBORNE: Your Honor, at this time I'd seek to
7 admit 22 into evidence.

8 THE COURT: All right. Any objection?

9 ATTORNEY GAY: No objection from Mr. Green.

10 ATTORNEY HENSLEY: Without objection.

11 THE COURT: Very well.

12 (WHEREUPON, State's Exhibit 22 is entered into the record.)

13 Q When they were asking you where the weed was, you didn't
14 tell them about this; did you?

15 A No, sir.

16 Q All right.

17 ATTORNEY OSBORNE: No further questions.

18 THE COURT: All right. Cross-examination, Ms. Gay?

19 ATTORNEY GAY: Beg the Court's indulgence. One second.

20 **CROSS-EXAMINATION**

21 BY ATTORNEY GAY:

22 Q How are you today, sir?

23 A I'm well, thank you.

24 Q My name is Melisa Gay, and I represent Mr. Green. I just
25 need to figure out what happened up here for a second. Lots of

1 things.

2 So when you were testifying today, really, the first thing
3 that Mr. Osborne, the solicitor, started talking to you about was
4 the fact that you had all these drug charges pending and that you
5 sell drugs. Isn't that true?

6 A Yes. That I used to, yes.

7 Q Well, at the time that this happened on this night.

8 A That I sold marijuana. Yes, ma'am.

9 Q Yes. And so, you know, Ms. Hensley and I both will probably
10 ask you some questions about all that. I'm not going to
11 duplicate.

12 But I will, I'll say that it's interesting, because you have
13 pictures, I think this is State's 121 and 120, show you these
14 pictures that I'm talking about.

15 A Yes, ma'am.

16 Q And these pictures, which were shown to the jury, are a
17 ledger ---

18 A Yes, ma'am.

19 Q --- that you actually kept your drug transactions in.

20 A They were a debt, whether they be drug transactions or other
21 transactions.

22 Q But some of them, for sure, were drug debts, people who owed
23 you money for you selling them drugs; right?

24 A Is that a question?

25 Q Yes. Correct?

1 A Yes, ma'am.

2 Q And so I think that was sort of beginning, this time when
3 you spoke with the solicitor. And in the end of the time,
4 Mr. Osborne picked up this, as it was like, Oh, yeah, we forgot
5 here. And this is State's Exhibit No. 22.

6 A Yes.

7 Q Right?

8 A Yes, ma'am.

9 Q And there's one, two, three, four, five, six, seven, eight,
10 nine, ten, eleven, possibly even twelve, if you want to look at
11 them and count, little, tiny packages of marijuana?

12 A Little tiny packages. Yes, ma'am.

13 Q And interestingly, each one of these little packages of
14 marijuana have numbers on them. Do you want to -- can you see,
15 can you confirm that for me, they each have little numbers on
16 them?

17 A Those are not my numbers but, yeah.

18 Q Okay, they have little numbers. So those little numbers
19 might have been put there by the police, but when this was in
20 your house when the police found it, it had different identifying
21 names, for lack of a better word, of each one of these
22 substances. This is not all the same kind of marijuana; is it?

23 A It's not.

24 Q Right. And so because they're individually packaged and
25 they have different identifying information, pretty much all 12

1 of these type things were all different types of marijuana that
2 you had?

3 A That's correct.

4 Q And you said this is all for your personal use; right?

5 A Yes, ma'am.

6 Q Okay. So what was interesting also is that you had this
7 agreement. This is one of the first things that he talked about,
8 State's Exhibit 173. And this, we'll call this/he called this a
9 cooperation agreement.

10 So this is an agreement between you and the state of South
11 Carolina to cooperate and come and testify at this trial. And I
12 believe it says that any information you will provide today or in
13 the course of this trial can't be used against you criminally.

14 A Does that say criminal?

15 Q Well, in any way. I mean, isn't that obviously why you sign
16 a cooperation agreement, so it wouldn't be used against you
17 criminally in all your, how many do we have, at least, 10
18 criminal charges pending?

19 A Something like that.

20 Q So this agreement right here is something -- and Mr. Osborne
21 was very clear -- that he said this was something that your
22 criminal defense attorney came up with, and he, Brady Benoit,
23 Esquire, attorney for the defendant, on this paperwork right
24 here. Correct?

25 A That's correct.

1 Q And so this paperwork right here was to help you out. Maybe
2 not, you know, dismiss cases or anything like that, but to be
3 helping you in your case that you have where you have, like 10,
4 separate charges pending?

5 A That's not true. That's not the way I interpret it.

6 Q Well, certainly it says that if you tell them stuff, they're
7 not going use it against you. That's what a cooperation
8 agreement is.

9 A They will not use it against me. That's correct.

10 Q Okay. And so, and Mr. Benoit, at that time, was
11 representing you, it says attorney for defendant. And he may or
12 may not be your criminal defense attorney now, but at some point
13 he was representing you on some of these charges?

14 A He still is.

15 Q He still is. And the way I understand these charges is that
16 you had old charges pending before the night of this incident?

17 A Okay.

18 Q All right, correct?

19 A Yes, ma'am.

20 Q And some of that was pretty serious stuff. You had the
21 trafficking charge, which is a meth?

22 A No.

23 Q It sets the charge pending.

24 A Beforehand? No.

25 Q All right. Well, we'll have to talk about that in a minute.

1 And you had, I think at one point you had, a gun charge, and it
2 was because you had a prior conviction and that's why you
3 couldn't have a gun. Correct?

4 A Correct.

5 Q And that was what happened on the night that this happened,
6 is that they did, in fact, arrest you for being in possession of
7 a gun and, as well, being in possession of some of these drug
8 substance?

9 A Later on, yes, ma'am.

10 Q Right, all because of this stuff that happened on this
11 night, the night we're here for, in January, the stuff that was
12 in the house?

13 A Can you be more specific?

14 Q Well, that was what you were charged with, the stuff that
15 was in the house, including the gun; correct?

16 A Yes, ma'am.

17 Q Okay. And I think that he took this gun and said that this
18 gun was nonfunctional, but you were still criminally charged with
19 it and it's still pending?

20 A It is.

21 Q Okay. And so you made some statements about this incident.
22 I understand that you, the first statement, we'll call it, is
23 what happened in the 911 tape. The 911 tape is your neighbor
24 calling the police on your behalf.

25 A Yes, ma'am.

1 Q Okay. So you didn't call the police from your house on your
2 cellphone at this time; you went over to the neighbor's house and
3 had her call the police?

4 A Correct.

5 Q Okay. And so you're actually talking in the background.
6 And I think that Mr. Osborne said when you were doing your
7 examination that he can hear you say different things in the
8 background. He asked you, Where were you shot?, and you showed
9 us.

10 A Yes, ma'am.

11 Q So we're going to call that your first statement for
12 purposes of what's going on in this. And there was a time when
13 the lady, who was your neighbor, the 911 operator says, Do you
14 know who did this?, and you answer no?

15 A At the time, I did not know.

16 Q And then she's talking about some different things about,
17 Where are the people; How many people there were?, things like
18 that in the 911 tape?

19 A Correct.

20 Q Okay. So then on the night of January 28th, 2019 -- I don't
21 know if this was on the scene or it was maybe at the police
22 station or the hospital, you actually made a written statement
23 about this incident?

24 A Correct.

25 Q And on that written statement you told the solicitors -- I

1 mean the police -- that -- Specifically, there was, like, a
2 question, What was your relationship with David? And you
3 answered you were trying to evict him?

4 A Who was I speaking to?

5 Q The police.

6 A Which police?

7 Q On the night of/on January 28th, 2019.

8 A Okay.

9 Q You specifically said to the police that you were trying to
10 evict David Swibaker.

11 A I don't recall which officer it was.

12 Q Well, just, do you recall making the statement to an
13 officer?

14 A I was in the hospital. But I remember there being officers
15 there.

16 Q Do you remember telling him that you were trying to evict
17 David, your roommate?

18 A I don't believe I told them at that moment but, yes, I was.

19 Q You acknowledge that you were, in fact, trying to evict
20 David?

21 A I was.

22 Q And then I believe that there was this over statement that
23 you made another time that you talked to the police, and that
24 would have been maybe February 4th, about four or five days
25 later, where you met with some officers. This was after you were

1 in the hospital and after you actually, I think, went down to the
2 police station to talk to them. Do you remember that time?

3 A I do.

4 Q Do you remember telling them that you believed that David
5 may have set you up?

6 A I do.

7 Q And do you believe -- do you remember telling them that, you
8 know, he was aware that drug deals were going down and things
9 like that?

10 A I don't know if I recall.

11 Q All right. Well, when you were talking to him did you ever
12 mention to David that you had thought that he set you up?

13 A No. Because once this incident happened, I didn't talk to
14 him. I didn't talk to him until the last trial.

15 Q And interestingly, on the night in question when all this
16 was happening, when you, after all the people ran out of the
17 house, you left the house and just left David in the house.

18 A Excuse me?

19 Q When it happened and you got shot ---

20 A Yes.

21 Q --- you ran out of the house, and you didn't even go back in
22 to check on David or anything? You never went back inside the
23 house?

24 A Who didn't?

25 Q You.

1 A Actually, I did. But I didn't understand the question
2 there. It's not a question, but I did go back in.

3 Q This is the question. After you were shot and you walked
4 outside of the house, did you ever go back inside the house
5 again?

6 A I did.

7 Q You did?

8 A I did.

9 Q Okay, you did. Okay.

10 ATTORNEY GAY: Beg the Court's indulgence, Your Honor.

11 THE COURT: All right.

12 ATTORNEY GAY: Your Honor, I don't believe I have any more
13 questions for this witness.

14 THE COURT: All right. Yes, Ms. Hensley?

15 ATTORNEY HENSLEY: Thank you, Your Honor.

16 **CROSS-EXAMINATION**

17 BY ATTORNEY HENSLEY:

18 Q Mr. Porter, we've just met informally before. I'm Laree
19 Hensley, I'm Devonte Major's lawyer.

20 A Yes, ma'am.

21 Q So I have a few questions. And I don't mean to beat a dead
22 horse, but I do have some questions about this Exhibit 22, okay.

23 A This is mine.

24 Q This is your personal stash, right, that's your testimony?

25 A Yes, ma'am.

1 Q And before it got put into these little bags like this, they
2 had labels, they had names; right?

3 A I believe they did. I believe they're in the same bags.

4 Q Oh, they're still in the same bags with the names on them?

5 A Yes, ma'am.

6 Q And those names are, let's see, Huckleberry, that's one of
7 the bags of weed; right?

8 A Yes, ma'am.

9 Q And one of them is Platinum Mints, that's one of them;
10 right?

11 A Sounds like it.

12 Q One's Dirty Girl?

13 A I'm not exactly sure, but it sounds right.

14 Q Does that sound like the kind of weed you had?

15 A Yes, ma'am.

16 Q Gorilla Glue, that sound familiar?

17 A Yes, ma'am.

18 Q Also White Fire OG?

19 A Sounds about right.

20 Q Sage?

21 A Yeah.

22 Q White Bulls?

23 A Sounds correct.

24 Q Xanax?

25 A Xanax? Yes.

- 1 Q OG Kush?
- 2 A Sounds about right.
- 3 Q Dangerous Delight?
- 4 A I'm not sure.
- 5 Q Sounds a lot like a dispensary to me. I mean, that's how
- 6 they sell weed in the dispensary, right, with names and labels?
- 7 A I don't know, I haven't been to one.
- 8 Q You're not familiar. You remember telling Detective Moy
- 9 that it wasn't a dispensary but you wished it was? Do you
- 10 remember telling him that?
- 11 A I don't. But I do.
- 12 Q Okay. You do remember going down to the police station on
- 13 February the 4th ---
- 14 A I do.
- 15 Q --- of 2019?
- 16 A Yes, ma'am.
- 17 Q That was the day after the Super Bowl, right, remember that?
- 18 A I'm not sure of the exact day but, yes, yes, ma'am. I don't
- 19 remember the Super Bowl but, yes.
- 20 Q At that time you had already given a statement, I think, to
- 21 Officer Jackson at the hospital; right?
- 22 A I don't remember Jackson.
- 23 Q Do you remember giving a statement at the hospital?
- 24 A I remember giving a statement. Yes, ma'am.
- 25 Q And somebody wrote the statement for you because you were

1 hurt; right?

2 A Yes, ma'am.

3 Q And that was the first statement that you gave other than, I
4 guess, the 911 call; right?

5 A Yes, ma'am.

6 Q Well, maybe you talked Detective Boehler, but it's the first
7 formal statement, is that fair?

8 A Yes, ma'am.

9 Q And at that statement you weren't Mirandized or anything;
10 you were just telling the story; right?

11 A Right. I was in the hospital on the bed.

12 Q Right. In the hospital room; right?

13 A Yes, ma'am.

14 Q Just as they came in there with their body cams and all
15 that, took your statement, and wrote it down for you; right?

16 A Yes, ma'am.

17 Q And you were trying to be helpful to them; right?

18 A As I am.

19 Q Sure. I mean, you wanted this crime solved; right?

20 A Absolutely.

21 Q You were going to tell them the truth; right?

22 A I was going to tell them what I could recall.

23 Q What you could recall?

24 A Yes, ma'am.

25 Q And you were trying to be as helpful as possible; correct?

- 1 A Yes, ma'am.
- 2 Q And to be as helpful as possible, you were going to tell the
3 truth?
- 4 A The best I could, yes.
- 5 Q So your statement starts out, do you remember telling them,
6 that J.B. had come over to have a few drinks?
- 7 A Yes, ma'am.
- 8 Q And what were y'all drinking?
- 9 A Tequila.
- 10 Q Tequila. Both of you?
- 11 A Yes, ma'am.
- 12 Q How many tequila drinks do you think J.B. that?
- 13 A Just a couple. I mean, we only had -- he brought over a
14 little pint, so it wasn't that much. And I still have some of it
15 left.
- 16 Q But just to be clear, I just want to be sure, you both had
17 drinks that night?
- 18 A Yes, ma'am.
- 19 Q And that's also what you said at the beginning of your
20 statement on February the 4th; right?
- 21 A Yes, ma'am.
- 22 Q J.B. called and said could he come over and have some
23 drinks?
- 24 A Yes, ma'am.
- 25 Q And that's what you all did?

1 A Yes, ma'am.

2 Q And you're as sure about that as anything else in this case;
3 right?

4 A I am.

5 Q Positive?

6 A Yes, ma'am.

7 Q I'm not trying to jump around too much, but I do want to
8 talk a little bit about these pending charges and your
9 convictions, right, because I think Mr. Osborne asked you if you
10 got charged with unlawful possession of a firearm.

11 But it was really possession of a handgun by person
12 convicted of a violent felony; right?

13 A Which case?

14 Q In this case?

15 A It was not.

16 Q So if that's what your rap sheet says, that's wrong?

17 A That's right.

18 Q But you had been convicted of a violent felony; right?

19 A I had been.

20 Q And that's that assault and battery, first degree; right?

21 A No. It was willful injury.

22 Q It was a what?

23 A Willful injury.

24 Q Willful injury?

25 A In 2001.

- 1 Q And that was in South Carolina?
- 2 A No, ma'am.
- 3 Q Oh, was that in ---
- 4 A Iowa.
- 5 Q Iowa. Okay, I'm sorry. And some of that rap sheet's hard
- 6 to read for me just because I don't know anything about the law
- 7 in Iowa, right, but I appreciate that. And you know that you
- 8 have a pending violent felony, too; right?
- 9 A Yes, ma'am.
- 10 Q And that's that trafficking of meth charge; right?
- 11 A Is that violent?
- 12 Q I believe it is, yes.
- 13 A Yes, ma'am.
- 14 Q And that charge happened on -- those allegations ---
- 15 A Yes, ma'am.
- 16 Q --- happened on September the 26th, 2019. Because just to
- 17 be fair, I know you haven't been convicted of those crimes.
- 18 Right?
- 19 A I have not.
- 20 Q But you have signed a cooperation agreement about those
- 21 allegations; right?
- 22 A It doesn't specify. It doesn't specify. They just said
- 23 that -- the agreement, it just says that whatever I say here
- 24 can't be used against me.
- 25 Q So any testimony that you give about any alleged drugs in

1 this case, they can't use against you; right?

2 A Unless it's a murder.

3 Q And this was signed on November the 4th, 2020; right?

4 A Yes, ma'am.

5 Q And so that was about a year after you picked up that
6 trafficking charge; right?

7 A I'm not exactly sure of the date.

8 Q That's fair. I think you described yourself previously as
9 kind of a penny dealer, just to kind of, you deal marijuana to
10 subsidize your income. Is that right?

11 A Correct.

12 Q And so ---

13 A Previous lifestyle.

14 Q I'm not saying that you're doing it now. I'm saying that
15 around January the 28th, 2019, that's what you were doing.
16 Right?

17 A Yes, ma'am.

18 Q So how much weed did you usually get when you were getting
19 weed to sell?

20 A I'm not exactly sure. Sometimes it would be three.
21 Sometimes it would be just a little bit, like an ounce. And
22 sometimes it would be like eight ounces.

23 Q But previously you said you usually just sold an ounce;
24 right?

25 A Yes, ma'am.

1 Q But the truth of the matter is that you've previously gotten
2 a lot more weed than that; right?

3 A That I had gotten? I've never made a statement saying how
4 much I received, how much I received. But I never sold that
5 much. But, I mean, I didn't go over an ounce, which is 20 grams.

6 Q Right. But when you got arrested on September the 26th,
7 2019, you had 234 grams of marijuana; right?

8 A Correct.

9 Q And that's more than an ounce; right?

10 A Right.

11 Q That's more than eight ounces; isn't it?

12 A No.

13 Q How many ounces is it?

14 A I believe it's eight ounces.

15 Q Eight ounces. So you had eight ounces of weed that day. Is
16 that half a pound of weed, a quarter pound of weed? Half a pound
17 of weed, you had a half a pound that day?

18 A Yes, ma'am.

19 Q And when this incident occurred, the week before you had had
20 half a pound of weed stolen from you then; correct?

21 A Excuse me?

22 Q The week before this incident that we're here about, you had
23 half a pound of weed stolen from you then; right?

24 A I believe it's something like that from home invasion.

25 Q And then you had re-upped. That means you got some more

- 1 weed; right?
- 2 A Yes, ma'am.
- 3 Q And you got about a quarter pound of weed then; right?
- 4 A Yes, ma'am.
- 5 Q So in a week you had three-quarters of a pound of weed;
- 6 right?
- 7 A Well, in my defense, half of it was taken.
- 8 Q That's right, I gotcha. You just bought that much; you
- 9 didn't still have it to sell?
- 10 A Exactly.
- 11 Q And so in this ledger, this is you keeping track of your
- 12 drug debts? Is that fair?
- 13 A There's some drug debts. And some are just regular debts.
- 14 Q So you, like, loan people money?
- 15 A Yes, ma'am.
- 16 Q And these are the people that owe you money; right?
- 17 A Correct.
- 18 Q And these are the correct sums, like you wrote down, I think
- 19 it says, maybe Doug owes you five dollars?
- 20 A Yes.
- 21 Q That really means five, not some code for something else?
- 22 A That means five dollars.
- 23 Q All right. You kept good track of it. When you mark the
- 24 people off, they paid off their debts then; right?
- 25 A Right.

- 1 Q So you had 15 or 16 people who owed you money for weed you
2 sold them that they hadn't paid you for?
- 3 A Or other debts.
- 4 Q Or money that you had loaned them?
- 5 A Yes, ma'am.
- 6 Q And I'm going to go to back to September the 26th just
7 briefly. On that day you had 31.29 grams of meth, allegedly;
8 right?
- 9 A September when?
- 10 Q 26, 2019.
- 11 A Is that a separate date than what you gave me before?
- 12 Q No. I think on the same day you got charged with
13 trafficking and meth, you got charged with that 234 grams of weed
14 on that same day; right? Allegedly that's what you had?
- 15 A I'm not sure. I'm not sure of the dates.
- 16 Q But they have charged you with trafficking and
17 methamphetamine?
- 18 A Correct.
- 19 Q Twenty-eight to 100 grams; right?
- 20 A Correct.
- 21 Q And that's a big-deal charge; right?
- 22 A Yes, ma'am.
- 23 Q I mean, and it's not even your first drug offense; right?
- 24 A Correct.
- 25 Q So theoretically you're looking at 7 to 30 years as a

- 1 minimum on that charge; right?
- 2 A Right.
- 3 Q And a \$50,000 fine?
- 4 A Is that what it is?
- 5 Q I believe it is. But you never sold over an ounce of weed,
- 6 is that still your testimony?
- 7 A Correct.
- 8 Q Now, during this trial you've talked about Mr. Major; right?
- 9 A I have.
- 10 Q But you did not, on January the 28th, 2019, you didn't know
- 11 Devonte Major; right?
- 12 A I did not.
- 13 Q You never met Devonte Major?
- 14 A No, ma'am.
- 15 Q And on that night, and even February the 4th, 2019, you did
- 16 not know Mr. Major's name; right?
- 17 A I did not know his name; no.
- 18 Q But this case has been going on a long time; right?
- 19 A It has been.
- 20 Q And you've been up here many times for many hearings; right?
- 21 A Correct.
- 22 Q And during those hearings you learned Mr. Major's name;
- 23 right?
- 24 A I have.
- 25 Q So when you identify Mr. Major here in this case, you know

1 his name because of those hearings, is that fair?

2 A Correct. Because of the case.

3 Q Because of the case, right, I understand. You got arrested
4 before this case started, right, you had a charge pending from
5 2018, something like that; right?

6 A That's correct.

7 Q And then when this case, during this investigation and this
8 marijuana and that gun, you got another charge; right?

9 A Correct.

10 Q And then we got that trafficking charge I've talked about
11 way too much; right?

12 A Correct.

13 Q But at no time did your bond ever get revoked; right?

14 A Actually, it did.

15 Q It did, but then you got out on a consent order with the
16 solicitor's office; right?

17 A After a month in jail.

18 Q After three months in jail?

19 A After a month.

20 Q Month?

21 A A month.

22 Q Oh, a month. But the solicitor's office agreed to let you
23 out of the jail; right?

24 A Because of COVID.

25 Q Because of COVID?

1 A Yes, ma'am.

2 Q You understand, though, that a consent order got signed by
3 them to let you out?

4 A Yeah. That was above my favoring.

5 Q But they let you out on a GPS monitor; right?

6 A Yes, ma'am.

7 Q Are you still on that monitor?

8 A I am.

9 ATTORNEY HENSLEY: Beg the Court's indulgence.

10 THE COURT: All right.

11 ATTORNEY HENSLEY: I'm sorry, Your Honor. My notes are in
12 my phone. Oh, I know what I missed. I'm sorry.

13 Q When you testified today, you talked about the fat gloves
14 that Mr. Major had on; right?

15 A Correct.

16 Q And you remembered that; right?

17 A Yes, ma'am.

18 Q But when you met with the detectives on February the 4th and
19 they asked you about gloves, you said, I can't visualize that;
20 right?

21 A I may have. I'm not exactly sure what I said. I know --

22 Q You may have said that?

23 A I'm not exactly what I said then. I know what I said today.
24 Yes, ma'am.

25 Q But on February the 4th you said, You guys keep asking me

1 about that, and I can't visualize their hands. Do you remember
2 saying that?

3 A No, I don't.

4 ATTORNEY HENSLEY: At this time I would like to refresh the
5 witness's recollection with the statement by letting him listen
6 to what he said.

7 THE COURT: All right. Yes, sir?

8 ATTORNEY OSBORNE: I don't have any objection.

9 THE COURT: All right. And?

10 ATTORNEY GAY: I don't object.

11 THE COURT: All right. Very well.

12 ATTORNEY HENSLEY: Beg the Court's indulgence. This might
13 take me a minute, Your Honor. I'm not nearly as good at this,
14 Your Honor, as Mr. Osborne. So let me try to get to a spot and
15 let him listen to it.

16 Your Honor, may I approach?

17 THE COURT: You may.

18 Q Mr. Porter ---

19 A Yes, ma'am.

20 Q --- I'm just going to show you a clip and let you listen to
21 it, without the jury hearing it, of your interview. You remember
22 meeting with Detective Moy and Detective Davis? Do you remember
23 that? And your answer was? Out loud.

24 A Yes, ma'am.

25 Q I'm sorry. So I'm just going to let you listen to this for

1 a second, and you tell me if you remember what you said, okay.

2 (WHEREUPON, the witness privately listens/watches a video
3 clip).

4 Q I'm going to start it playing, and you tell me if they talk
5 about/ask you about the gloves. Okay?

6 A Fair enough.

7 Q I'm going to fast-forward it a little bit. Okay. Does that
8 refresh your recollection?

9 A It does.

10 Q So in that interview on February the 4th you did say that
11 you couldn't visualize their hands; right?

12 A Correct.

13 Q You didn't remember anything about gloves; correct?

14 A Correct.

15 Q And part of that interview was Detective Moy and Detective
16 Davis asking you about these other things that maybe hadn't been
17 disclosed at the first or second or third or fourth interviews.
18 Right?

19 A Excuse me?

20 Q Well, they were talking to you about this prior break-in and
21 all of that. That was stuff that you hadn't talked to them about
22 before; right?

23 A I had not.

24 Q And also, at that interview you were telling them how you
25 thought -- you were trying to evict David; right?

1 A Right.

2 Q Because you thought David maybe had something to do with
3 that; right?

4 A At the moment, I thought he did.

5 Q And I understand things have changed, it's not February the
6 4th, 2019, now. But that's what you thought on that date; right?

7 A Correct.

8 Q And that's why you had those cameras in your house; is that
9 right?

10 A Correct.

11 ATTORNEY HENSLEY: Beg the Court's indulgence.

12 THE COURT: All right.

13 Q And those cameras were to see if you could detect
14 Mr. Swibaker stealing from you; is that right?

15 A Amongst a couple other reasons.

16 Q But that was one of them; right?

17 A That was one of them. Yes, ma'am.

18 ATTORNEY HENSLEY: I think that's all my questions, Your
19 Honor. Thank you.

20 THE COURT: All right. Very well. Yes?

21 ATTORNEY OSBORNE: Briefly, Judge.

22 THE COURT: Yes.

23 **REDIRECT EXAMINATION**

24 BY ATTORNEY OSBORNE:

25 Q So this shooting happened at about midnight?

1 A Yes.

2 Q About 12:03, something like that. How long had J.B. been at
3 your house prior to the shooting?

4 A Probably four hours.

5 Q He was there for four hours?

6 A Yes.

7 Q And I think Ms. Hensley asked, you and him had a shot or two
8 of tequila?

9 A Yes, sir.

10 Q Was J.B., like, taking shots on the way out before he hopped
11 on his moped?

12 A No, sir.

13 Q So he wasn't drinking on the way out?

14 A No, sir.

15 Q Okay.

16 A Like I mentioned, he had a pint, and I still have this much
17 (indicating) left in the same bottle, so.

18 Q Okay. And you were drinking, too?

19 A I'd take a shot with him, or a couple shots with him, I'm
20 sure.

21 Q So just, do you know -- I understand that you were -- your
22 bond was revoked.

23 A That's right.

24 Q And then another solicitor consented to have you released as
25 long as you were monitored?

1 A Correct.

2 Q Do you happen to know during that time that many
3 drug-offense individuals were being released from the jail
4 because of COVID?

5 ATTORNEY HENSLEY: Objection, Your Honor.

6 ATTORNEY GAY: It calls for speculation.

7 THE COURT: Sustained.

8 Q Did you see a lot of other people walking out of jail with
9 you?

10 A That day? No.

11 Q But at any time, at any time, did myself, Mr. Young,
12 Mr. Sorenson or anyone from my office promise you anything in
13 exchange for your testimony?

14 A Never once.

15 Q Oh. So I think Ms. Hensley asked that you had learned
16 Mr. Major's name from a previous hearing. But isn't it fair to
17 say that you knew his name before that hearing?

18 A It was. It is.

19 Q Okay. So isn't it true that after this incident ---

20 ATTORNEY HENSLEY: Objection to leading.

21 ATTORNEY GAY: Yes. And not the scope of --

22 ATTORNEY OSBORNE: May we approach?

23 THE COURT: Sure.

24 ATTORNEY GAY: I'd like to renew my objection.

25 (WHEREUPON, an off-the-record discussion was held at

1 sidebar.)

2 Q So is it fair to say that on the night of the incident --
3 Ms. Hensley and, I believe, Ms. Gay was asking you questions
4 about, you know, you saying, Well, I don't know, maybe Swibaker
5 had something to do with this.

6 And you were saying that; right?

7 A Correct.

8 Q Okay. Is it fair to say, yes or no, that on the night of
9 this incident you were confused about these guys breaking into
10 your house?

11 A Absolutely.

12 ATTORNEY GAY: Your Honor, I believe that's leading. And he
13 answered no, but it's still a leading question.

14 THE COURT: It is leading. Don't lead.

15 Q Did you know these guys ---

16 A I did not.

17 Q --- on the night of the incident?

18 A No.

19 Q Did you know how they got to your house?

20 A Did not.

21 Q Did you know how they knew about your house?

22 A No, sir.

23 Q Was that fact confusing to you?

24 A Absolutely.

25 Q Did that cause you, yes or no, to, just like any human being

1 would do, to start to think, Why my house?

2 A Yes, sir.

3 Q You were shot?

4 A Yes, sir.

5 Q J.B. was shot a number of times?

6 A Yes, sir.

7 Q Your dog was shot?

8 A Yes, sir.

9 Q Who wasn't shot?

10 A David, my roommate.

11 Q Did that cause you to be suspicious of him?

12 A Absolutely.

13 Q Are you still suspicious of him?

14 A No, sir.

15 ATTORNEY OSBORNE: Okay. No further questions.

16 THE COURT: All right. Yes, ma'am, any recross?

17 ATTORNEY GAY: No.

18 ATTORNEY HENSLEY: Nothing further on behalf of Mr. Major.

19 THE COURT: All right. Thank you. Yes, sir, you may step

20 down. All right. Next witness.

21 ATTORNEY OSBORNE: Short. I don't think it's that long.

22 The state calls Officer Scarborough.

23 CLERK OF COURT: If you'll please raise your right hand, and

24 state your full name for the record.

25 THE WITNESS: Joshua Scarborough.

1 CLERK OF COURT: If you'll spell your last name for the
2 record.

3 THE WITNESS: S-c-a-r-b-o-r-o-u-g-h.

4 JOSHUA SCARBOROUGH,

5 having first been duly sworn, was examined and testified as
6 follows:

7 THE COURT: Your witness.

8 ATTORNEY OSBORNE: Thanks, Judge.

9 **DIRECT EXAMINATION**

10 BY ATTORNEY OSBORNE:

11 Q All right, deputy. Where do you work now?

12 A Berkeley County Sheriff's Office.

13 Q And how long have you been there?

14 A About a year and a half.

15 Q And, well, have you recently been promoted?

16 A No, sir.

17 Q What's your rank?

18 A Just a patrol first class.

19 Q So a PFC?

20 A Yes.

21 Q And we're going to move right along a little bit, it's
22 getting a little late. Were you working on the night of
23 January 27th of 2019, going into the early morning hours?

24 A Yes, sir. Yes, sir.

25 Q And where did you work then?

1 A Summerville Police Department.

2 Q And what was your assignment?

3 A Patrol.

4 Q Now, does Summerville just break it down into teams a little
5 bit, or are you just all over the city or town?

6 A They have a leader for patrol teams, for dayshift and the
7 night shift teams. And then they have the medial zones, and
8 those teams have a north and south district kind of thing.

9 Q Yep. And did you have the occasion to become involved in
10 this murder investigation?

11 A Yes, sir.

12 Q Tell the jury how that came about.

13 A The night of the incident, I was on an unrelated traffic
14 stop in the same neighborhood. Dispatch dropped the tones for
15 the shooting that just occurred in the same area, so I ended my
16 traffic stop and began to respond to the area.

17 While on the way, I saw a vehicle leaving the area with no
18 license plate on it, and it had four black males inside of the
19 vehicle. Wasn't sure it was related.

20 Relayed the information over dispatch to my team and then
21 proceeded to the incident location.

22 Q Okay. Now, is it fair to say that at this point in the
23 investigation, or in the case, did you have a suspect vehicle
24 description or anything like that?

25 A I think dispatch gave a general description. As far as the

1 vehicle or anything extensive, I don't think we had anything at
2 that point, no, sir.

3 Q I'm showing you State's Exhibit 1. What was the name of the
4 -- well ...

5 ATTORNEY OSBORNE: Your Honor, may the witness point out a
6 couple things, just two things, for me?

7 THE COURT: Yes.

8 Q All right. So if you want, if you could step down and then
9 just point up there. And I'm going to ask you just to point out
10 a couple different locations.

11 THE COURT: I need you to keep your voice very loud.

12 THE WITNESS: Yes, ma'am. Thank you.

13 Q Okay. So you said you were on a traffic stop. First of
14 all, what are we looking at here on 1?

15 A This is Robynwyn neighborhood in Summerville.

16 Q You said that you were -- and I know you don't like the
17 word, a routine traffic stop, but this traffic stop that you were
18 on, where was that at?

19 A On Tulip Street. I'm not exactly sure where at, but it was
20 on Tulip Street about right here (indicating).

21 Q All right. And what about the incident location, where was
22 that at?

23 A Myrtle Place. I'm trying to find it. May not have it on
24 there.

25 Q Sorry. And I may be tricking you here because I think

1 that's going to be maybe the only street that's not marked.

2 A I think it's -- yes, sir. I think it's that one. It's so
3 hard to tell. It's a confusing neighborhood.

4 Q Is it fair to say it is a confusing neighborhood?

5 A It's very confusing. Yes, sir.

6 Q Okay. And so when you were out -- and that's good, you can
7 set down. And when you were out on this traffic stop, you said
8 that you had heard -- what did you hear?

9 A While on a traffic stop, dispatch dropped tones for an
10 emergency call for service and advised that a shooting had just
11 occurred. So I, you know, viewed that to be more important than
12 my traffic stop, so I kind of ended it quickly started to go to
13 that as a priority.

14 (WHEREUPON, State's Exhibits 4 and 5 were marked for
15 identification.)

16 ATTORNEY OSBORNE: Your Honor, may I approach?

17 THE COURT: You may.

18 Q I'm showing you State's 4 and 5. Can you take a look at 4.
19 For ID purposes, can you tell me if you recognize that?

20 A Yes, sir.

21 Q And what is that?

22 A That's my in-car video from that night of the incident.

23 Q All right. And State's 5, do you recognize that?

24 A Yes, sir. It's a clipped version my in-car video from that
25 night.

1 Q So 4 is all of your in-car, and 5 is just a clipped version?

2 A Yes, sir.

3 Q Is that correct?

4 ATTORNEY OSBORNE: All right. Your Honor, at this time we
5 would seek to admit State's 5 into evidence.

6 THE COURT: Any objection?

7 ATTORNEY GAY: No, ma'am, I don't believe so.

8 THE COURT: All right.

9 ATTORNEY HENSLEY: No objection.

10 THE COURT: Very well.

11 (WHEREUPON, State's Exhibit 5 is entered into the record.)

12 Q You said Tulip before. Was this actually Fripp?

13 A It's a good possibility. Again, it's a confusing
14 neighborhood.

15 (Whereupon, State's Exhibit 5 is published to the jury.)

16 Q I wanted to stop you right here. Well -- and I'm not trying
17 to embarrass you. I guess you turned down the wrong street, is
18 that fair to say?

19 A Yes, sir.

20 Q And is this a car following you?

21 A Yes, sir. It was another officer's vehicle behind me at the
22 time.

23 Q So they, too, then turned down the wrong street?

24 A Yes, sir. We were both very confused.

25 (Video resumes.)

1 Q All right. I want to stop right there. What just happened
2 on the video at the 2:06 mark?

3 A The vehicle I explained earlier, the black Honda CR-V with
4 the four males inside of it, passed by me. Obviously, based on
5 my commentary, I was kind of shocked of what I saw when they
6 passed, if that makes sense.

7 Q What was it that gave you that type of reaction?

8 A The reaction to me was pretty significant. One of the --
9 all their eyes were extremely wide open. One of the back
10 passenger's mouth dropped and kind of like followed me with his
11 eyes and not with his head. They all just looked like they saw a
12 ghost. It just didn't seem normal. It kind of just caught my
13 attention. I was, you know, shocked to see what I saw.

14 Q You said one of the back passenger's dropped their mouth.
15 Do you know, was it the guy behind the driver, behind the
16 passenger, or ---

17 A I don't remember which one it was specifically. I remember
18 seeing one of them, you know, the situation, I remember one of
19 their mouths dropped opened.

20 I believe it was the back passenger, or the back passenger,
21 driver's side. I could be wrong. But one of the passengers, or
22 one of the occupants, dropped their mouth open.

23 And once they passed me, I looked in my side-view mirror and
24 could actually see one or two of them turn around to look at me.
25 And I watched the driver look at me through his side-view mirror,

1 watching to see if I was going to pull around or what I was
2 doing. And it just wasn't normal.

3 Q And you didn't pull around; right?

4 A I did not. No, sir.

5 (Video resumes.)

6 Q All right. I will stop the torture on that. It took a
7 while to get there; right?

8 A Yes, sir.

9 Q Find it.

10 (WHEREUPON, State's Exhibit 500 is marked for
11 identification.)

12 ATTORNEY OSBORNE: Your Honor, may I approach?

13 THE COURT: You may.

14 Q All right. This is just for ID purposes only, and to
15 refresh your memory. All right. Just for ID purposes, again,
16 State's 500.

17 Would it help you to look at your report to refresh your
18 memory as to where you were located when you passed that CR-V?

19 A Yes.

20 ATTORNEY HENSLEY: Your Honor, I just have an objection.

21 THE COURT: Okay.

22 ATTORNEY HENSLEY: He hasn't said he doesn't remember. So
23 it seems inappropriate to refresh your recollection before he
24 doesn't remember.

25 ATTORNEY OSBORNE: Okay.

1 Q If your report reflected something different than your
2 testimony regarding where you saw that car, which would be more
3 accurate, your report or your recollection two years later?

4 A My report, for sure.

5 Q And would it help refresh your recollection to review that
6 report to see what your memory was back then?

7 A Yes, sir.

8 ATTORNEY OSBORNE: Your Honor, at this time I'd seek to show
9 him State's 500.

10 THE COURT: You can certainly show him -- you can show him
11 the Manhattan phone book if you think it will refresh his
12 recollection, so you can show him that piece of paper.

13 ATTORNEY OSBORNE: All right. Thank you. Well, we were
14 going to be there a while.

15 Q So did that help refresh your recollection?

16 A Yes, sir.

17 Q Okay. Where were you when you passed by that vehicle?

18 A On Fripp.

19 Q Turning Pawley, or near Pawley?

20 A Yes, sir, towards Pawley.

21 ATTORNEY OSBORNE: And for ID purposes only, to get some
22 times here, Your Honor, may I approach?

23 THE COURT: You may.

24 Q Showing you State's 3. Okay. Deputy, can you turn to page
25 5. And I'm interested in your name, Scarborough. And do you see

1 your entries in there? Do you recognize that document, first of
2 all?

3 A Yes, sir. This is a CAD report.

4 Q All right. So I see a signal 88 there?

5 A Yes, sir.

6 Q What does that mean?

7 A In the area. It sends a locator in the area.

8 Q It's a code for being in the area?

9 A Yes, sir.

10 Q And what time were you in the area?

11 A 12:06:27.

12 Q Okay. So 12:06:27, okay. And what time, do you see, where
13 you reported passing four black males in a CR-V?

14 A Was 12:07:28. So almost a minute later.

15 Q Okay. All right. After this video ends, what was your next
16 involvement in the case?

17 A I found the residence. I came on scene and observed
18 multiple officers were already on scene. At this time I was
19 informed, or one of my teammates, PFC Cramer, was actually in
20 pursuit of that CR-V. So due to multiple officers be on scene, I
21 left to assist with that, and both the vehicles pursued involving
22 the CR-V.

23 Q And did you assist -- did you make it to the conclusion of
24 the pursuit?

25 A Yes, sir.

1 Q And where did the pursuit end?

2 A On Highway 17, almost to Colleton County, I believe, or into
3 Colleton County.

4 Q And did you assist with the felony traffic stop?

5 A Yes, sir.

6 Q And then we'll get into that with Corporal Cramer, but what
7 did you do at the conclusion of that?

8 A I transported a male by the name of Devonte Major to the
9 Summerville Police Department and put him in a holding cell.

10 Q Okay. Did you happen to notice what Mr. Major was wearing?
11 Shoes?

12 A Some very unique shoes. Very bright-colored, purple, large
13 Nike shoes.

14 (WHEREUPON, State's Exhibits 141, 142 and 161 are marked for
15 identification.)

16 ATTORNEY OSBORNE: May I approach, Your Honor?

17 THE COURT: You may.

18 Q I'm showing you State's 141, 142 and 161. Can you take a
19 look at those and tell me if you recognize those items.

20 A Those are those shoes he was wearing when I put him in my
21 car to transport him.

22 Q Okay. And 141 and 142 are photographs of the shoes?

23 A They're photographs, yes, sir. I apologize.

24 ATTORNEY OSBORNE: Your Honor, at this time we seek to admit
25 141, 142 and 161 into evidence.

1 THE COURT: Any objection, Ms. Gay?

2 ATTORNEY GAY: Not on behalf of Mr. Green.

3 THE COURT: On behalf of Mr. Major, Ms. Hensley?

4 ATTORNEY HENSLEY: I'd just object to the packet, because I
5 don't think that proper foundation was laid to that.

6 THE COURT: Sustained.

7 (WHEREUPON, State's Exhibits 141 and 142 are entered into
8 the record.)

9 ATTORNEY OSBORNE: Okay. Can I have some scissors, please.
10 May I approach again, Your Honor?

11 THE COURT: You certainly may.

12 Q All right. If you could just tear into that and take a look
13 at those, and see if you recognize those shoes.

14 A (Responds.)

15 Q Do you recognize them?

16 A Yes, sir. Those are the shoes Devonte Major was wearing.

17 Q And you know that because you transported him?

18 A Yes, sir.

19 Q You took notice of it?

20 A Yes, sir.

21 ATTORNEY OSBORNE: All right, Your Honor. At this time we'd
22 seek to admit State's 161 into evidence.

23 THE COURT: All right. Any objection?

24 ATTORNEY GAY: Not with regard to this item, Your Honor.

25 THE COURT: Ms. Hensley?

1 ATTORNEY HENSLEY: I still think we have a chain issue, Your
2 Honor. So I think they can be identified, but not admitted at
3 this time.

4 THE COURT: Sustained.

5 ATTORNEY OSBORNE: Okay. All right. I'll publish 141 and
6 142.

7 Q What is 141?

8 A The shoes that Devonte Major was -- a picture of the shoes
9 Devonte was wearing on the night of the incident.

10 Q Okay. And 142?

11 A Again, a different picture of the same shoes.

12 Q Okay.

13 ATTORNEY OSBORNE: No further questions, Your Honor.

14 THE COURT: All right. Cross-examination, Ms. Gay?

15 ATTORNEY GAY: One moment, Your Honor.

16 THE COURT: All right.

17 ATTORNEY GAY: I do have one question.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY GAY:

20 Q We just watched your video. I'm Melisa Gay, representing
21 Elijah Green. And we just watched your video. And it was
22 frustrating, because you were in a neighborhood where all the
23 roads maybe weren't marked well. Wouldn't you agree that it was
24 frustrating that night?

25 A Yes, ma'am.

1 Q It was moving quickly; you were moving your car quickly?

2 A At some points, yes, ma'am.

3 Q Sounded like a Charger or something, some big-engine car.

4 What kind of car do you drive?

5 A That night, it was a Dodge Charger.

6 Q Yeah, I could tell with that big rev. And certainly we see
7 that it takes, I don't know, possibly two seconds, three seconds,
8 maybe, for you to pass the car that was the black car. And so
9 there wasn't -- that car didn't stop for you to have any kind of
10 encounter with it? Did you?

11 A No, ma'am.

12 Q So everything that you saw that night related to that black
13 car happened in that two or three seconds?

14 A Yes, ma'am.

15 ATTORNEY GAY: I have no further questions. Thank you.

16 THE COURT: All right. Yes, ma'am?

17 ATTORNEY HENSLEY: I don't have any questions for this
18 witness, Your Honor.

19 THE COURT: All right. Redirect?

20 ATTORNEY OSBORNE: None, Your Honor.

21 THE COURT: All right. And is this witness free to leave?

22 ATTORNEY OSBORNE: Yes.

23 ATTORNEY HENSLEY: Yes.

24 THE COURT: Any objection?

25 ATTORNEY GAY: No, objection, Your Honor. Thank you.

1 THE COURT: All right. Very well. All right. Ladies and
2 gentlemen, that will conclude the work that we are going to do
3 today. And I do need to give you some instruction. Firstly, let
4 me remind you, do not discuss this matter or allow anyone to
5 discuss it with you. That means your family, your friends,
6 coworkers, each other. Do not blog; do not do any sort of
7 research; do not discuss this matter face-to-face. Do not blog
8 about it; do not use any sort of social media platform to discuss
9 it. Don't do any research, to include going to a dictionary for
10 the definition of a word.

11 You must receive all the information from which you'll make
12 up your minds in court while court is in session.

13 Again, I do not know, I do not believe, that there will be
14 any news reports about this particular matter. However, in an
15 abundance of caution, please be very mindful. And should you
16 come across something that looks at all familiar, please do not
17 listen to it; don't watch it; change the channel; close your
18 computer. You must not view anything about this matter, any sort
19 of report, whether it's on the radio, the television, the
20 newspaper or the internet. So please also be mindful of that.

21 Remember to leave your cellphone or other communication
22 device away from the courthouse tomorrow. If you forget, just
23 let our bailiffs know, and they will take good care of it until
24 you're able to return it to your car or home. You cannot have a
25 cellphone or other communication device with you while you are

1 serving on the jury.

2 Nobody's going to work at night; right? No one's going in
3 at night? Good. Very well.

4 Ladies and gentlemen, we will begin in the morning at 9:30.
5 At 9:30. Have a good evening. And I will see you at 9:30 in the
6 morning. Thank you so much. Yes, leave your notepads, please.

7 (WHEREUPON, the jury is dismissed for the day at 4:51 p.m.)

8 THE COURT: All right. I think everyone's cleared out.
9 Anything from the state before we take our leave?

10 ATTORNEY OSBORNE: No, Your Honor.

11 THE COURT: All right. Anything from Mr. Green, Ms. Gay?

12 ATTORNEY GAY: No, Your Honor.

13 THE COURT: And Ms. Mr. Major?

14 ATTORNEY HENSLEY: Nothing on behalf of Mr. Major.

15 THE COURT: Very well. I will see you all in the morning.

16 (WHEREUPON, court recessed for the day at 4:52 p.m. on
17 Tuesday, July 13, 2021, and reconvened at 10:10 a.m. on
18 Wednesday, July 14, 2021.)

19 (WHEREUPON, Court's Exhibits 3, 4 and 5 were marked for
20 identification.)

21 THE COURT: So we have a cellphone issue. And while we've
22 got this short delay with the defendants, I'm going to, with your
23 permission, I'm just going to send a message to the jurors and
24 tell them, with their cellphones, if they got them and they want
25 to get them, that we've got a way to keep them so that they don't

1 fry in their car.

2 Y'all got a problem with me delivering that message?

3 ATTORNEY GAY: No.

4 (WHEREUPON, the jury is seated in the courtroom at
5 10:30 a.m.)

6 THE COURT: You know what? Clearly we have geniuses
7 throughout our marvelous jury panel. And I am going to address
8 your question. And I've got to tell you all, with the
9 cellphones, 23 years and we are doing our cellphones now as I
10 have seen them done in Charleston where, you know, folks want to
11 have their cellphones, they don't want to leave them in the car
12 because you don't want to go back and have them fried into a pool
13 of plastic. And so we are going to keep them in here for you.

14 I'd love it if you left them at home, but I get it, most of
15 the area here, we're in a little part of the county. And you
16 guys are geniuses. And so we are certainly going to accommodate
17 as best we can, and we're going to do our very best to keep up
18 with them. And that was question number one.

19 Question number two is with regards to your notes. Yes,
20 your notes stay here, and they will be with you during your
21 deliberations. But until that time they will clearly remain in
22 the courtroom. And, of course, we secure them. But you will
23 have access to them. And I guess that makes sense when I said
24 they're for you to allow you to refresh your recollection for
25 your deliberations. I guess that made perfect sense, Okay, but

1 when do you that? Does that make perfect sense? You'll have
2 your notes during your deliberations.

3 But again, it's more important to listen to the testimony
4 and that you observe these witnesses than take notes. But we
5 certainly went over that yesterday.

6 And I think there was one more note, and I don't have them.
7 The other one, we have a presiding juror. You are our presiding
8 juror. Y'all need to switch places. You just come on up here,
9 because you need to stay here for hearing. Right?

10 JUROR: That's my hearing. Can I allow her to stay there?

11 THE COURT: Yeah. We'll just switch you out. I do need to
12 have you in the front row, though, actually. I don't care.
13 Would someone be willing to move? Y'all are wonderful. Thank
14 you. And, yes, and we'll get your earphones. You need to be
15 right here in the presiding juror position, please, ma'am. Thank
16 you. And then we'll switch those. There, you go. Awesome.

17 Ladies and gentlemen, I think everybody is situated at this
18 point. And at this point we will continue with the state's case.

19 Our next witness, please.

20 ATTORNEY YOUNG: Thank you, Your Honor. The state calls
21 Captain Kenneth Driscoll.

22 CLERK OF COURT: If you'll raise your right hand, and state
23 your full name for the record.

24 THE WITNESS: Kenneth T. Driscoll.

25 CLERK OF COURT: If you'll spell your last name for the

1 record.

2 THE WITNESS: D-r-i-s-c-o-l-l.

3 KENNETH T. DRISCOLL,

4 having first been duly sworn, was examined and testified as
5 follows:

6 **DIRECT EXAMINATION**

7 BY ATTORNEY YOUNG:

8 Q Good morning.

9 A Good morning, sir.

10 Q Where do you currently work at?

11 A The Summerville Police Department, sir.

12 Q And what other jobs have you had in the past?

13 A Patrol officer, detective, supervisor. When I was sergeant,
14 I led the unit for CID, which is the detective division, sir.

15 Q Any prior experience prior to law enforcement?

16 A Twenty-two years in military. Sixteen of that was spent
17 law-enforcement based with the military.

18 Q And how long have you been with Summerville Police
19 Department?

20 A Almost 14 years, sir.

21 Q What would you say your various assignment have been over
22 the years?

23 A Patrol division. Again, CID, which is the Criminal
24 Investigation Division. Currently over the CID unit now as a
25 captain.

1 Q Have you had any specialized training relevant to this
2 particular case?

3 A Yes, sir. I completed a 40-hour course with the
4 Cellebright, which is a, it's a UFED, is what it's called, a
5 universal extraction device for mobile cellphones, tablets,
6 things of that nature.

7 Q Over the course of your career have you had any
8 accommodations or awards, or anything of that nature?

9 A Yes, sir. I was detective of the year once, and officer of
10 the year through -- I can't remember what company they sponsored
11 us through, I think it was, Veteran's Affairs, they sponsored an
12 officer of the year for that, as well.

13 Q Let's go back to the January 28th, 2019. At that point in
14 time where were you working then and what was your assignment?

15 A I was a sergeant over the CID unit, supervising nine
16 personnel.

17 Q What was your initial role in this particular investigation?

18 A My initial role was call out, to assist the detectives who
19 are called out for an individual case, and then step back from it
20 after like the first night and assist with whatever the
21 detectives needed to assist them.

22 In this case, it would be downloading the cellphones.

23 Q So I realize you did quite a bit in the investigation, but
24 what I want to focus on is the extraction information from a
25 couple of phones. Did you have any occasion to download

1 information from any of the phones belonging -- or, should say, a
2 Motorola phone from victim Marcus Porter, and also the iPhone
3 belonging to Mr. Elijah Green?

4 A Yes, sir.

5 ATTORNEY YOUNG: May I approach the witness in, Your Honor?

6 THE COURT: You may.

7 Q I'm going to show you State's Exhibit 179. Can you just
8 describe what that is.

9 A This is a Motorola cellular device in a red case.

10 Q Do you recognize that particular phone?

11 A Yes, sir. It belonged to Mr. Porter.

12 (WHEREUPON, State's Exhibit 182 is marked for
13 identification.)

14 Q Also show you State's Exhibit 182. And do you recognize
15 that?

16 A Want me to open it?

17 Q Yes, please.

18 A It's an Apple iPhone.

19 Q Do you recognize that particular phone?

20 A Apple iPhone in a black case. This would have been
21 Mr. Green's cellular device.

22 Q And did you have the opportunity to extract any data from
23 either one of these particular phones?

24 A Yes, I did, sir.

25 Q Did you use a, I believe it's called a, Cellebrite

1 extraction device?

2 A So Cellebrite is a company. The device itself is called a
3 UFED. It's a Universal Forensic Extraction Device. We use that
4 to copy information essentially from one person's cellphone so
5 that the items inside the cellphone can be placed in a PDF format
6 so that you can review any data that the UFED actually extracted.

7 Q What is UFED?

8 A Universal Forensic Extraction Device.

9 Q Could you describe for the jury the actual process, going
10 through the extracting information?

11 A So it's like a box, it's a computer, a little box. Back in
12 the day, I guess the best way to describe it, if anybody went to
13 get a brand new cellphone, they would have their contacts
14 transferred over, the cellphone company would use the same type
15 of device called a UFED.

16 Actually, you plug the phone in. It gives you exactly
17 directions on how to extract that information from those
18 particular devices. The program itself has numerous different
19 types of phones in there. The only thing you do is you tell it
20 what kind of phone, and you plug it in, and the system itself
21 removes, or copies, all that information out for you.

22 Q Okay. And you did that in this particular case?

23 A Yes, sir.

24 Q Do you recall the date you performed the Cellebrite download
25 on the phones?

1 A No, sir. I think it was maybe February 2nd or the 31st ---
2 Q Okay.
3 A --- of January.
4 Q What did you do with the downloaded contents of the
5 cellphones?
6 A It gets placed on either a DVD or a CDR. And then the phone
7 and the CD is given to the detective for review.
8 Q All right.
9 (WHEREUPON, State's Exhibits 181 and 183 are marked for
10 identification.)
11 ATTORNEY YOUNG: May I approach the witness, Your Honor?
12 THE COURT: You may.
13 Q I'm going show you State's Exhibits 181 and 183. Can you
14 describe what those are.
15 A These are both DVR disks.
16 Q Do you recognize those disks?
17 A Yes, sir. My initials are on both of these disks. One is
18 from Mr. Green's phone, and the other one is from Mr. Porter's
19 phone, as far as the contents that was copied from the
20 cellphones.
21 Q So would that be a fair and accurate representation of the
22 downloaded contents?
23 A Yes, sir.
24 Q Okay. All right. Thank you, sir.
25 A Thank you.

1 Q Please answer any questions defense counsel might have for
2 you.

3 A Yes, sir.

4 THE COURT: On behalf of Mr. Green, Ms. Gay?

5 ATTORNEY GAY: One moment, please.

6 THE COURT: Sure.

7 ATTORNEY GAY: One moment, Your Honor, with the Court's
8 indulgence.

9 THE COURT: Sure.

10 ATTORNEY GAY: I have no further questions for this witness,
11 Your Honor. He can be excused. Thank you.

12 THE COURT: All right. Yes, ma'am?

13 ATTORNEY HENSLEY: I have some questions.

14 ATTORNEY GAY: Oh, I'm sorry. I didn't realize it was
15 relevant to you.

16 THE COURT: All right. Thank you.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY HENSLEY:

19 Q Detective Driscoll?

20 A Yes, ma'am.

21 Q Captain Driscoll?

22 A Yes, ma'am, that's fine.

23 Q Y'all's ranks are really confusing to me.

24 A Sorry about that.

25 Q You were in the military for 22 years?

- 1 A Yes, ma'am.
- 2 Q What branch of the service?
- 3 A U. S. Navy, ma'am.
- 4 Q Oh, me, too. So I understand those ranks, I understand what
5 a captain is in the Navy. So that's like what you are on the
6 police force; right?
- 7 A Not quite, ma'am.
- 8 Q Okay, all right. So, Captain Driscoll, you did some other
9 things in this case besides just the phone extraction. Right?
- 10 A Yes, ma'am.
- 11 Q And one of those things you did was you responded to the
12 hospital the night of the incident; correct?
- 13 A Yes, ma'am.
- 14 Q And when you did that, you and Detective Moy, I think, met
15 with Mr. Porter; correct?
- 16 A Yes.
- 17 Q And Mr. Porter told you that Mr. Weaver had come over, and
18 they had some drinks; right?
- 19 A I believe so. Yes, ma'am.
- 20 Q And he also told you that he was a small-time drug dealer;
21 right?
- 22 A Yes.
- 23 Q That he didn't move any heavy weight; right?
- 24 A Correct.
- 25 Q Would you consider trafficking methamphetamine heavy weight?

1 A I'm not a drug guy, ma'am, so I really can't answer that
2 question.

3 Q I'll ask somebody else.

4 A Yes, ma'am.

5 Q That's fair, I appreciate that.

6 ATTORNEY HENSLEY: I believe that's all the questions I
7 have. Thank you, Captain Driscoll.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: All right. Any redirect, Mr. Young?

10 ATTORNEY YOUNG: No, Your Honor.

11 THE COURT: Very well. And any objection to this witness
12 leaving?

13 ATTORNEY HENSLEY: I don't object to him being excused now.

14 ATTORNEY GAY: No.

15 THE COURT: Very well.

16 ATTORNEY GAY: Right. I'm sorry.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Call your next witness, please.

19 ATTORNEY OSBORNE: State calls Corporal Jacob Cramer.

20 CLERK OF COURT: If you'll please raise your right hand, and
21 state your full name for the record.

22 THE WITNESS: Jacob Anthony Cramer.

23 CLERK OF COURT: If you'll spell your last name for the
24 record.

25 THE WITNESS: C-r-a-m-e-r.

1 JACOB ANTHONY CRAMER,
2 having first been duly sworn, was examined and testified as
3 follows:

4 THE COURT: And if you'd just state your name for our record
5 again.

6 THE WITNESS: Jacob Cramer.

7 THE COURT: Thank you. Your witness.

8 ATTORNEY OSBORNE: Thank you, Judge.

9 **DIRECT EXAMINATION**

10 BY ATTORNEY OSBORNE:

11 Q It's corporal?

12 A Yes, sir.

13 Q All right. Corporal Cramer, and if you don't mind, I know
14 you've got a loud voice, just, you know, kind of speak up a
15 little bit.

16 A Yes, sir.

17 Q All right. Where do you currently work?

18 A Summerville Police Department.

19 Q And how long have you been with the Summerville Police
20 Department?

21 A A little over seven years now.

22 Q What have been some of your various assignments with
23 Summerville?

24 A I've been a K-9 handler for most of those years. Right now
25 I'm currently a corporal on our special enforcement team. I work

1 Team 4 night shift, Team 2 dayshift. I work as a K-9 handler on
2 both teams, as well. And a field gaming officer.

3 Q Any awards or accommodations while you've been with
4 Summerville?

5 A I was presented with a lifesaving award in 2019.

6 Q All right. Let's get into the night of this incident. Were
7 you working on the night of January 27th, going into the 28th, of
8 2019?

9 A Yes, sir, I was.

10 Q And what was your assignment then?

11 A I was a field-training officer/K-9 handler on Team 4 night
12 shift. I was training Officer Reynolds.

13 Q Okay. So you had a K-9 in the car with you?

14 A Yes, sir, I did.

15 Q What's your K-9's name?

16 A My K-9 at that time was Chase. He's been retired since.
17 I'm working with a different dog now.

18 Q Okay. All right. So you and Reynolds and Chase were in the
19 car. Were you driving or was Reynolds driving?

20 A Officer Reynolds was driving. Yes, sir.

21 Q And he was in training?

22 A Yes, sir.

23 Q How is it that you became involved in this investigation?

24 A It came over the radio, tones dropped, and we were actually
25 sitting in the backside of the neighborhood. And we ran Code-3

1 lights and sirens to the scene, so that a shooting is what came
2 over the radio.

3 Q And do you remember exactly where you were dispatched?

4 A To Myrtle Place.

5 Q Myrtle Place, okay. That's in what neighborhood?

6 A It's in Robynwyn.

7 Q Let's talk a little bit about Robynwyn. How would you
8 describe that neighborhood?

9 A We get calls for service there quite often. It's ---

10 Q I'm sorry. Go ahead.

11 A It's one of our more frequently visited neighborhoods in the
12 town.

13 Q All right. And I think you said this. Where did you say
14 you responded? Where were you at when the call came out?

15 A We were at the end of South Point Boulevard in the
16 neighborhood of South Point off of Highway 78.

17 Q Just, can you give me some other sort of landmark that
18 people might be a little more familiar with, maybe?

19 A It's probably half a mile down past Palmetto State Armory,
20 the intersection of Berlin G and 78.

21 Q All right. While responding to the scene, did you hear
22 anything over the radio that caught your attention?

23 A Officer Scarborough said that he had passed a dark SUV, I
24 believe, occupied by four individuals that could have possibly
25 been involved.

1 Q And what route did you take -- well, I think I know probably
2 the most direct route, but what route did you take to get to
3 Robynwyn?

4 A Down Highway 78, turned on -- made a right-hand turn onto
5 North Palmetto to go into that side of Robynwyn.

6 Q So I guess for those who might not be familiar, when you
7 turn right into Palmetto, or when you turn right onto Palmetto to
8 get into Robynwyn, is that the front entrance to Robynwyn?

9 A It's not the main entrance where their sign is, but it turns
10 into, you can take a right onto North Palmetto and then make a
11 left onto Weber, which turns into Iris, which is inside of
12 Robynwyn.

13 Q So that's sort of hitting it from the back end, coming to
14 Robynwyn from the back?

15 A More or less, yes, sir.

16 Q So what happened whenever you turned onto Palmetto?

17 A We seen headlights coming towards us. Seemed like they were
18 driving kind of slow, so we slowed our speed down. And it was a
19 dark colored Honda CR-V that was occupied by four individuals.
20 It was probably about a block onto North Palmetto when we passed
21 them.

22 Q Seem to matched the description put out by Scarborough?

23 A Yes, sir.

24 Q All right. I'm showing you what's already been marked and
25 admitted as State's Exhibit 1. I'm sorry that I have to ask you

1 to do this, but I'm going to have to ask you, if you could get
2 up -- and we're only going to do this a couple times -- and if
3 you could -- and I'll try to zoom in a little bit -- just point
4 out the direction in which you were coming from and the direction
5 that you passed by the CR-V. And I'll try to zoom in a little
6 bit.

7 A I think you're good right there.

8 Q Sorry. Give me one second. Am I on it now, or do I need to
9 back out?

10 A You're good right there.

11 Q Okay.

12 A This is North. This is Highway 78 at the top, the road in
13 yellow. We were coming from, South Point would be, way over
14 yonder. Come down, and we made the right onto North Palmetto.
15 And about in this area is where we passed the SUV at.

16 Q Okay. So which direction were you headed on Palmetto?

17 A We were heading -- let's see. Seventy-eight is east and
18 west, so we were heading south. No, north, on North Palmetto.
19 North Palmetto runs this way.

20 Q And the ---

21 A This is the neighborhood of Robynwyn. You can come in North
22 Palmetto to Weber, Weber, and then Robynwyn neighborhood starts
23 here.

24 Q I know it's not marked, but do you know Myrtle Place? Can
25 you point that out?

1 A Shamrock. Myrtle Place should be here.

2 Q Okay. The back yard to Myrtle backs up to that ---

3 A Yeah, right here.

4 Q Okay, yeah. Is this a little cul de sac?

5 A Yes, this is a little cul de sac right here. And there's a
6 ditch line. So it should be right in that area.

7 Q I'll come back to that in a minute. Which direction was the
8 CR-V headed again?

9 A The CR-V was heading south on North Palmetto, coming this
10 way to Highway 78.

11 Q When it hit 78, did you see which direction it went?

12 A Yes, sir. It made a left-hand turn onto Highway 78, heading
13 east.

14 Q Okay. While I got you, when you saw that, what did you do?

15 A We already had our lights activated on the patrol vehicle,
16 so we went ahead and turned around on the vehicle in order to
17 attempt to conduct a traffic stop since it could have possibly
18 been involved.

19 And while we were turning around, I observed the vehicle
20 make the left-hand turn, heading back up Highway 78.

21 Q Back up. The direction y'all came?

22 A The direction we had came from. Yes, sir.

23 Q All right. Thank you. So where we left off, you were
24 coming, y'all were trying to get behind the car, turned around,
25 and then you got behind it on 78, I guess?

1 A Yes, sir. We caught up with it on Highway 78, almost when
2 we got to North Cedar Street.

3 Q What happened then?

4 A Lights were still activated, attempting to conduct a traffic
5 stop on the vehicle. And it slowly made a right-hand turn onto
6 Cedar Street. It appeared as it was going to stop, and then it
7 continued driving at a slow rate of speed at first, and then once
8 it got closer to the railroad tracks at Cedar it continued to
9 speed up.

10 And I was giving updates with dispatch on our records
11 channel because our main channel was 33 because of the officers
12 on scene.

13 Q And then the pursuit began?

14 A It began.

15 (WHEREUPON State's Exhibits 6 and 7 are marked for
16 identification.)

17 ATTORNEY OSBORNE: Your Honor, may I approach?

18 Q I'm showing you State's Exhibit No. 6 and State's Exhibit
19 No. 7. Can you take a look at those and tell me if you recognize
20 those.

21 A Yes, sir. This is my whole in-car dash cam from the chase.
22 and this is a clipped in-car dash cam from the case.

23 Q So 6 is your dash cam --

24 A The whole video.

25 Q The whole thing?

1 A The whole video.

2 Q And 7 is just a clip?

3 A Yes, sir.

4 Q Okay.

5 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
6 admit State's 7 into evidence.

7 THE COURT: Any objection?

8 ATTORNEY GAY: No.

9 ATTORNEY HENSLEY: No objection, Your Honor.

10 THE COURT: Thank you. All right, so admitted.

11 (WHEREUPON, State's Exhibit 7 is entered into the record.)

12 Q About how long was this entire chase?

13 A Half an hour, about.

14 Q Okay.

15 A Well, maybe not that long. I'm not entirely sure.

16 Q While this clip represents the whole chase, we're only going
17 to play clips of it, okay.

18 A Okay.

19 Q I'm only going to play portions of the clipped, I should
20 say.

21 ATTORNEY OSBORNE: I know there's a delay to the audio. I
22 don't think it's this long, though. Your Honor, may I just check
23 ahead?

24 A It's a minute.

25 Q Oh, it is a full minute?

1 A It's a full minute.

2 Q Thanks.

3 (Whereupon, State's Exhibit 7 is published to the jury.)

4 Q Okay. What just came out over the radio?

5 A That was Officer Scarborough saying that it was a blue or
6 black CR-V, unsure if it was possibly related.

7 Q Okay. And where have y'all turned just know?

8 A We had just turned onto North Palmetto.

9 (WHEREUPON, the video resumes playing.)

10 Q The vehicle that just passed ---

11 A It was a dark Honda CR-V.

12 (WHEREUPON, the video resumes playing.)

13 Q Okay. We just saw -- what did we just see right there with
14 the CR-V?

15 A It made a left-hand turn onto 78, heading eastbound.

16 Q Is it fair to say right now you can't see it?

17 A Yes, sir. It's out of our view there until we get turned
18 onto Highway 78.

19 Q Okay.

20 (WHEREUPON, the video resumes playing.)

21 Q I just want to point out something for a second. What are
22 we looking at down here on the bottom left of the screen?

23 A That's the speed of the patrol vehicle.

24 Q What speeds does the pursuit take you to at various times?

25 A Over 100 miles an hour further on into it once we get out of

1 town.

2 (WHEREUPON, the video resumes playing.)

3 Q I'm just going skip ahead a little bit, okay. So we stopped
4 about 7:45. Move ahead to about 12:50. Have we got to White
5 Gables yet?

6 A Not yet. It's up around the next bend.

7 (WHEREUPON, the video resumes playing.)

8 Q We've already passed it here?

9 A Yeah. We were almost at White Gables when you moved it.

10 Q All right, sorry. Okay, let me go back. I'm not as
11 familiar with these streets like you. All right. We'll pick up
12 where I stopped it, 7:48.

13 (WHEREUPON, the video resumes playing.)

14 Q I know it's kind of hard to hear, but what was said there?

15 A That was Officer Reynolds telling me that he had just seen a
16 wallet come out of the car. I believe he said exactly, They
17 threw a wallet. And then I relayed that information to dispatch
18 that a wallet was seen coming out of the vehicle in the area of
19 White Gables.

20 Q Okay, all right. So let's marry up that time here.

21 ATTORNEY OSBORNE: Your Honor, may I approach?

22 THE COURT: You may.

23 Q I'm showing you State's Exhibit No. 3, and I'm directing to
24 you page 6. Do you see an entry on there from Officer Reynolds
25 regarding the wallet being discarded from the vehicle around

1 White Gables?

2 A Yes. At 0013, says wallet, looks like it just came out of
3 the window just before White Gables.

4 Q So 12:13? That would have been 12:13 a.m., I guess?

5 A Yes, sir.

6 Q Try to get it right this time. We'll move ahead to 14.

7 (WHEREUPON, the video resumes playing.)

8 Q All right. So is that what you were referring to, with
9 speeds reaching ---

10 A Yes, sir.

11 Q And I understand there's more of it, but ---

12 A Over 100 miles an hour, yes, sir.

13 Q And now moving ahead to 25:10 on the media player.

14 (WHEREUPON, the video resumes playing.)

15 Q Okay. Did you just see something on the roadway?

16 A Yes, sir. It is the pair of -- it was blue clothing in the
17 roadway, or cloth.

18 Q Did you go back later and collect that?

19 A Yes, sir, we did.

20 (WHEREUPON, the video resumes playing.)

21 Q And what do we see coming up here?

22 A It's an orange ski mask.

23 Q Did you collect that later, too?

24 A Yes, sir, we did.

25 (WHEREUPON, the video resumes playing.)

1 Q All right. Can you just explain to the jury what's going to
2 happen here in a minute that's going to help bring this to an
3 end?

4 A Yeah. We were on the radio with Colleton County. They were
5 setting up spike strips. And that's why we left so much of a
6 distance between us and the suspect vehicle, because, you know,
7 we didn't want to get our tires spiked, as well. So we let the
8 gap stretch out, so that way we could not lose our tires.

9 (WHEREUPON, the video resumes playing.)

10 Q In police work, what type of stop is this called?

11 A It's a felony car stop.

12 Q Are there procedures and protocols for this particular type
13 of stop?

14 A We train them a lot, go over them quite a bit. You call the
15 suspects from the vehicle from a position of cover, one by one.

16 (WHEREUPON, the video resumes playing.)

17 Q Was the driver later identified?

18 A Yes, sir. He was later identified as Polo Salazar.

19 (WHEREUPON, the video resumes playing.)

20 Q And this front passenger, was he later identified?

21 A Yes, sir, as Muanah Fortune.

22 Q Are you giving commands on this one?

23 A Yes, sir. That's me giving commands there. The person you
24 heard first was Sergeant Drayton. And it's just, I had a better
25 visual to the passenger's side of the car; he had a better visual

1 to the driver's side of the car.

2 Q Is it fair to say you all go through training on felony car
3 stops?

4 A Quite often.

5 (WHEREUPON, the video resumes playing.)

6 Q And was this rear driver's' side occupant identified?

7 A Yes, sir. It was later identified as Devonte Major.

8 (WHEREUPON, the video resumes playing.)

9 Q All right. And the rear passenger occupant, who was he
10 identified as?

11 A He was later identified as Elijah Green.

12 (WHEREUPON, the video resumes playing.)

13 Q All right. No one else in the car; correct?

14 A Correct, no one else was in the car.

15 Q All right. And I know it's obvious, but, so you were there,
16 corporal, at the time the felony car stop was conducted; you were
17 there when the defendants were taken into custody?

18 A Yes, sir, I was.

19 Q So you had the opportunity to see what they were wearing?

20 A Yes, sir.

21 (WHEREUPON, State's Exhibits 130, 131, 148, 149, 150, 157,
22 158, 159, 201, 202, 203, 204 and 205 are marked for
23 identification.)

24 Q I'm going to show you ---

25 ATTORNEY OSBORNE: And some of this may already be entered,

1 Your Honor.

2 Q --- 130, 131, 204, 205, 148 to 150, 203, 157 through 159,
3 202, 141 to 142 and 201.

4 ATTORNEY OSBORNE: Your Honor, may I approach the witness?

5 THE COURT: You may.

6 Q Tell me if you recognize those photographs.

7 ATTORNEY OSBORNE: And Your Honor, while he's looking at
8 that, for the record, I have provided some time ago a copy of all
9 the exhibits to both defense attorneys, and we've gone over them
10 prior to everybody's testimony.

11 A These are the photographs of the jackets and the shoes that
12 each suspect in the car was wearing.

13 Q Okay. I'll take them back.

14 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
15 admit 130 through 131, 204 and 205, 148 through 150, 203, 157
16 through 159, 202, 141 through 142 and 201.

17 THE COURT: On behalf of Mr. Green, any objection?

18 ATTORNEY GAY: No objection from Mr. Green.

19 THE COURT: Very well.

20 ATTORNEY HENSLEY: No objection, Your Honor.

21 THE COURT: Very well. Thank you.

22 (WHEREUPON, State's Exhibits 130, 131, 148, 149, 150, 157,
23 158, 159, 201, 202, 203, 204 and 205 are entered into the
24 record.)

25

1 Q I will just quickly go through them. Starting with State's
2 130, what are we looking at here?

3 A It's a pair of blue Nikes.

4 Q And who was wearing those shoes, if the bag isn't a
5 giveaway.

6 A I'm sorry. I can't read them from here.

7 Q If you need to get up to see a little closer.

8 A Oh. Elijah Green's shoes. Sorry.

9 Q And 131?

10 A Blue Nikes.

11 Q Just a different angle?

12 A Just a different angle of the same shoes; yes, sir.

13 Q Okay. And 204?

14 A Black jacket.

15 ATTORNEY GAY: Your Honor, I believe we have an objection
16 how it's being handled because he's not doing it from his memory,
17 he's having to look at the pictures and then identify what they
18 are from the pictures.

19 If he doesn't have independent recollection of who this is,
20 he can't testify, because he can't answer the questions.

21 Isn't that what you're concerned about, Ms. Hensley?

22 THE COURT: They're in evidence. If he can identify them in
23 evidence, he certainly can. If he cannot, he cannot.

24 A There was multiple black jackets, so.

25

- 1 Q I'll show you 205.
- 2 A Another black jacket.
- 3 Q 148? What are we looking at in 148?
- 4 A A pair of white shoes, black shoes. Jordans.
- 5 Q Showing you 203?
- 6 A It's an American Eagle Sweater.
- 7 Q Do you remember who was wearing that?
- 8 A The front-seat passenger.
- 9 Q Showing you 157?
- 10 A It's a pair of black shoes. Polo Salazar's shoes, as
- 11 indicated on the evidence bag.
- 12 Q 158?
- 13 A Same shoes.
- 14 Q And 159?
- 15 A Other side.
- 16 Q Showing you 202?
- 17 A It's a camouflaged jacket. That was the driver's jacket,
- 18 Polo Salazar.
- 19 Q You said Polo Salazar was the driver?
- 20 A Yes, sir.
- 21 Q 141, what are we looking at here?
- 22 A Purple shoes.
- 23 Q And do you remember who was wearing those?
- 24 A Devonte Major.
- 25 Q And 142?

1 A Same shoes.

2 Q And lastly, 201?

3 A Another black jacket.

4 Q Okay. All right. Once the pursuit was over, what did y'all
5 do then?

6 A Did a quick sweep of the car for weapons. And then once we
7 got the car secured and other officers were handling that, myself
8 and Officer Reynolds left and collected the evidence we seen
9 coming out of the vehicle.

10 Q Okay.

11 (WHEREUPON, State's Exhibits 83, 84, 168, 169, 170 and 171
12 are marked for identification.)

13 ATTORNEY OSBORNE: Your Honor, may I approach?

14 THE COURT: You may.

15 Q I'm showing you 168 through 171, and I'll go ahead and show
16 you 83 and 84, as well. And if you could ---

17 A Describe what I'm looking at?

18 Q Well, and describe the exhibit number and what you're
19 looking at.

20 A Exhibits 168 and 169 are the blue coat/coveralls that were
21 recovered from the middle of the roadway. Exhibits 170 and 171
22 is the orange ski mask that we recovered from the roadway. And
23 Exhibits 83 and 84 is the wallet that we discovered from the side
24 of the roadway. We recovered it from the side of the roadway
25 just before White Gables.

1 Q And just for the record, those are photographs of those
2 items; correct?

3 A Yes. Those are photographs of the exterior of the wallet,
4 as well as the interior of the wallet.

5 ATTORNEY OSBORNE: Your Honor, at this time we seek to admit
6 168 through 171, 83 and 84.

7 ATTORNEY GAY: No objection from Mr. Green.

8 THE COURT: From Mr. Green. On behalf of Mr. Major?

9 ATTORNEY HENSLEY: Without objection.

10 THE COURT: Very well. They're entered.

11 (WHEREUPON, State's Exhibits 83, 84, 168, 169, 170 and 171
12 are entered into the record.)

13 Q Starts out by showing you 168. I know you already said it
14 but, what are we looking at here?

15 A It's the blue coveralls that we recovered from the roadway.

16 Q And when I stopped the video, is this what --

17 A That's what we seen tumbling down the roadway.

18 Q And just to kind of put it in perspective, because I know I
19 stopped it a couple times, how far before the felony car stop was
20 it that this was recovered, about?

21 A Probably about a mile. A mile and a half, tops.

22 Q And then 169?

23 A Same coveralls, just the backside.

24 Q And what is 170?

25 A It's the orange ski mask.

1 Q And again, about how far prior to the felony car stop was
2 this recovered?

3 A If the coveralls were a mile and a half, this was probably
4 about a mile. A little bit further down the road.

5 Q And then showing you 171?

6 A It's the back of the ski mask.

7 Q While I have this up here, these notations right here, the
8 34.1 and everything ---

9 A It didn't have any of that on it when we recovered it.

10 Q Okay. Two more. Showing you State's 83?

11 A It's the wallet we recovered from the shoulder of the road
12 just before White Gable's Drive, plus off of Central Avenue.

13 Q And 84?

14 A Same wallet, just the inside of it.

15 Q Okay. And what is the name on the D.L?

16 A That's Joe Weaver.

17 Q All right. So in relation to the overalls, the photograph
18 that we saw of the navy overalls, did you or Officer Reynolds do
19 a thorough search of those overalls before they were turned over
20 to crime scene?

21 A We didn't, we didn't do a thorough search. We did a quick
22 pat-down for any firearms. And when we didn't feel any firearms
23 in them, we threw it in an evidence bag and continued to collect
24 other evidence.

25 Q Why not?

1 A We knew we were looking for firearms because firearms were
2 used in the crime, so.

3 Q No. I mean why would you not conduct a thorough search of
4 the overalls?

5 A Didn't want to taint the evidence in any kind of way.

6 Q Did you find any weapons in the overalls? Or any guns, I
7 guess.

8 A No, sir.

9 Q Okay.

10 (WHEREUPON, State's Exhibits 212 and 213 are marked for
11 identification.)

12 ATTORNEY OSBORNE: Your Honor, may I approach?

13 Q I'm going to show you 212 and 213. And I know this is kind
14 of a cumbersome request. Do you recognize those items?

15 A Aerial maps of the area where the chase went through.

16 Q Both -12 and -13, 212 and 213?

17 A Yes, 212 and 213.

18 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
19 admit 212 and 213 into evidence.

20 ATTORNEY GAY: No objection from Mr. Green.

21 THE COURT: All right.

22 ATTORNEY HENSLEY: Without objection.

23 THE COURT: Very well. They are in.

24 (WHEREUPON, State's Exhibits 212 and 213 are entered into
25 the record.)

1 Q So I realize this is going to be really tough and there's
2 really no better way that I can find to present it but, just, if
3 you could, generally speaking, I'm going to ask you to point out
4 some locations, okay.

5 A Okay.

6 Q And then we'll start with 212. Just generally, whereabouts
7 did the pursuit begin?

8 A This is ---

9 Q You're going to have to speak up real loud. I'm sorry.

10 A This is Highway 78 right here, coming down like so. And
11 this is North Main Street. So this would be Cedar. So North
12 Palmetto, that's Daniel's Orchard there, so North Palmetto would
13 be right here. So the pursuit started right in this area.

14 Q Okay. And then where did it proceed? And then as it's
15 going through, if you could just mark the location that you
16 recovered the wallet.

17 A Okay. Started in this area. Made a left-hand turn
18 eastbound on Highway 78 to North Cedar. Made a right-hand turn
19 onto North Cedar heading southbound. North Cedar, that's where
20 the railroad tracks are. North Cedar turns into Central Avenue,
21 so we continued down Central Avenue, which is this long road
22 right here, Central Avenue through here. This is the
23 neighborhood of White Gables. The wallet was located on the
24 shoulder of the road just in this area here.

25 Q Okay. So that was pretty early on in the chase, is that

1 fair to say?

2 A Yes, sir.

3 Q And then moving on to 213. I know we're back out a good
4 bit, but just generally speaking, where'd y'all go from there?

5 A Sorry. It's very, very far out. Central Avenue to 17,
6 right through, down here towards Cottageville. I believe the car
7 was spike-stripped just after Cottageville, maybe somewhere in
8 this area.

9 Q Okay. That's good.

10 A This is all 17. Made the right-hand turn from Central
11 Avenue. You can barely see it, but that's Central Avenue coming
12 down. Made the right onto Highway 17 from Central, and continued
13 on down through.

14 Q All right, thanks. So we talked about, so far we talked
15 about, three things that were collected, the wallet, the jumpsuit
16 and the ski mask, the orange ski mask.

17 A Yes, sir.

18 Q Do you know for sure -- and I know we've got some other
19 stuff -- but in relation to the back end of the chase, are you
20 for sure that y'all collected everything that was thrown out of
21 the car during that chase?

22 A Not sure that we collected everything. There could have
23 been other things thrown out that we didn't see. But everything
24 that we saw, we collected.

25 Q After collecting those items did you have the occasion to

1 respond back to the incident location, ■■■ Myrtle?

2 A Yes. I was actually requested by my supervisors to go back
3 to the scene to utilize my K-9 partner to conduct an article
4 search around the residence.

5 Q What does that mean, conduct an article search? And what is
6 your K-9 trained to do in that?

7 A He's trained to locate evidence that is left behind after
8 the fact. He alerts to the human odor that is left on those
9 items or the fresh odor in that sterile area. We ran him up and
10 down the ditch line behind the residence, through the back yard
11 of the residence. And we didn't locate anything.

12 Q Okay. Didn't locate any weapons or anything around the
13 house?

14 A No, sir, we didn't.

15 Q Did you observe anything else of potential interest in this
16 investigation?

17 A The muddy ditch behind the house had some fresh footprints,
18 what appeared to be fresh footprints, going through it.

19 Q Okay, said behind the house. Do you remember if there was a
20 fence behind the house?

21 A I don't remember. I'm sorry.

22 Q And you said muddy prints. Do you remember where the prints
23 were? And when you say prints, you mean footprints, I guess?

24 A Just, they didn't have any definition to them or anything,
25 from what I remember. It just looked like the mud had recently

1 been walked through ---

2 Q Okay.

3 A --- when we were back there searching it.

4 Q Okay. After y'all didn't locate any firearms at the
5 residence, what did y'all do then?

6 A We went back to the one place where we didn't have eyes on
7 the vehicle, which was right there off of Highway 78 where the
8 car made the left-hand turn and then continued eastbound on
9 Highway 78. We lost visual for that short section, so I wanted
10 to go back and check that area to see if we could locate
11 anything.

12 Q Okay. And did you locate anything there?

13 A We located four firearms. Yes, sir.

14 Q Four firearms?

15 A Yes, sir. I don't know the exact distance, but within a
16 short distance down the shoulder of the road.

17 (WHEREUPON, State's Exhibits 13, 14, 15 and 16 are marked
18 for identification.)

19 Q I'm showing you State's 13, 14, 15 and 16.

20 ATTORNEY OSBORNE: And, Your Honor, those are all locked,
21 they have gun locks. Secured.

22 THE COURT: Very well. Thank you.

23 Q Can you tell me, do you recognize each of those items?

24 A Yes, sir. These are the four firearms we located on the
25 shoulder of the road.

1 Q Okay. And what did you do after you located those firearms?

2 A After we located each firearm, it was put over the radio
3 that we had located another firearm. And we stood by on scene
4 until Detective Brooks arrived to collect them.

5 Q But those are the firearms that you saw and located?

6 A Yes, sir. I assisted Detective Brooks in measuring the
7 scene as to where each firearm was and stood by while he
8 collected them. And then I turned the other evidence that we
9 collected off the shoulder of the road over to Detective Brooks.
10 And that was it.

11 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
12 admit 13, 14, 15 and 16 into evidence.

13 THE COURT: Any objection?

14 ATTORNEY GAY: I'd like to consult co-counsel.

15 THE COURT: Certainly.

16 ATTORNEY GAY: Your Honor, I would object for lack of
17 establishing the chain at this point. I don't think it's
18 appropriate to admit them with this witness. I think there's a
19 different witness that will need to be involved.

20 ATTORNEY OSBORNE: I always forget the terms. It's either
21 fungible or not nonfungible. But either way, this is definitely
22 identifiable evidence that has specific, unique characteristics.
23 And he's the officer who located them. However, Detective Brooks
24 will be testifying next.

25 THE COURT: All right. Very well. Sustained.

1 ATTORNEY OSBORNE: Thank you. No further questions.

2 THE COURT: All right. Yes, ma'am. Cross-examination?

3 ATTORNEY GAY: One moment, Your Honor.

4 THE COURT: Yes.

5 **CROSS-EXAMINATION**

6 BY ATTORNEY GAY:

7 Q Good morning, sir. I'm Melisa Gay, and I represent Elijah
8 Green. How are you today?

9 A I'm doing well. How are you?

10 Q Good. Okay. So we -- I'm always curious, what kind of car
11 were you driving, because ---

12 A A Ford Explorer.

13 Q A Ford Explorer?

14 A Yes, ma'am. K-9 vehicle, it's a Ford Explorer.

15 Q Okay, great. And you said that that K-9 how now been
16 retired and you now have a new K-9?

17 A Yes, ma'am.

18 Q So on that night, when we were watching your video you said
19 the first minute or so you're getting the call that an incident
20 happened on Myrtle Lane, and you're just sort of in pursuit to go
21 there initially?

22 A Yes, ma'am.

23 Q And then it wasn't until you passed this Honda that you
24 decided to turn around and follow it?

25 A I'm sorry?

1 Q Nobody told you -- okay, this is my question. Did y'all
2 have Intel, did somebody put out that there was a black Honda
3 that you're supposed to be looking for, or did you just see and
4 it decide to turn around?

5 A No. Officer Scarborough had seen the car further back in
6 the neighborhood and said that it had possibly been involved.

7 Q And then we watched the pursuit, so we saw what went on.
8 And you would agree with me that at no time did y'all ever see
9 any guns be thrown out of the car?

10 A No, ma'am. No firearms.

11 Q No firearms. And then it was the other officer, Reynolds,
12 who actually said that he saw a wallet fly out the car. You
13 didn't see the wallet fly out of the car?

14 A Yes, ma'am. I was busy operating controls and stuff in the
15 car so he could focus on driving so he was 100 percent on the
16 road.

17 Q And everything that happened, you know, with the dash cam,
18 everything that happened with the car that y'all are pursuing, we
19 see. I mean, it's like a little movie. That's the beauty of the
20 dash cam.

21 A Yes, ma'am.

22 Q And then as the items started appearing in the roadway, you
23 didn't see them come out of the car; you just saw them in the
24 roadway as you were driving over them?

25 A I believe it was the coveralls that were actually still

1 tumbling down the roadway when we were approaching them.

2 Q Well, a car going 100-and-something miles an hour had just
3 passed over them, and so why they were tumbling down the roadway
4 is speculation at this point. Wouldn't you agree?

5 A I agree.

6 Q And with regard to the mask, it wasn't tumbling down the
7 roadway; it was just laying in the road?

8 A Yes, ma'am.

9 ATTORNEY GAY: One moment, Your Honor. I just want to
10 confer with my client.

11 I have no further questions for Officer Cramer at this time.

12 THE COURT: Very well. Yes, ma'am.

13 ATTORNEY HENSLEY: Thank you, Your Honor.

14 THE COURT: Yes.

15 **CROSS-EXAMINATION**

16 BY ATTORNEY HENSLEY:

17 Q Good morning. Is it Officer Cramer or Corporal?

18 A Corporal, yes.

19 Q Corporal Cramer.

20 A You can call me officer. That's fine.

21 Q I'm Laree Hensley, I'm Devonte Major's lawyer.

22 A Hello.

23 Q I have a couple of questions. First, does your K-9 also do,
24 like, free air sniffs for drugs?

25 A Yes, ma'am.

- 1 Q So you know about drugs; right?
- 2 A Yes, ma'am.
- 3 Q So if you conducted a free air sniff of the vehicle and
- 4 found 31.29 grams of meth, that would be a lot of meth; right?
- 5 A 31.3 grams of meth? Yes, ma'am, that's a good bit of meth.
- 6 Q That is a whole lot; right?
- 7 A Yeah. It's over an ounce.
- 8 Q So meth starts out, like, for possession of meth, that's,
- 9 like, less than one gram; right?
- 10 A Less than a gram.
- 11 Q And then possession with an inference of an intent to
- 12 distribute ---
- 13 A Over a gram.
- 14 Q --- over a gram. And then trafficking --
- 15 A Ten grams.
- 16 Q --- has levels; right?
- 17 A Ten grams.
- 18 Q So 10 grams. Twenty-eight. Trafficking's the first level;
- 19 right?
- 20 A Yes, ma'am.
- 21 Q The second level's like 28 to 100, right, 100 grams?
- 22 A I believe so. I'm not 100 percent on that.
- 23 Q But we're in the second level of trafficking if we have
- 24 31.29 grams; right?
- 25 A For methamphetamine? Yes, ma'am.

1 Q Sure. And if we had 234 grams of marijuana?

2 A 234 grams? That would be possession with intent to
3 distribute. It wouldn't be ---

4 Q About half of a pound; right?

5 A Yeah, about half a pound.

6 Q And when the objects were coming out of the car, the objects
7 were on the road. Right?

8 A Yes, ma'am.

9 Q You could definitely tell that you had passed an orange
10 object; right?

11 A Yes.

12 ATTORNEY HENSLEY: That's all the questions I have. Thank
13 you.

14 THE COURT: Any redirect?

15 ATTORNEY OSBORNE: No, Your Honor.

16 THE COURT: And is this witness free to leave?

17 ATTORNEY OSBORNE: Yes, Your Honor.

18 THE COURT: Any objection?

19 ATTORNEY GAY: No, Your Honor.

20 ATTORNEY HENSLEY: No, Your Honor.

21 THE COURT: Thank you. You are free to go.

22 THE WITNESS: Thank you.

23 THE COURT: We're going to take our morning break. Ladies
24 and gentlemen, we are now going to take our morning break.
25 Please step your jury room. Remember, do not discuss this matter

1 or allow anyone to discuss it with you. Leave your notepads in
2 your seats. And we are going to take 12 minutes. We will
3 reconvene at 12:00. Thank you.

4 (WHEREUPON, the jury is escorted out of the courtroom at
5 11:50 p.m.)

6 (WHEREUPON, court recessed at 11:51 p.m. and reconvened at
7 12:41 p.m.)

8 THE COURT: Ladies and gentlemen, I hope you enjoyed your
9 break. And thank you for the time for us to do the work that we
10 needed to do. So thank you so much for that.

11 Now that we have reached this point and done the work that
12 we did, we probably shortened some things up, perhaps, for a
13 little bit. Our next witness appears to be someone who would be
14 lengthy. And the question then becomes for the judge, do you
15 start and go for 20 minutes and then you take lunch, or do you go
16 ahead and you take lunch when there's already a break, get people
17 to do that, and come on back and do it in -- sessions are closer
18 together. In my experience, it's better when you can do it
19 together. And so that's what we're going to do.

20 So we're going to go ahead and take lunch, and we're going
21 to start back at 2:00. That gives you a little bit more time.
22 Since yesterday we had lunch in, some folks stayed in, some folks
23 went out. But today you will find yourself lunch somewhere along
24 Highway 78. And we will reconvene at 2:00.

25 I do need you to be mindful, do not discuss this matter or

1 allow anyone to discuss it with you. If you happen to see anyone
2 that has anything to do with the trial coming and going from the
3 courthouse, just be mindful that they will not be speaking with
4 you. And please know they are not being rude.

5 And cellphones. We now have a cellphone spot. How are
6 we -- these folks are now going to want their cellphones. Your
7 cellphones, do you know where they are? I know where they are.
8 My bailiffs will make sure you have your cellphones during lunch.
9 And I will see you at 2:00. Thank you so much.

10 (WHEREUPON, the jury is escorted out of the courtroom at
11 12:44 p.m.)

12 THE COURT: Can we do anything to prepare for this next
13 witness? Any issues that could come up, are we going to do them
14 now?

15 ATTORNEY OSBORNE: I don't think so, Judge. I showed them
16 all the pictures again, so.

17 THE COURT: Very well. I'm going to come out probably a
18 little before 2:00 to make sure there aren't any issues. I know
19 y'all will let me know that.

20 And the note, I did get another note. We'll mark it. They
21 can't hear. So we're continuing -- so whatever we can do about
22 microphones, jack them up, let's do it. Thank you.

23 (WHEREUPON, Court's Exhibit 6 is marked for identification.)

24 (WHEREUPON, court recessed at 12:45 p.m. and reconvened at
25 2:14 p.m.)

1 (WHEREUPON, the jury is seated in the courtroom at 2:13
2 p.m.)

3 THE COURT: All right. Ladies and gentlemen, at this time
4 we will continue with the state's case. Would you please call
5 your next witness.

6 ATTORNEY OSBORNE: The state calls Detective Matthew Brooks.

7 CLERK OF COURT: If you'll please raise your right hand, and
8 state your full name for the record.

9 THE WITNESS: Matthew Adam Brooks.

10 CLERK OF COURT: If you'll spell your last name for the
11 record.

12 THE WITNESS: B-r-o-o-k-s.

13 MATTHEW ADAM BROOKS,

14 having first been duly sworn, was examined and testified as
15 follows:

16 THE COURT: And if you would state your full name.

17 THE WITNESS: Sorry, Your Honor?

18 THE COURT: I'm going to ask you to state your full name
19 again as you sit before the microphone. It will be a bit of a
20 sound check, if you will, because I need to be sure that our
21 jurors can hear you.

22 THE WITNESS: Matthew Adam Brooks.

23 THE COURT: Everybody good? Yes. Thank you. All right.
24 You may proceed.

25 ATTORNEY OSBORNE: Thank you.

DIRECT EXAMINATION

BY ATTORNEY OSBORNE:

Q All right, Detective Brooks. Where are you currently employed?

A I am currently employed with the Summerville Police Department.

Q All right. And how long have you been with Summerville?

A I've been with the Summerville Police Department for seven years.

Q Any prior law enforcement experience?

A I served one year with the North Myrtle Beach Police Department, and I had eight years as a volunteer police officer up in New Jersey.

Q What have been some of your various assignments with Summerville?

A I have been assigned to patrol team, Team 4, as well as the vice team. I was a field-training officer. And currently assigned to the forensics unit.

Q What do you do in the forensics unit?

A Summerville Forensics Unit is actually a combination of crime scene, as well as evidence technician. We married together and have one division.

Q I think we're going to be talking about both during this case. But in reference to crime scene investigation, I know we've all seen TV, but what are some of the things that you do as

1 a crime scene investigator?

2 A Primary focus for us is to preserve the evidence on the
3 scene. Photograph/document the scene as best we can, and collect
4 evidence for appropriate testing and analysis.

5 Q Okay. And did you go through any training as part of your
6 position there with Summerville?

7 A I had in-house training for crime scene collection, evidence
8 collection, processing, photography, as well as I have attended
9 the academy's crime scene course, and taken various other
10 disciplines such as blood splatter analysis and fingerprint
11 recognition.

12 Q Let's go back to the night of January 27, 2019, going into
13 January the 28th. Were you working that night?

14 A I was off work that night but I was the on-call CSI for the
15 department.

16 Q Were you called out for this case?

17 A I was.

18 Q Or this incident, I guess.

19 A Yes, sir.

20 Q All right. So now as a crime scene detective, and you
21 respond to the scene of a crime, you know, much like this one, I
22 guess -- well, let's talk about residences in particular. How do
23 you go about processing a residence for evidence?

24 A The first thing that I do when I get to the scene, in this
25 case the residence, is I photograph the exterior from multiple

1 angles and multiple sides, to document the scene upon my arrival.

2 Q Okay. And that being the outside; right?

3 A Yes, sir.

4 Q All right.

5 (WHEREUPON, State's Exhibits 27, 28, 29, 30, and 31 are
6 marked for identification.)

7 ATTORNEY OSBORNE: Your Honor, may I approach?

8 THE COURT: Yes, you may.

9 Q And now we kind of see why I did this in the order that I
10 did. Some of this might be duplicative, but I'm going to go
11 ahead and do it all. I'm showing you State's 26 through 32. Can
12 you tell me if you recognize those photographs? And just
13 generally speaking, I think, will suffice for this.

14 A I do.

15 Q And what are they?

16 A These are photographs I took at the scene.

17 Q And do State 26 through 32 fairly and accurately depict the
18 outside of the residence, or the scene?

19 A They do.

20 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
21 admit 26 through 32 into evidence.

22 THE COURT: Ms. Gay, any objection on behalf Ms. Green?

23 ATTORNEY GAY: No objection.

24 THE COURT: Ms. Hensley, on behalf of ---

25 ATTORNEY HENSLEY: No objection.

1 THE COURT: All right.

2 (WHEREUPON, State's Exhibits 27, 28, 29, 30 and 31 are
3 entered into the record.)

4 Q Some of these questions maybe kind of silly, but I'm just
5 going to announce exhibit, and you describe what we're looking
6 at.

7 A Yes, sir.

8 Q All right. We'll start with State's 26?

9 A That is the front exterior of the residence that I responded
10 to.

11 Q Okay. Twenty-seven?

12 A This is the backside.

13 Q So if I were facing the residence, is this to the right or
14 the left?

15 A This would to be to the right side of the rear of the
16 residence.

17 Q Twenty-eight?

18 A Slightly to the left of the last photo.

19 Q Twenty-nine?

20 A This is partly to the left, more towards the left side of
21 the yard.

22 Q And what is my curser moving over here?

23 A That is a chain-link fence.

24 Q I didn't show it in the other photos, but did you see that
25 in 27, as well, and 28?

1 A There was on the right side. I do not recall if there was a
2 fence that wrapped around the very back of the yard.

3 Q Okay. And 30?

4 A That's the back of the residence, including the back door,
5 which is on the left there.

6 Q And 31?

7 A That's an additional photo of the back of the residence.
8 That's the back door.

9 Q Got one more. Thirty-two.

10 A That was a moped that was parked in the front driveway in
11 front of the residence.

12 Q Okay. After you photographed the outside of the residence I
13 take it you moved into the inside?

14 A Yes, sir.

15 Q And walk us through your process then.

16 A In entering the residence, I photographed the scene as it is
17 prior to moving or manipulating anything so that I can document
18 the scene as it was upon my arrival.

19 After I photographed the scene, I then mark up evidence as
20 found. The items are rephotographed in place. And then a
21 further, more evasive search takes place.

22 (WHEREUPON, State's Exhibits 35, 36, 37, 38, 39, 40, 41, 42,
23 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58,
24 59, 60, 61, 62, 63, 64, 65, 68, 70, 71, 72, 73, 74, 75, 77, 78
25 and 81 are marked for identification.)

1 ATTORNEY OSBORNE: Your Honor, may I approach?

2 THE COURT: You may.

3 Q And again, just generally speaking here -- if we need to
4 hammer down on specific exhibits, we can -- but I'm showing
5 what's been marked as State's 33, to, I think, 80, 81. Do you
6 recognize those items?

7 A Yes, sir.

8 Q Not 81. Minus 81. So 33 through 80.

9 A Yes, sir. These are photographs I took inside the
10 residence.

11 Q And do those photographs fairly and accurately depict how
12 the residence was that night as you saw it and as you processed
13 the scene?

14 A Yes. That's an accurate representation, upon my arrival,
15 what the scene looked like.

16 ATTORNEY OSBORNE: Your Honor, at this time the state seeks
17 to admit State's 33 to 80 into evidence.

18 ATTORNEY GAY: No objection from Mr. Green.

19 ATTORNEY HENSLEY: Without objection.

20 THE COURT: Thank you. All right, they're in.

21 (WHEREUPON, State's Exhibits 35, 36, 37, 38, 39, 40, 41, 42,
22 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58,
23 59, 60, 61, 62, 63, 64, 65, 68, 70, 71, 72, 73, 74, 75, 77 and 78
24 are entered into the record.)
25

1 Q We're just going to do the same little dance here, okay.

2 A Yes, sir.

3 Q I'm showing you State's 33?

4 A Yes, sir. That's the front entranceway. You actually see
5 the door handle for the front door on the left side of the
6 screen. And that's from the door frame. I'm photographing into
7 the living room.

8 Q Thirty-four?

9 A That's the kitchen, just past where the front entranceway of
10 the living room.

11 Q All right. And from here, where would the back door to the
12 residence be?

13 A It's actually to the left of the refrigerator. If you see
14 it, on the left side of the screen there is a little bit of a
15 line that's actually the edge of the wall, and it leads to a wash
16 area that the door was located next to.

17 Q Thirty-five?

18 A That is the table that's in the kitchen, just next to the
19 hallway and the living room.

20 Q Thirty-six?

21 A That is to the side of the table, again, inside the kitchen.

22 Q And I want to draw your attention back here in the back.
23 Kind of hard to see, but what are we looking at back here?

24 A That is crime scene marker 7, and that's under the table.

25 Q Okay. So we're still in the kitchen area; right?

- 1 A Yes, sir.
- 2 Q Thirty-seven?
- 3 A That's an additional photograph of marker 7.
- 4 Q And just explain what are you doing with these markers.
- 5 A The yellow markers, I place down with items that are of
- 6 evidentiary value. I place those next to the items before I move
- 7 or manipulate them or collect them so that I can document their
- 8 resting position where they were initially located.
- 9 Q Thirty-eight?
- 10 A An additional photograph of marker 7 with the evidence.
- 11 Q Okay. And if you need to refer to your notes, I think it's
- 12 fine. What are we looking at here with marker 38? Or, marker 7,
- 13 State's 38.
- 14 A Marker 7 was a spent shell casing, a 9-millimeter blazer.
- 15 Q Thirty-nine?
- 16 A Further photographs of the kitchen area.
- 17 Q And I think we're going to move in here after this. What
- 18 are we looking at here on the chair?
- 19 A That is a red duffel bag.
- 20 Q All right. Forty?
- 21 A Further photographs of the red duffel bag on the chair.
- 22 That's in the kitchen.
- 23 Q Forty-one, I see a marker here, a Y?
- 24 A Yes. It was established for marker Y for that evidence.
- 25 Q And what was marker Y?

1 A Inside the red bag, I located a black wallet, as well as the
2 notepad. The notepad was actually sitting right next to it.

3 Q I'm just going to change gears here real quick for a second,
4 and I want to show you what's already been marked and admitted as
5 State's 120 and 121. I'm showing 120 first, and 121. Are these
6 photographs of the notepad?

7 A Yes. That's the notepad that was inside the duffel bag.

8 Q Okay. We left off here with 41. So we'll move on into
9 State's 42.

10 A This is back by the table, leading towards the back door.

11 Q And what are we looking at? I know this shot's blurry.
12 We'll try to get a better one inside the shoe here.

13 A That was a spent shell casing that was located inside the
14 shoe.

15 Q Forty-three?

16 A That's a further shot of the spent casing inside the shoe.

17 Q All right. And 44?

18 A That is marker 14 to establish marking up that shell casing.

19 Q Okay. And what is that marker 14, or shell casing?

20 A That was a spent shell casing, a Blazer 9-millimeter Luger.

21 Q Okay. All right. Forty-five?

22 A This is, again, between the table in the kitchen and the
23 back door, marker no. C.

24 Q All right. Forty-six?

25 A A further photograph of marker C with the evidence.

- 1 Q All right. And what is marker C?
- 2 A Marker C was a spent shell casing, AFC 9-millimeter Luger.
- 3 Q Okay. Forty-seven?
- 4 A An additional photograph of the table inside the kitchen.
- 5 Q All right. And 48?
- 6 A That was a tipped-over mason jar containing a green,
7 plant-like material.
- 8 Q And we're still in the kitchen know?
- 9 A Yes, sir. This was on top of the kitchen table.
- 10 Q And 49?
- 11 A That was when I established marker 12 for the mason jar.
- 12 Q Fifty?
- 13 A That is -- it's hard to see in this, but there is a spent
14 shell casing actually on the table.
- 15 Q Okay. I might have a better one. Fifty-one?
- 16 A Yes, sir. That's marker 13, next to the spent shell casing.
- 17 Q Okay. And what is marker 13 again?
- 18 A Marker 13 was an FC 9-millimeter Luger spent shell casing.
- 19 Q All right. Fifty-two?
- 20 A That is one of the couches inside the living room.
- 21 Q Fifty-three?
- 22 A Some of the seat cushions for the couch, as well as some
23 evidence located, in the living room.
- 24 Q All right. And I think that's the evidence. Fifty-four?
- 25 A Yes, sir. That's the evidence, as well as crime scene

1 marker no. 5.

2 Q And what is crime scene marker no. 5?

3 A Marker no. 5 was an FC 9-millimeter shell casing.

4 Q Okay. Fifty-five?

5 A That is, again in the living room, an additional piece of
6 evidence located.

7 Q All right. Fifty-six?

8 A And that is the evidence, as well as crime scene marker
9 no. 6.

10 Q Which is?

11 A That is another spent shell casing, an FC 9-millimeter
12 casing.

13 Q Okay. Fifty-seven?

14 A Okay, it's hard to see. It's actually at the bottom of the
15 screen. That's evidence located in the living room, right in
16 front of the coffee table.

17 Q Okay. A little bit better, but 58?

18 A It's, again, hard to see. I believe that's going to be
19 crime scene marker 8 in front of the coffee table, in the living
20 room.

21 Q Okay. And what is crime scene marker no. 8?

22 A That was a spent shell casing, an RP 9-millimeter Luger
23 casing.

24 Q So if I've heard you correctly, so far you have recovered a
25 Blazer 9-millimeter Luger; one -- or, two Blazer 9 millimeter

1 Luger fired shell casings; and one, two, three, four, five
2 9-millimeter Luger, or four 9-millimeter Luger FC shell casings,
3 and one RP?

4 A Yes, sir.

5 Q All 9-millimeters?

6 A All 9 millimeter casings.

7 Q Fifty-nine?

8 A Fifty-nine is the evidence located on the carpet inside the
9 living room.

10 Q Sixty?

11 A An additional photograph of evidence located on the carpet
12 in the living room.

13 Q Okay. And 61?

14 A That is a photograph of crime scene marker 9, which I placed
15 next to the evidence that was located on the carpet.

16 Q All right. What is 9?

17 A Crime scene marker 9 was a spent projectile.

18 Q Sixty-two?

19 A Those are pants that were located on the carpet in the
20 living room.

21 Q Sixty-three?

22 A That was evidence that was located under the pants when we
23 moved them.

24 Q Going back to 62 for a second, can you tell what that is on
25 the boot -- on the belt there?

- 1 A I'm unable to tell.
- 2 Q Okay. All right. Sixty-three, is that another piece of
3 evidence?
- 4 A Yes, sir. That was under the pants.
- 5 Q Sixty-four?
- 6 A That's with an evidence marker next to the piece of evidence
7 that was located under the pants.
- 8 Q All right. And what is marker no. 10?
- 9 A No. 10 was an additional spent projectile.
- 10 Q Sixty-five?
- 11 A That is in the living room, leading up to the hallway. And
12 that is a blood -- or, a blood pooling location, designated
13 marker 11.
- 14 Q Okay. Sixty-six?
- 15 A This is the back door on the interior side, the deadbolt and
16 the handle.
- 17 Q Okay. Did you see any damage to the frame of the back door?
- 18 A No, sir.
- 19 Q Was this the back door that was to the kitchen? Was this
20 the door ---
- 21 A Yes, sir. This is the back door to the residence that was
22 located just adjacent to the kitchen.
- 23 Q Okay. Sixty-seven?
- 24 A This is the hallway.
- 25 Q Sixty-eight?

- 1 A This is the back, right bedroom.
- 2 Q All right. Sixty-nine?
- 3 A An additional photograph of the back, right bedroom.
- 4 Q Seventy?
- 5 A An additional photograph of the room.
- 6 Q Seventy-one?
- 7 A That is the closet in the back, right bedroom.
- 8 Q And 72?
- 9 A That is a black leather jacket that was hanging up inside
- 10 the closet.
- 11 Q All right. And I see you have a marker S there.
- 12 A Yes, sir. There were items located on an interior pocket of
- 13 the jacket, so the jacket and the contents were designated
- 14 marker S.
- 15 Q Okay. And 73 shows what?
- 16 A The retrieval of those items from the interior pocket.
- 17 Q Seventy-four?
- 18 A You're looking at a, the top of a, jar, as well as plastic
- 19 bags, all found to contain a green, plant-like material
- 20 consistent with marijuana.
- 21 Q Seventy-five?
- 22 A The recovered plastic bags with the suspected marijuana.
- 23 Q Seventy-six?
- 24 A The jar that was underneath the plastic bags, again,
- 25 containing plastic bags with suspected marijuana.

1 Q And 77?

2 A That is the top shelf of the closet in the back, right
3 bedroom. Between the clothing, there was a firearm that was
4 located.

5 Q And I think you're just marking it here with placard P?

6 A Yes, sir. It was designated marker P for the paragraph.

7 Q All right, that was 78.

8 A Yes, sir.

9 Q Now 79?

10 A This is in the back, right bedroom closet. On the left
11 side, there was a dresser. On the top drawer, there was a
12 plastic bag, again containing green, plant-like material
13 consistent with marijuana.

14 Q All right. Eighty?

15 A This is the back, right bedroom. There was a deceased
16 canine that was on the bed.

17 Q And that's the same bedroom in which the marijuana was
18 recovered?

19 A Yes, sir.

20 Q Okay.

21 ATTORNEY OSBORNE: Beg the Court's indulgence.

22 (WHEREUPON, State's Exhibits 18, 19, 20, 21, 23 and 24 are
23 marked for identification.)

24 Q Okay. I'm going show you State's 18, 19, 20, 21 and 24.

25 Can you take a look at those and tell me if you recognize those.

1 A Yes, sir. This is evidence that was collected. Some of it
2 looks like evidence that was processed by SLED. All from the
3 scene.

4 Q So for this one, I'm going to ask you to hammer down a
5 little bit, okay.

6 A Yes, sir.

7 Q And I'm going to show you 23, as well. If you could, just
8 publish the exhibit number, say what exhibit number it is, and
9 tell me if you recognize what's in there ---

10 A Yes, sir.

11 Q --- as what it is.

12 A Item no. 21 is the mason jar that was located on the kitchen
13 table inside the residence, containing the green, plant-like
14 material that was consistent with marijuana.

15 Can I open the sticker?

16 Q Yes.

17 A Just want to make sure I'm not ... State's 23 is from
18 marker Y. That's the notebook that was recovered inside the
19 duffel bag.

20 State's 18 are two projectiles that were recovered from the
21 living room inside the residence, markers no. 9 and 10.

22 State's 19 are the extracts that were collected from the DNA
23 swab that I took from marker no. 11, the bloodstain on the carpet
24 inside the living room.

25 Q And just ---

1 A As well as, it looks like I have a second envelope in here.
2 One second. And it looks like from an additional blood swab.

3 Q And just stop right there for one second. Whenever you're
4 doing blood swabs, what does that mean exactly?

5 A What it is, is I take a sterile swab, a Q-tip, pretty much,
6 and what I will do is, with gloved hands, I'll go to whatever I'm
7 trying to collect, take the swab, go directly down into it, swirl
8 it slightly, straight up, and I repackage it and, at that point,
9 I change gloves.

10 Q Okay.

11 A State's No. 20 is going to be DNA extract from the swab that
12 I took inside the deceased canine's mouth.

13 State's 24 are the gloves that were recovered outside the
14 residence around the corner from the actual incident location.
15 They're latex-style gloves.

16 Q And those latex-style gloves, were they consistent with any
17 other gloves that you're familiar with?

18 A They were consistent with the same type of gloves that EMS
19 was wearing.

20 Q And was EMS called out to the scene?

21 A They were.

22 Q I think that's it; right?

23 A Yes, sir.

24 ATTORNEY OSBORNE: Your Honor, at this time I'd seek to
25 admit 18, 19, 20, 21, 23 and 25 into evidence.

1 ATTORNEY GAY: One moment, Your Honor.

2 ATTORNEY OSBORNE: Oh, 24. Twenty-three and 24.

3 Twenty-five is already in.

4 ATTORNEY GAY: Your Honor, at this time I would make a
5 motion that this not be admitted yet. I do think that the chain
6 is still an issue and that additional witnesses would be required
7 before it's admitted.

8 ATTORNEY OSBORNE: That's fine.

9 THE COURT: Okay.

10 Q One other item for ID purposes.

11 ATTORNEY HENSLEY: Your Honor, I would just join in that
12 motion.

13 THE COURT: Okay.

14 (WHEREUPON, State's Exhibit 17 is marked for
15 identification.)

16 Q One other item. I'm showing you State's 17. Do you
17 recognize that item?

18 A Yes, sir. State's evidence 17 are the spent casings that I
19 recovered.

20 Q Okay.

21 ATTORNEY OSBORNE: All right. Your Honor, I said no
22 problem, but for State's 21, which is the mason jar, and State's
23 23, there actually is no chain. They weren't analyzed, there's
24 nothing analyzed.

25 So for those items, I would ask they be admitted because

1 they're not being sent anywhere, and he's the actual collector of
2 those items.

3 THE COURT: That's as to the jar and as to the?

4 ATTORNEY OSBORNE: The notepad.

5 THE COURT: The notepad. Yeah.

6 ATTORNEY GAY: Hold on a second.

7 THE COURT: All right.

8 ATTORNEY GAY: Your Honor, may we approach a minute?

9 THE COURT: Sure.

10 (WHEREUPON, an off-the-record discussion was held at
11 sidebar.)

12 THE COURT: They're admitted.

13 (WHEREUPON, State's Exhibits 21 and 23 are entered into the
14 record.)

15 Q And these items have already been marked and admitted, but
16 I'd just like to kind of bring it all together now. State's 22,
17 do you recognize that?

18 A Yes, sir. That's consistent with the marijuana that was
19 located in the back, right bedroom.

20 Q Okay. And if you need to look at it, I can open it up. But
21 that is? Okay.

22 A Yes, sir. It's consistent with the same packaging, bags
23 that were in the closet drawer, as well as the jacket.

24 Q And State's 25, I'm showing you now, is this -- do you need
25 to see it?

1 A Yes, sir.

2 Q Is that the pistol that you recovered from the closet?

3 A Yes, sir. This is the one that was on that top shelf in the
4 back, right bedroom closet.

5 Q Okay, thanks. All right. Okay. After you finished
6 processing the scene -- and I know you were there a lot longer
7 than what we talked about, but after you finished processing the
8 scene -- what did you then?

9 A While I was out there, we photographed the scene. Like I
10 said, an additional, more invasive search was conducted by
11 detectives on the scene. Once additional items were located,
12 they were again tagged and photographed, collected, packaged and
13 transported to the Summerville Police Department for further
14 analysis or storage.

15 Q Okay. Did you have the occasion to meet with Corporal
16 Cramer at some point?

17 A Yes, sir. Prior to making entry into the residence, I met
18 with Corporal Cramer at -- I forget the name of the intersection,
19 it was off Highway 78. If you give me one second, I'll refer to
20 my notes.

21 Q Sure.

22 A I met with him at 504 Highway 78 in Summerville.

23 Q Okay. And did you have the occasion to collect any evidence
24 from him?

25 A Yes. He turned over evidence to me.

1 (WHEREUPON, State's Exhibits 10, 11 and 12 are marked for
2 identification.)

3 Q All right. I'm showing you -- we'll start off first with --
4 State's 10, 11 and 12. Can you take a look at those items and
5 tell me if you recognize those.

6 A Yes, I recognize these items.

7 Q Okay. What are they?

8 A Item no. 11 is the jumpsuit, it's a black jumpsuit that was
9 turned over to me by Corporal Cramer.

10 State's No. 12 is a black wallet that was turned over to me
11 by Corporal Cramer.

12 And State's 10 is an orange ski mask that was turned over to
13 me by Corporal Cramer.

14 Q Okay.

15 ATTORNEY OSBORNE: All right, Your Honor. At this ---

16 Q And did you -- you packaged those?

17 A Yes, sir. Once they were turned over to me, I transported
18 them to the Summerville Police Department, where they were
19 packaged by me.

20 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
21 admit 10, 11 and 12 into evidence.

22 THE COURT: Any objection?

23 ATTORNEY GAY: One moment, Your Honor.

24 THE COURT: All right.

25 ATTORNEY GAY: No objection from Mr. Green.

1 THE COURT: All right. And with regards to Mr. Major?

2 ATTORNEY HENSLEY: None. No objection, Your Honor.

3 THE COURT: Very well. They're entered.

4 (WHEREUPON, State's Exhibits 10, 11 and 12 are entered into
5 the record.)

6 ATTORNEY OSBORNE: All right. I don't think these are
7 entered yet. Your Honor, may I approach?

8 (WHEREUPON, State's Exhibits 85 and 86 are marked for
9 identification.)

10 Q And I show you State's 85 and 86, and do you recognize
11 those?

12 A Yes, sir. These are photographs I took of the wallet it
13 that was turned over to me, and the contents.

14 Q Okay. Now, in relation to this, and let me just -- so we
15 don't have to pull that out, just use pictures. I want to show
16 you what's already been marked and admitted as State's 168.

17 Is State's 11 -- 168, is that just a picture of it?

18 A Yes, sir. That's a picture I took of that.

19 Q When you took that from Corporal Cramer and Officer
20 Reynolds, did you do a thorough search of it?

21 A No, sir, I did not.

22 Q And why is that?

23 A Because I knew that we were going to do additional testing
24 on there.

25 Q And let me just show you one other thing, clarifying this.

1 I'm showing now State's 170. Is that what is in bag no. 10?

2 A Yes, sir. That's the orange ski mask.

3 Q All right. So we see some notations on here. Did you put
4 these notations on there?

5 A No, sir, I did not.

6 Q The numbers and the arrows and all that stuff?

7 A No, sir. That was not me.

8 Q Are you familiar with the lab numbers?

9 A The lab numbers are consistent with SLED numbers.

10 Q Okay. And we'll just flip it over to 171. Is that the same
11 answer there?

12 A Yes, sir.

13 Q Okay. And now I'm showing you State's 83. And this is what
14 you said was in State's 12; is that correct?

15 A Yes, sir, it is.

16 Q I'm going to show you 83, 84.

17 A That's with the wallet folded open.

18 Q Eighty-five?

19 A And those were bills that were located inside the wallet.

20 Q And 86?

21 A Those were cards that, again, were located inside the
22 wallet.

23 Q All right. After you met with Cramer and Reynolds and
24 collected those items, what did you do next?

25 A I also met with, again, Corporal Cramer to collect -- he

1 located five -- four firearms, again, on the side of Highway 78.

2 Q And you were the individual who actually collected these
3 weapons; is that correct?

4 A Yes, sir. I photographed and collected them.

5 Q All right. I'm showing you now 13, 14, 15 and 16. Same
6 routine as before. If you could just announce the exhibit
7 number.

8 A Yes, sir.

9 Q And then announce what it is if you recognize it.

10 A Yes, sir. State's 13 is a Taurus 24/7-G2 9-millimeter
11 handgun that was located on the side of Highway 78, along with
12 the accompanying magazine.

13 Q Don't publish them.

14 A Oh, do not?

15 Q No.

16 A Okay. State's 14 is a Smith & Wesson, Model 10.5, revolver,
17 .38 revolver, that was located, again, on the side of Highway 78.

18 State's 15 is a Jimenez Arms .380 that was located, again,
19 on the side of Highway 78.

20 And State's 16 is a Springfield XD 9-millimeter handgun,
21 located, again, on the side of Highway 78.

22 Q And you're the individual that collected these?

23 A Yes, sir.

24 Q You put them in the boxes?

25 A Yes, sir.

1 ATTORNEY OSBORNE: Your Honor, at this time I'd seek to
2 admit 13, 14, 15 and 16 into evidence.

3 THE COURT: Any objection?

4 ATTORNEY GAY: I don't believe that -- wait, we're thinking.
5 Hold on, please.

6 THE COURT: All right.

7 ATTORNEY GAY: Your Honor, at this time we are making an
8 objection on behalf of my client, Mr. Green about foundation, has
9 not been laid yet ---

10 THE COURT: Okay.

11 ATTORNEY GAY: --- in enough detail.

12 THE COURT: Okay.

13 ATTORNEY GAY: And are you joining in that?

14 ATTORNEY HENSLEY: And I would join in that.

15 THE COURT: All right.

16 Q How do you know those are the boxes you put the guns in?

17 A Those are consistent with the boxes. Again, these boxes are
18 consistent with the ones that the Summerville Police Department
19 uses. The labels that are on the side of the boxes are, again,
20 the same labels that the Summerville Police Department prints and
21 affixes to the boxes. My name appears on each one of those, as
22 well as the seal on the evidence itself, dated 1/30/19.

23 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
24 admit 13, 14, 15 and 16 into evidence.

25 THE COURT: All right. Yes?

1 ATTORNEY GAY: Defer to Ms. Hensley.

2 ATTORNEY HENSLEY: Could we approach, Your Honor?

3 THE COURT: Yes.

4 (WHEREUPON, an off-the-record discussion was held at
5 sidebar.)

6 THE COURT: Very well. In evidence.

7 (WHEREUPON, State's Exhibits 13, 14, 15 and 16 are entered
8 into the record.)

9 Q This is going to take a second, but when you're -- you may
10 publish them now. But we're going to do them one at a time.

11 A Yes, sir.

12 Q Okay. And let's start with, in no particular order, 13.
13 And then what I would like you to do is publish 13 to the jury,
14 tell what kind of gun it is, and then we want to -- I want to
15 talk about how that gun was when you recovered it. Were there
16 rounds in the magazine? Was there a round in the chamber? What
17 type of rounds? Things like that.

18 A Yes, sir. So starting with State's 13, again, this is the
19 Taurus that was located on the side of 78. This firearm had one
20 live round in the chamber, an RP Luger 9-millimeter; had 9 RP
21 Luger 9-millimeter round in the magazine; six Blazer 9-millimeter
22 round in the magazine; and one FC Luger 9-millimeter round inside
23 the magazine. Magazine has a capacity of 17 rounds.

24 Q Okay, seventeen-round magazine capacity. One in the
25 chamber. Nine and 6, that's 15, 16, 17?

1 A Yes, sir.

2 Q Fully loaded?

3 A Yes, sir.

4 Q Okay.

5 A State's 14 is the Smith & Wesson revolver. This revolver
6 had, at the time of recovery, three spent Winchester .38 special
7 casings, as well as three live Winchester .38 special rounds.

8 Q And how many bullets can be put in that gun?

9 A Six.

10 Q Three spent, three live?

11 A Three spent, three live.

12 Q All right. I'm going to show you, just to put it together,
13 those spent shell casings. Showing you State's 17. Did you put
14 them in there, or where are they?

15 A Yes, sir, they are in here.

16 Q And that's for ID purposes. I can take that back.

17 A Yes. Next we have State's 15, the recovered Jimenez, as
18 well as the accompanying magazine. The Jimenez had one live
19 round in the chamber, a Hornady or a Hornady, I'm not entirely
20 sure how to pronounce that, a .380 auto round. In the magazine,
21 it had five live rounds of Hornady .380 auto, one live round of
22 Tulammo .380 ACP, and seven live rounds of Hornady .380.

23 And I am uncertain of the magazine capacity.

24 Q Okay. But you did say that there was, like the other gun,
25 live round in chamber, ready to go?

1 A Yes, sir. There was a live round in the chamber.

2 Q Did these specific ammunition combinations of Hornady,
3 TulAmmo, did that come up later on in your investigation? Did
4 you see that again repeat itself?

5 A Yes, sir.

6 Q Okay. We'll talk about that in a minute.

7 A Yes, sir. And then State's No. 16 is the recovered
8 Springfield and accompanying magazine, again, located on the side
9 of Highway 78 in Summerville. And the Springfield had one live
10 round in the chamber; an FC 9-millimeter Luger; it had seven live
11 rounds of Blazer 9-millimeter Luger in the magazine; and one live
12 round of FC 9-millimeter Luger in the magazine. Magazine
13 capacity was 16 rounds.

14 Q All right. So it looks like we're missing some from this
15 one. We've got one, eight, nine live rounds in the gun?

16 A Yes, sir.

17 Q There's still room for other bullets, is that fair to say
18 ---

19 A Yes, sir.

20 Q --- that aren't accounted for? Okay.

21 In that combination of fired shell casings, Blazer and FC,
22 had you seen that earlier?

23 A Yes, sir. That was similar to the casings that were located
24 inside the residence.

25 Q Yeah, I think you can sit back down. You said you had some

1 fingerprint training and whatnot. Did you try to fingerprint
2 these guns?

3 A Yes, sir. I processed the firearms with what's called
4 Cyanoacrylate fuming, more commonly referred to as super glue
5 fuming, in an attempt to recover fingerprints from the firearms
6 themselves. I was met with negative results.

7 Q In your training and experience, I guess as a crime scene
8 technician, would you expect to find fingerprints on an item that
9 was touched by an individual wearing gloves?

10 A No, sir.

11 Q Well, how about DNA?

12 A If they're wearing gloves, no, I wouldn't expect DNA to be
13 transferred.

14 (WHEREUPON, State's Exhibit 185 is marked for
15 identification.)

16 Q And I probably just should have showed you this. For ID
17 purposes I'm showing you State's 185. Can you take a look at
18 this.

19 A Yes, sir. That's the recovered live ammunition.

20 Q Okay. This would just be for ID, we won't send this back.
21 This is the recovered live ammunition from what?

22 A That was from the firearms, as well as recovered inside a
23 vehicle later in the investigation.

24 Q Okay. Did you have the occasion to take measurements
25 detailing the locations from which those firearms were recovered?

1 A Yes, sir, I did. Corporal Cramer assisted me in taking
2 measurements to triangulate the location of the firearms before
3 they were recovered.

4 Q And after you took those measurements did you -- or, what
5 did you do with the measurements?

6 A I used them to make an approximation for measurement
7 purposes and display purposes, to actually create a diagram for
8 where they were recovered.

9 Q And would presenting that diagram to the jury assist in your
10 presentation or explaining the locations from which you recovered
11 each firearm?

12 A I believe it would, sir.

13 (WHEREUPON, State's Exhibit 122 is marked for
14 identification.)

15 ATTORNEY OSBORNE: Your Honor, may I approach?

16 THE COURT: You may.

17 Q I'm showing you State's 122. Do you recognize that?

18 A Yes, sir. State's 122 is the diagram that I made depicting
19 the location that I recovered the firearms from.

20 ATTORNEY OSBORNE: Okay. Your Honor, at this time I'd seek
21 to admit State's 122 into evidence.

22 THE COURT: Any objection?

23 ATTORNEY GAY: No, Your Honor.

24 ATTORNEY HENSLEY: Without objection.

25 THE COURT: Very well. Admitted.

1 (WHEREUPON, State's Exhibit 122 is entered into the record.)

2 Q All right. If you could, I guess, explain to the jury what
3 we're looking at here.

4 A These are images, actually using Google maps, to further
5 blow up the diagram. The bottom shows a street view. The top
6 section shows a further enlarged section.

7 The white markings show where Highway 78 is. The red dots
8 with the yellow circle around them and the numbers above them
9 show the firearm locations. And then on the right side is the
10 key that actually depicts which firearms were at which location.

11 Q Okay. And so the numbers you have here, 13, 14, 15, 16,
12 correspond to the state exhibit numbers?

13 A Yes, sir.

14 Q And I see over here you also have SLED numbers?

15 A Yes, sir. Those were numbers that were identified, or
16 assigned, by SLED when the firearms went for examination.

17 Q All right. So after you recovered the firearms, what did
18 you do next?

19 A I responded back to the Summerville Police Department to
20 execute a search warrant on a recovered vehicle.

21 Q And what type of vehicle was it?

22 A It was the vehicle that I was advised was patrol had
23 pursued.

24 Q And what was the make and model of the car?

25 A The vehicle was a black, 2007 Honda CR-V.

1 Q Okay. Before I show this to you, when you -- or, maybe you
2 said this. What does that mean, to process a vehicle?

3 A What I do, before I do anything with the vehicles, I
4 photograph the vehicle in its position from all sides,
5 documenting the condition of the vehicle upon its -- or, upon my
6 immediate arrival.

7 Then what I do is, I open all the doors, one at a time, to
8 photograph the interior of the vehicle to document the location
9 of any items of evidentiary purpose or any contents before
10 anything is moved or manipulated.

11 Q All right.

12 (WHEREUPON, State's Exhibits 87, 88, 89, 90, 91, 92, 93, 94,
13 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107 and
14 108 are marked for identification.)

15 ATTORNEY OSBORNE: Your Honor, may I approach?

16 THE COURT: Yes.

17 Q I'm showing you State's 87 to 108. And if we need to hammer
18 down on it again, we will later but just, generally speaking,
19 what does 87 through 108 depict, if you recognize them?

20 A These are photographs of the vehicle, interior, and some of
21 the evidence that was located inside of the vehicle.

22 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
23 admit 87 through 108 into evidence.

24 ATTORNEY GAY: Without objection from Mr. Green, Your Honor.

25 THE COURT: All right.

1 ATTORNEY HENSLEY: No objection, Your Honor.

2 THE COURT: Very well.

3 (WHEREUPON, State's Exhibits 87, 88, 89, 90, 91, 92, 93, 94,
4 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107 and
5 108 are entered into the record.)

6 Q Okay, same routine. Showing you State's 87, what are we
7 looking at there?

8 A That is the front driver's side of the vehicle.

9 Q Eighty-eight?

10 A That is the back passenger's side of the vehicle.

11 Q Eighty-nine?

12 A That is the front driver's side tire and rim of the vehicle.

13 Q Ninety?

14 A That is the front passenger's side tire of the vehicle, and
15 rim.

16 Q Ninety-one?

17 A That is the interior of the vehicle from the driver's front
18 door.

19 Q And 92?

20 A Ninety-two is evidence inside of the vehicle, as well as the
21 front floorboard under the steering wheel.

22 Q And when you say evidence inside of the vehicle, what are we
23 looking at?

24 A Right in front of the seat where you see a little bit of
25 orange, that's actually an orange-and-black glove. And then to

1 the left of that is a black, knit hat.

2 Q And obviously I guess we're looking at the driver's side
3 floorboard?

4 A Yes, driver's side floorboard. And to the right is the
5 driver's seat.

6 Q And 93?

7 A That is a further photograph of the glove that was located
8 on the front driver's side floorboard.

9 Q Ninety-four?

10 A An additional photograph of the same glove.

11 Q Same glove?

12 A Yes, sir.

13 Q Ninety-five?

14 A That is the front passenger, that should be the, door.

15 Q Ninety-six?

16 A That is the front passenger seat, as well as evidence that
17 was located inside the vehicle.

18 Q All right. And when you say evidence, what evidence was
19 recovered from this front passenger's seat?

20 A We located, to the right of -- to the right of the seat
21 where you see the brown, that's actually a brown satchel. In
22 between the seat and the plastic paneling, it's kind of hard to
23 see that, white and kind of like a camo color, is actually a face
24 shield, as well as there were, I believe, three watches that were
25 located inside the vehicle.

1 Q Okay. Moving on to 97?

2 A That's one of the watches, as well as the satchel.

3 Q And I think we saw another watch right here in 95 -- or, 96?

4 A Yes, sir.

5 Q And 98?

6 A That is the brown satchel.

7 Q And again, I think you said we're on the driver's side, or
8 passenger's side?

9 A The front passenger's seat, yes, sir. And that's on the
10 floorboard in front of the seat itself.

11 Q Ninety-nine?

12 A That, again, is the front floorboard on the passenger's
13 side. That's the brown satchel, as well as the lid to a mason
14 jar.

15 Q And did you try to recover prints from that mason jar?

16 A Yes, sir, I did.

17 Q Any luck?

18 A No, sir.

19 Q Okay. One Hundred?

20 A That is, again, the mason jar lid that was recovered from
21 the floorboard, the license plate that was recovered inside the
22 vehicle, as well as Swisher wrappers.

23 Q 101?

24 A That's a further photograph of evidence that was placed on
25 the seat. That's the face shield there, as well as two of the

1 watches.

2 Q 102?

3 A That is the door panel.

4 Q And 103?

5 A That is the rear passenger's side floorboard. And on the
6 floor is what was consistent with vomit.

7 Q And what floorboard are we looking at again?

8 A That was the rear passenger floorboard.

9 Q Rear passenger?

10 A Yes, sir.

11 Q 104?

12 A That is a license plate that was recovered inside of the
13 vehicle.

14 Q Do you happen to know, did these plates come back to the
15 car?

16 A That plate did not come back to the vehicle. I believe it
17 came back to -- if you give me one second, I can tell you.

18 ATTORNEY HENSLEY: I'd just object to relevance to that,
19 Your Honor.

20 ATTORNEY OSBORNE: That's fine. Withdraw the question,
21 Judge.

22 THE COURT: Very well.

23 Q All right. 105?

24 A That is between the driver's seat and the side, the center
25 console there.

1 Q All right. And what are we looking at here?

2 A Right there is a cellphone that was recovered between the
3 seat, as well as a camo-colored glove.

4 Q Is that what we're looking at in 106?

5 A Yes, sir. That's the glove that was recovered between the
6 seat and the center console.

7 Q 107?

8 A An additional photograph of that glove.

9 Q All right. And then another license plate, 108?

10 A Yes, sir. There was an additional license plate located in
11 the rear of the vehicle.

12 ATTORNEY OSBORNE: Beg the Court's indulgence.

13 THE COURT: Yes.

14 (WHEREUPON, State's Exhibits 109, 110 and 111 are marked for
15 identification.)

16 Q All right. I'm going to go show you 109 and 110. Can you
17 take a look at those. And 111. 109, 110 and 111.

18 Okay. And if you do, again, mention the exhibit and, then
19 if you recognize it, what it is.

20 A I recognize all these items. Item 109 is the knit hat and
21 the orange glove that I located on the floorboard in front of the
22 front driver's side seat.

23 State's 110 is the glove that was in between the front
24 driver's side seat and the center console. That glove has been
25 turned inside out since previous.

1 And 111 is the face shield that I located next to the front
2 passenger's seat, between the passenger's seat and the front
3 door.

4 Q Okay. And did you collect these items?

5 A I did.

6 Q Did you package these items?

7 A Yes, sir.

8 Q Okay. And do you recognize the packaging as belonging to
9 something that you did?

10 A Yes, sir.

11 ATTORNEY OSBORNE: All right, Your Honor. At this time I'd
12 seek to admit 109, 110 and 111 into evidence.

13 THE COURT: All right. Yes, ma'am?

14 ATTORNEY GAY: One moment.

15 THE COURT: Ms. Gay?

16 ATTORNEY GAY: Without objection for Mr. Green.

17 THE COURT: All right. Mr. Major?

18 ATTORNEY HENSLEY: Without objection, as well.

19 THE COURT: Very well.

20 (WHEREUPON, State's Exhibits 109, 110 and 111 are entered
21 into the record.)

22 Q I'm sorry, I should have caught you. I think we have good
23 pictures of the camo, of the face glove. But the knit cap and
24 the glove, do you mind publishing those to the jury. I'm not so
25 sure we got a good look at those.

1 A Yes, sir. The glove from the front passenger. Again, the
2 glove has been folded inside out. The black, knit hat, again,
3 from the front driver's side of the vehicle.

4 ATTORNEY OSBORNE: Beg the Court's indulgence.

5 THE COURT: Yes.

6 (WHEREUPON, State's Exhibits, 112, 119 and 208 are marked
7 for identification.)

8 ATTORNEY OSBORNE: May I approach, Judge?

9 THE COURT: You may.

10 Q All right. I'm going to show you State's 112 through 119.
11 I realize some of that might already be in. And 208. And
12 generally speaking, can you just tell us what those items are.

13 A Yes, sir. These are, 112 through 119, are further
14 photographs of the items that I located on the front passenger's
15 side floorboard, the face shield, as well as three watches.

16 State's 208 is the brown satchel that I located on the front
17 passenger floorboard in front of the seat.

18 Q And again, you packaged the brown satchel, I take it?

19 A Yes, sir.

20 Q Do you recognize that packaging as what you put it in?

21 A Yes, sir.

22 ATTORNEY OSBORNE: All right. Your Honor, at this time I'd
23 seek to admit 112 through 119, as well as 208.

24 ATTORNEY GAY: No objection from Mr. Green.

25 THE COURT: Very well. With regard to Mr. Major?

1 ATTORNEY HENSLEY: No objection.

2 THE COURT: Very well. They're admitted.

3 (WHEREUPON, State's Exhibits 112, 119 and 208 are entered
4 into the record.)

5 Q All right. Let's just roll through those pictures real
6 quick. Some of these, we've already seen. Showing you 112
7 first. What are we looking at here?

8 A That, on the right side, is the face shield that I located
9 tucked between the seat. The left shows three watches that were
10 located, again, in connection with that seat, they were located
11 around that front passenger's seat.

12 Q 113?

13 A One of the watches, the top of it.

14 Q 114?

15 A The backside of the same watch.

16 Q 115?

17 A Second watch.

18 Q Sixteen?

19 A The backside of that watch.

20 Q 117?

21 A The third watch.

22 Q And 118?

23 A The backside of that watch.

24 Q All right. And you had mentioned a satchel before. And
25 that's already been admitted, so you can publish that to the

1 jury. What is that, 208?

2 A Yes, sir, 208.

3 Q Okay. And where was that satchel recovered from, again?

4 A The front passenger floorboard in front of the front
5 passenger's seat.

6 Q Did you search the satchel?

7 A Yes, I did.

8 Q And if you need to refer to your notes, that's fine. What
9 did you find inside the satchel?

10 A Inside the satchel I found four live rounds of .380
11 ammunition. Three of those rounds were the Hornady .380 auto,
12 one of those rounds was TulAmmo .380, as well as I found a
13 state-issued driver's license.

14 Q All right. Before we get to the driver's license, those two
15 specific type of ammunition rounds, had you seen that earlier in
16 this case?

17 A Yes, sir.

18 Q And where did you see that?

19 A Those were similar to the rounds found inside the Jimenez,
20 the .380s.

21 Q In the recovered .380?

22 A Yes, sir.

23 Q And you said you found a driver's license in that satchel.

24 A Yes, sir, I did.

25 Q And can you look in the satchel and see if the driver's

1 license is still there?

2 A Yes, sir, it is.

3 Q All right. Let me see it. And the name on that driver's
4 license?

5 A Polo Salazar.

6 Q Did you have the occasion to photograph the clothing that
7 was taken from the defendants in this case?

8 A Yes, I did.

9 (WHEREUPON, State's Exhibits 123, 124, 125, 126, 127, 128,
10 129, 132, 133, 134, 135, 136, 137, 138, 139, 140, 143, 144, 145,
11 146, 147, 151, 152, 153, 154, 155 and 156 are marked for
12 identification.)

13 Q I'm showing you 123 through 156. Can you tell me if you
14 recognize those items.

15 A Yes, sir. These are photographs of the clothing that was
16 collected from the suspects and turned into evidence.

17 Q Okay. And you took those pictures, I guess?

18 A Yes, sir, I did take these photos.

19 ATTORNEY OSBORNE: Your Honor, at this time I'd seek to
20 admit 123 through 156 into evidence.

21 THE COURT: Any objection?

22 ATTORNEY GAY: No objection.

23 ATTORNEY HENSLEY: I have an objection just as to chain, as
24 they were collected and turned into evidence.

25 ATTORNEY OSBORNE: We're not admitting the clothing. We're

1 admitting the photographs of the clothing.

2 ATTORNEY HENSLEY: Then I withdraw my objection.

3 THE COURT: Very well.

4 Q Okay. Start off with 123.

5 A That is a photograph of the collected clothing that was
6 marked from Green.

7 ATTORNEY GAY: Objection, Your Honor. Hold on just a
8 second. Conferring. I'm going to join in Ms. Hensley's motion,
9 Your Honor.

10 THE COURT: Do y'all want to approach?

11 ATTORNEY HENSLEY: Yes.

12 THE COURT: All right.

13 (WHEREUPON, an off-the-record discussion was held at
14 sidebar.)

15 THE COURT: Ladies and gentlemen, we're going to take our
16 afternoon break. And if you'll please step to your jury room.
17 Do not discuss this matter or allow anyone to discuss it with
18 you.

19 We've got a matter to attend to, which will take maybe 5 to
20 10 minutes. So we'll probably take 40 minutes for our break. Do
21 not discuss this matter or allow anyone to discuss it with you.
22 And, please, leave your notepads.

23 (WHEREUPON, the jury is escorted out of the courtroom at
24 3:31 p.m.)

25 THE COURT: Now, you can take a break, also, but, of course,

1 don't discuss your testimony with anyone.

2 THE WITNESS: Thank you, Your Honor.

3 MATTER(S) OF LAW

4 THE COURT: All right. What are we doing with regards to
5 the ---

6 ATTORNEY OSBORNE: Judge, the only thing I can think to do
7 is, I mean, we've got about 50 pieces of clothing here, from
8 dirty socks to underwear, all of that. We're just going to have
9 to tear into every single one. I mean, I don't know of any other
10 way to satisfy their concern.

11 THE COURT: All right. I just have a question. As I
12 understand the concern, the concern is the chain of custody;
13 right? And this witness placed those items into the bags; right?

14 ATTORNEY OSBORNE: That is correct.

15 THE COURT: They were given to him by somebody?

16 ATTORNEY OSBORNE: Summerville Police Department's
17 procedures are, that when patrol, and in this case patrol, two
18 individuals, transported the individuals to the jail, they end up
19 packaging. They don't package. They're not in evidence. So
20 they take all the evidence; they put it into a bag; they put the
21 bag into a locked container; they notate what it is.

22 Then Detective Brooks then takes it and then properly seals
23 it and packages it the way it is.

24 THE COURT: And it is in that bin and it has been identified
25 in some form or fashion?

1 ATTORNEY OSBORNE: Yes.

2 THE COURT: And this came from blah-blah-blah-blah?

3 ATTORNEY OSBORNE: Right. And I can flush that out. That
4 that is the way that I understand their procedures are.

5 THE COURT: I understand. And so you, so what this part of
6 the chain would be, it would be that these are the clothing, that
7 these items are the clothing that were received in that fashion?

8 ATTORNEY OSBORNE: That's correct.

9 THE COURT: This witness did not take the clothing off of
10 these individuals and put them in the package?

11 ATTORNEY OSBORNE: No.

12 THE COURT: Okay.

13 ATTORNEY GAY: So I'm not so concerned about taking the bags
14 and opening them, as what Laree and I are concerned about is, do
15 you have a witness who can either testify to protocol in
16 Summerville or that they are the person who was there? Or
17 Cramer, maybe, can say, when he was -- look, I took his clothes
18 and put them into evidence, or he can come in and say, I got it
19 out.

20 Right, Laree?

21 ATTORNEY HENSLEY: I think that witness is Flynn. I think
22 he's on the witness list. He's the person who collected the
23 clothing from the jail and brought it to the evidence locker.
24 That's the step that I think we're missing in the chain, is how
25 this evidence, where did the evidence come from and who put it in

1 the locker.

2 THE COURT: You mean in the bin, not in the locker. In the
3 locked bin, as I understand.

4 ATTORNEY HENSLEY: Correct.

5 ATTORNEY GAY: And the idea of him saying, These are the
6 pictures, this is the evidence, these are my bags, I don't have a
7 problem with that. I don't want 50 bags opened. I just want
8 that first step to be done correctly.

9 ATTORNEY OSBORNE: Can't do one without two, that's the
10 problem, because the problem is, he, the only way he's going to
11 know what's in those bags is to open those bags. We've already
12 been down that road with the shoes.

13 And my thought was, that's why, why do you have 180
14 exhibits? Well, the reason why I did all the pictures is so we
15 didn't have to go into all these bags. We can tear to into them,
16 but the only way to know what's in them is to look at those dirty
17 socks and underwear and all that stuff. That's the only way to
18 really know what's in there. Because what Flynn said was in the
19 bag ---

20 THE COURT: That's the only way to know what's in there.

21 ATTORNEY OSBORNE: That's the only way.

22 THE COURT: It is the only way. Okay, very well. And that
23 that will be this piece of it.

24 ATTORNEY OSBORNE: Right. And if that's what they ---

25 THE COURT: And then the other piece is whoever put them in

1 the bin, collected them and put them in the bin.

2 ATTORNEY OSBORNE: Right. And, you know, from my
3 perspective, from my perspective, I don't want to do that because
4 I don't know that it's really pushing the ball that much for me.

5 So I will make a couple points. One, none of these
6 photographs which I was trying to plow through were analyzed in
7 any way. This isn't the GSR, there's nothing here that was sent
8 off to SLED. This is simply, from my perspective, to show ---

9 THE COURT: All right. Mr. Major needs to go to the
10 restroom, so I suppose we'll have to stop the proceedings so he
11 can go to the restroom.

12 ATTORNEY OSBORNE: That's fine.

13 THE COURT: Okay.

14 ATTORNEY HENSLEY: Mr. Major would prefer to wait and finish
15 the argument, Your Honor, rather than take a break right now.

16 THE COURT: Okay.

17 ATTORNEY OSBORNE: Just two seconds, Judge.

18 THE COURT: Sure.

19 (Defendant momentarily leaves the courtroom and returns.)

20 ATTORNEY OSBORNE: All right, Judge. Upon further
21 consideration, the state is going to not seek to admit any of the
22 undergarments or clothing that the defendants were wearing, nor
23 those photographs.

24 (WHEREUPON, an off-the-record discussion was held in open
25 court.)

1 ATTORNEY OSBORNE: May I just, for the record, make sure
2 we're all totally clear, 123 to 156 will not be entered.

3 THE COURT: If you'll all take a minute just to be sure that
4 that has all been pulled through up here just so that it doesn't
5 accidentally get to the jury.

6 CLERK OF COURT: Yes, ma'am.

7 THE COURT: Thank you.

8 (WHEREUPON, court recessed at 4:32 p.m. and reconvened at
9 3:57 p.m.)

10 (WHEREUPON, the jury is seated in the courtroom at
11 3:58 p.m.)

12 THE COURT: Thank you. All right. Ladies and gentlemen, at
13 this time we will continue with the state's case. Yes, sir, you
14 may proceed.

15 ATTORNEY OSBORNE: Thank you, Your Honor.

16 (WHEREUPON, State's Exhibits 193, 194, 195, 196 and 197
17 marked for identification.)

18 Q All right. I'm going to show you State's 193, 194, 195, 196
19 and 197. And tell me if you recognize these items. And then if
20 you could, just mention the exhibit number and then, you know,
21 what it is.

22 A Yes, sir.

23 Q Do not publish it.

24 A Yes, sir.

25 Q It's for ID purposes.

1 A I recognize State's 193 and 194 as clothing that was
2 submitted into evidence.

3 Q Okay. And how do you know that?

4 A These are labels from the department, again with my name on
5 them, as well as consistent with the packaging for the
6 department, as well as dated and initialed by myself.

7 Q Okay. And from your perspective do you know which clothing
8 those state's exhibits represent or who they were taken from?

9 A They are marked ---

10 ATTORNEY HENSLEY: Objection.

11 ATTORNEY OSBORNE: It's just ID.

12 ATTORNEY GAY: Ultimately the same thing, though. I join in
13 the objection, that he can't specifically identify whose they
14 are. Correct?

15 ATTORNEY OSBORNE: This is part of the policies and
16 procedures from the Summerville Police Department, that he is the
17 individual who is actually putting it into evidence, and he
18 relies on the identifications on the bags.

19 ATTORNEY GAY: Thank you for testifying.

20 ATTORNEY OSBORNE: I'm answering your question.

21 THE COURT: If I may.

22 ATTORNEY HENSLEY: Maybe if we had ---

23 THE COURT: Let me see you.

24 (WHEREUPON, an off-the-record discussion was held at
25 sidebar.)

1 THE COURT: Yes, sir.

2 Q And we left off with, what state's exhibits were you talking
3 about?

4 A 193 and 194.

5 Q And are you the individual who packaged these up and put
6 them in the bags?

7 A I placed these items -- or, these items were turned in to me
8 in bags, and then I sealed them.

9 Q Okay, because you're the evidence guy?

10 A Yes, sir.

11 Q And how do you know you're the one that sealed them?

12 A Because my initials and dates are on the seal.

13 Q And how do you know what's in the bag?

14 A That is marked by the submitting officer who turns them over
15 to me.

16 Q Is that on the bag?

17 A Yes. They're marked by the submitting officer.

18 Q So when you're testifying as to what's in the bag, you're
19 relying on the information that's provided to you, is that fair
20 to say?

21 A Yes, sir.

22 Q Because you're not the actual person who pulled it off of
23 his back or saw the person wearing the jacket, is that all fair
24 to say?

25 A That is correct.

1 Q And that testimony might come from other people who saw them
2 wearing ---

3 ATTORNEY HENSLEY: Objection. Speculation.

4 ATTORNEY GAY: I join. Plus it's possibly hearsay.

5 ATTORNEY OSBORNE: Your Honor, at this time we would submit
6 to conditionally introduce these items into evidence, the items
7 being 193 and 194. And then we'll get to the other two in a
8 second.

9 THE COURT: I understand.

10 ATTORNEY GAY: Based on previous objections and
11 understanding of conditional, yes, Your Honor.

12 THE COURT: Sure. I'm going to conditionally admit them.
13 Yes.

14 ATTORNEY OSBORNE: And, Your Honor, may he publish them to
15 the jury at this time?

16 THE COURT: My only concern about them being published at
17 this point is -- well, let me tell you why.

18 (WHEREUPON, an off-the-record discussion was held at
19 sidebar.)

20 Q And so now we will do that same little song and dance with
21 193 -- 195, 196 and 197.

22 A I recognize items 195, 196 and 197, again, as clothing that
23 was submitted into evidence.

24 Q Okay. And how do you recognize that or know that?

25 A These are, again, clothing that are consistent with the

1 department packaging. They have labels on the exterior of them,
2 again, bearing my name, as well as evidence integrity tape
3 bearing my initials and date.

4 (WHEREUPON, State's Exhibits 209, 210 and 211 are marked for
5 identification.)

6 Q Okay. All right. And just one other issue. You can stand
7 right there for a second. And just tell me if you recognize
8 State's -- while you're standing, and then I can have you sit
9 back down -- 209, 210 and 211. And it's for ID purposes.

10 A Yes, sir.

11 Q Starting with 209, what is that?

12 A 209 are buccal swabs that I collected from one of the
13 individuals in this case.

14 Q And who was that?

15 A Those were collected from Polo Salazar.

16 Q All right. 210?

17 A 210, again, are buccal swabs that I collected from one of
18 the individuals in this case.

19 Q And who?

20 A Devonte Major.

21 Q All right. 211?

22 A 211, again, are buccal swabs that I collected from an
23 individual in this case.

24 Q And who was that?

25 A Elijah Green.

1 Q Okay, you can sit back down. Thank you. And so now we'll
2 just kind of double-back and ask some questions. What are buccal
3 swabs?

4 A Buccal swabs are swabs that are taken from the interior
5 cheek of an individual, and they're used for identification
6 purposes. And it's a known standard for DNA.

7 Q For DNA?

8 A Yes, sir.

9 Q Well, do you know the date that you collected those?

10 A Yes, sir. If you'd give me one second.

11 Q And just the date.

12 A The date was April 2nd of this year.

13 Q And I believe you transported those to SLED on April the
14 9th. Does that sound right?

15 A Yes, sir.

16 Q And when you transported them, were they -- I know they're
17 not packaged correctly now, but when you transported them, did
18 you package them correctly?

19 A Yes, sir. They were placed back in the original envelope
20 that's in that heat-sealed pouch. They had a seal placed on them
21 that, again, was initialed by me. And then they were placed in a
22 seal heat-sealed pouch, which I then sealed.

23 Q And did you turn them over to SLED on that day?

24 A I did.

25 Q And while transporting them were they damaged, altered or

1 tampered in any way?

2 A No, sir.

3 ATTORNEY OSBORNE: Thank you, Judge. No further questions.

4 THE COURT: Cross-examination, Ms. Gay, on behalf of
5 Mr. Green?

6 **CROSS-EXAMINATION**

7 BY ATTORNEY GAY:

8 Q Hey, good afternoon. I'm Melisa Gay. I represent Elijah
9 Green. How are you today?

10 A I'm good.

11 Q Been a long one, and we have a lot to talk about. Make this
12 as quick as possible. So, starting in chunks. So when you
13 arrived on the scene to be able to start collecting the evidence
14 in this case, I believe your testimony was that the first place
15 you went was in the house, you photographed the outside of the
16 house?

17 A I photographed the exterior of the residence; yes.

18 Q And then you said that you went inside the house, but while
19 you were waiting on a search warrant you went and did something
20 else?

21 A I didn't enter the residence. I photographed from the
22 doorway while waiting for the search warrant. And then while
23 waiting, I had gone over and met with Corporal Cramer and
24 recovered the four firearms on the side of 78.

25 Q Right. And so in terms of the firearms, you did a nice

1 diagram for us, for us to know where these were located on the
2 street.

3 A Yes, ma'am.

4 Q And so is it fair to assess that it appeared that any tossed
5 firearms would have been tossed out of the right-hand side of the
6 car?

7 A That would be consistent with that. Yes.

8 Q And that, so you said specifically in your testimony that
9 you had done some kind of test and that no fingerprints were
10 found on the guns at all.

11 A I processed it with Cyanoacrylate fuming, again, more
12 commonly referred to as super glue fuming, and was unable to
13 recover any discernable fingerprints.

14 Q So there's no evidence that you're saying today that you
15 found any fingerprints that matched my client, Mr. Green?

16 A That is correct.

17 Q I believe the solicitor asked you, Well, you know, is it
18 consistent that people that wear gloves don't leave fingerprints
19 behind? Certainly we would agree that that is true?

20 A Yes, ma'am.

21 Q But in this case you went through some bags of evidence and
22 things and, to the jury, in this case there's only three gloves
23 in evidence?

24 A Yes, three cloth gloves that were recovered.

25 Q Right. So there's not eight?

1 A I believe there was more gloves that was submitted. I do
2 not have the exact number on top of my head, though. I don't
3 believe --

4 Q Excuse me. Your testimony is that there were three that you
5 found in the car.

6 A There were three that were submitted into evidence from the
7 vehicle. Yes.

8 Q So after you did that ---

9 A Yes, ma'am.

10 Q --- and went and picked up the guns, and I think those guns
11 were in the mud, is what you said, in the ditch?

12 A Some of them were in the ditch; some of them were actually
13 on the grass.

14 Q So after that you went back to the house, and that's when
15 you began your inside?

16 A My interior photos of the residence. Yes, ma'am.

17 Q And the solicitor talked to you about some pictures that he
18 published to the jury that were yours.

19 A Yes, ma'am.

20 Q Pictures that you took. You also had some notes, and it was
21 part of the case file in this case that you prepared, pursuant to
22 your investigative duties; correct?

23 A Yes.

24 Q Okay. And I'm sure you've had an opportunity to review
25 those notes in preparation for your testimony today.

1 A Yes, ma'am.

2 Q Do you recall saying that the house was neat and tidy, the
3 rooms, the bedrooms, the closets?

4 A No. There were items on the floor and tossed around inside
5 the residence.

6 Q Well, I know that there were items, large items, tossed
7 around. But when you went into the bedroom, do you recall saying
8 that the closet was neat and that there were baskets on the
9 floor, no disarray in the closet?

10 A Yes, I do believe so.

11 Q And I think that you specifically said that you thought the
12 kitchen area was very neat?

13 A Yes.

14 Q Now, with regard to what was in disarray, it's my
15 understanding that there was a couch that was maybe turned over?

16 A Yes, on its side.

17 Q In the living room?

18 A Yes, ma'am.

19 Q And then there was another couch that had a bunch of, like,
20 some cushions pulled off of it?

21 A Yes, ma'am.

22 Q And so and then when you went into one of the bedrooms, the
23 bedroom that had the dog in it, there, in the pictures, we see
24 that there's either a box spring or a mattress standing up on its
25 side.

1 A Yes, ma'am.

2 Q And it's interesting that it's standing up on its side
3 because the dog, the animal, is actually laying on top of the
4 other box spring.

5 A Yes, ma'am.

6 Q And so pursuant to the understanding of what's going on in
7 this case, the dog gets shot and runs back to the back room and
8 jumps up on the bed, and that's where the dog dies. It's your
9 understanding that's where the dog died?

10 A That would be my understanding. I wasn't there when it took
11 place.

12 Q And so in order for the dog -- wouldn't you agree with me
13 that in order for the dog -- to be on top of it, that mattress,
14 that the box springs or whatever that is that's standing up would
15 not have been there when the dog jumped on it? That thing would
16 have been already off the bed, is what I'm trying to say?

17 A That, I don't know. I don't know if it entered from the
18 left side or the right side of the bed.

19 Q But certainly in the pictures, when you went in the house,
20 the part of the bed set is already standing up on its side and
21 the dog is on top ---

22 A Yes, ma'am.

23 Q --- of what we see?

24 A Yes.

25 Q And I believe that you said that -- and you start looking

1 around for -- okay, so this is interesting. In the bedroom that
2 belonged to Marcus Porter -- and if you need to refresh your
3 recollection with your report -- in the bedroom, isn't it true
4 that there were several, more than four or five, SIM cards, which
5 are the little things that go into cellphones, on the floor?

6 A Yes, ma'am. They were on the floor.

7 Q So like little pieces of somebody's cellphone, the brain of
8 the cellphone, multiple ones, there was four, five, six, eight,
9 something like that, all scattered on the floor?

10 A Yes, ma'am.

11 Q And then it's also interesting that in that bedroom you also
12 found a brown wallet.

13 A Yes, ma'am.

14 Q And I believe that wallet was identified by you as to be
15 something related to Marcus Porter?

16 A I believe so.

17 Q And in that wallet was actually a counterfeit \$100 bill?

18 A Yes, ma'am.

19 Q And then also in another place in the house that day you
20 found another counterfeit bill, another \$50 counterfeit bill?

21 A Yes, ma'am.

22 Q And then as you moved along, you also found -- and I think
23 it's going to be discussed a little bit by Ms. Hensley -- you
24 also found -- a scale?

25 A Yes, ma'am.

1 Q And I think there was actually maybe even more than one
2 scale in the house. Now, isn't it true that people use scales in
3 their associations with drugs?

4 A That is one of the uses. Yes.

5 Q Right. And I'm just going to refer to this package as, this
6 is, State's Exhibit 22. But, this is a very large quantity of
7 the various types of marijuana?

8 A Yes, ma'am.

9 Q And you found this in, I believe, a drawer in the closet?

10 A It was a mixture, actually. It was from the inside jacket
11 pocket in the back, right closet of the bedroom, as well as the
12 top drawer in that same closet. There was a dresser along the
13 left side of it.

14 Q And the dresser we see is a drawer, it's like a picture of
15 the drawer, that's opened. But that wasn't opened at the time
16 you went in there. You actually opened it during the search?

17 A I opened it during our invasive search. Yes, ma'am.

18 Q So you actually are the person who opened that drawer, and
19 then all of this was visible, or whatever part of this it was, it
20 was visible?

21 A Yes.

22 Q And I believe you specifically said, clothing hanging;
23 clothing neatly folded on the shelves?

24 A Yes, ma'am.

25 Q And then you started looking in the house after you did

1 your, I think you called it the, more invasive search, that's
2 when you started looking for projectiles, things like that?

3 A Yes, ma'am.

4 Q And you testified to all that, and we have pictures of it.
5 But of note, one of the guns that you found -- and I'm not a gun
6 person, I really have no idea, I barely know what they look like
7 half the time. But when somebody has a -- when a gun has a,
8 self-something or other, it's when it keeps the casings in the
9 gun; isn't that true? It doesn't spit them out?

10 A Do you mean like a revolver?

11 Q Uh-huh.

12 A Yes. Revolvers do not eject the rounds; they still in the
13 cylinder until they're removed.

14 Q And one of these guns was a revolver and had some live
15 rounds, and then also had the spent rounds in it. Correct?

16 A Yes, ma'am.

17 Q I was listening to that correctly?

18 A Yes, ma'am.

19 Q And then so just because I want to talk some more about this
20 about these things found in the house and in Marcus Porter's
21 room, in the trash can I believe you said you saw a bunch of
22 syringes that were used with plastic caps on them?

23 A Yes, ma'am.

24 Q And just for purposes of discussion, methamphetamine can be
25 a drug that's injected in the body with a syringe; isn't it?

1 A That's one of the uses. Yes.

2 Q So if I recall going through this -- and you didn't go
3 through every single one he have them -- wasn't there seven
4 cellphones taken into evidence in this case from the house?

5 A Yes, ma'am.

6 Q So in that house not only was there seven or eight SIM cards
7 that were the brains of the cellphone laying on the ground, but
8 there were also, like, seven cellphone bodies?

9 A Yes, ma'am.

10 Q And then I believe you went through, and I'm just kind of
11 going through the report, all the guns, which I won't belabor,
12 that was all well-handled by you. And then here it says that
13 there was drawers and kitchen cabinets that appeared neat and
14 didn't appear to have any rifling through them. That's
15 specifically in your report.

16 A Yes, room.

17 Q Do you recall that?

18 A Uh-huh.

19 Q And then let me just kind of make sure I'm covering it all.
20 I think I'm almost finished.

21 Okay. And then also in this paperwork that you did, these
22 notes, you said that you found a glass pipe with a bulb in the
23 end which is commonly used to smoke illegal drugs.

24 A Yes, ma'am.

25 Q And partially burnt roaches in a clear plastic bag.

1 A Yes, ma'am.

2 Q And that's when all this material right here was found, this
3 marijuana?

4 A Uh-huh.

5 Q And you also found a small safe located in Mr. Porter's
6 bedroom.

7 A Yes, ma'am.

8 Q Was that safe opened?

9 A I believe it was. Hold on one correct.

10 Q Any of loose marijuana found in this safe, or any other
11 stuff, illegal stuff? The reason I ask is because it doesn't say
12 in your report, and I just kind of wonder if you remember.

13 A If I didn't document anything illegal or that shouldn't have
14 been there -- because if anything was illegal, say, narcotics,
15 paraphernalia, such, it would have been collected and packaged
16 because I would not leave illegal narcotics inside of a
17 residence. So if it's not in our report ...

18 Q But if it was a safe, which is something that, a lot of
19 times some people that are drug dealers have safes so that they
20 can hide things away and keep them out of the way.

21 ATTORNEY OSBORNE: Objection, Your Honor. Speculation.
22 Relevance.

23 ATTORNEY GAY: I withdraw the question.

24 THE COURT: Very well.

25

1 Q And you said that you also found a box of ammunition in
2 Mr. Porter's bedroom.

3 A Yes, ma'am.

4 Q And interestingly you said that this gun, which I believe
5 was the one that is identified as State's No. 25 ---

6 A Yes, ma'am.

7 Q Would you like to look at it? This is the one that was
8 found in Marcus Porter's closet?

9 A Yes, ma'am.

10 Q In the report it specifically says it was loaded. Do you
11 recall that?

12 A I believe so.

13 Q Loaded with eight RP .38 -- .380 auto rounds in that gun, in
14 Marcus Porter's closet?

15 A Yes, ma'am.

16 Q Okay. And also, when you went outside -- or maybe you did
17 this in the front part, or I'm not sure what timeframe it was --
18 you actually photographed the back door.

19 A Yes, ma'am.

20 Q And on that back door there was, like, a footprint?

21 A Yes, ma'am.

22 Q And it says that you did it, you photographed, marked the
23 back door with and without a forensic ruler, and that you were
24 taking a picture because it was your understanding that the
25 people had said somebody kicked their door in.

1 A Yes, room.

2 Q And so you don't know what happened with the results of
3 that, of your picture, but you actually did that because you had
4 been informed that this might be a possibility?

5 A Yes, ma'am.

6 Q And I think that there was a point where there was a picture
7 of the door, like, I don't know which one it is, but I think you
8 looked at it, it's got like the handles of the door. Remember
9 that?

10 A Yes, room.

11 Q And that door was not damaged?

12 A I did not observe any damage to the door or door frame.

13 Q So, and I won't ask this question, but it goes to, there was
14 no damage on the door as if it had been kicked in?

15 A Not that I observed.

16 Q Thank you. And then -- I'm almost finished. Hold on. I'm
17 just going to look at the last part of what you said. I think
18 your testimony was very clear on which one of these guns that
19 were found had live rounds in them and which one didn't. If I
20 recall -- and sometimes I fall asleep -- there were three of them
21 with live rounds and maybe one of them didn't have any live
22 rounds? Is that what I recall?

23 A All the recovered firearms had live rounds.

24 Q All four?

25 A Yes, ma'am.

1 Q Okay. Sorry.

2 ATTORNEY GAY: Beg the Court's indulgence, Your Honor.

3 THE COURT: Yes.

4 Q So I have a couple quick questions. So on that back door
5 that you looked at because you thought somebody may have kicked
6 it in, was there any mud on that door?

7 A I believe so.

8 Q Just a little bit?

9 A Yes.

10 Q How about in the house? There wasn't any mud in the house?

11 A Not that I recall.

12 Q Okay. And when you were out there doing your search, there
13 is like a ditchy area kind of near the back of this house; isn't
14 there?

15 A There was a fire pit.

16 Q I'm talking about even farther back. Isn't there like a
17 little stream or something where there's some muddy area?

18 A That, I don't recall. I didn't go past the property line.

19 Q Okay, I understand you weren't out there. All right. Thank
20 you. I believe that's all. Thank you for talking to me.

21 A You're welcome.

22 THE COURT: Ms. Hensley?

23 ATTORNEY HENSLEY: Thank you, Your Honor.

24

25

CROSS-EXAMINATION

BY ATTORNEY HENSLEY:

Q I'm sorry. Is it Detective Brooks?

A Yes, ma'am.

Q Detective Brooks, I'm Laree Hensley. I represent Devonte Major. Nice to meet you. I always get the ranks confused. So I just have a few questions. I don't want to belabor the points that Ms. Gay has already made.

But before you moved the guns, when you went to meet Corporal Cramer on Highway 78, there were, he had found guns on the side of the road, is that fair?

A Yes, ma'am.

Q And before you moved them, you took pictures of them?

A Yes, ma'am.

Q And we haven't seen any of those pictures; right?

A Not today.

Q Okay, not today. And the same thing about inside the house. You came to the front door. You took the pictures of the outside; right?

A Yes, ma'am.

Q You came into the front door and without -- because you were waiting on the search warrant, you just took some pictures of what you could see from the front door; is that fair?

A Yes, ma'am.

Q And then you went to meet Corporal Cramer and came back;

1 right?

2 A Yes, ma'am.

3 Q So when you went into the house, the couch was in what
4 position?

5 A One of the couches was on its side, and one of them was
6 upright.

7 Q Okay. And that's the way it was when you came in; right?

8 A Yes, ma'am.

9 Q But there had been other people in that house, other law
10 enforcement officers in that house, before you entered the house;
11 right?

12 A Yes, ma'am.

13 Q Can you tell me from your report what time you went in?

14 A That, I do not believe I know what time I actually made
15 entry. Let me see if I documented that. I didn't document exact
16 time that entry was made.

17 Q Okay. Is it fair to say that you had been there, you had
18 been called out there, so ---

19 A Some time had passed?

20 Q And you went to meet Corporal Cramer, and then you came
21 back. So some time had passed; right?

22 A Yes, ma'am.

23 Q And during that time the first responding officers had been
24 in the house; right?

25 A Yes, ma'am.

- 1 Q Several of them; right?
- 2 A That's my understanding.
- 3 Q Okay, that's fair. And EMS had been in the house; right?
- 4 A Again, that's my understanding. Yes.
- 5 Q And was Mr. Swibaker still in the house when you arrived?
- 6 Do you remember that?
- 7 A I do not recall.
- 8 Q That's fair. But we saw a bunch of pictures, but they're
- 9 not necessarily pictures in the order of the way you took them;
- 10 right?
- 11 A Some of them were out of order. Yes.
- 12 Q So we have them numbered for exhibits, but it doesn't mean
- 13 that you took No. 22 before No. 23 before No. 24; right?
- 14 A Correct.
- 15 Q I just wanted to be clear about that. And you said that you
- 16 did not thoroughly search the coveralls; correct?
- 17 A That is correct.
- 18 Q Because they were going to be sent off for evidence and
- 19 testing; right?
- 20 A There was going to be additional testing conducted.
- 21 Q But did you open the wallet; right?
- 22 A Yes, ma'am.
- 23 Q You took everything out of the wallet; right?
- 24 A Yes, ma'am.
- 25 Q You made pictures of all of that?

- 1 A Yes, ma'am.
- 2 Q And that also went for testing; right?
- 3 A A swab from that went for testing.
- 4 Q And you collected from the car a hat on the driver's side
5 floorboard; right?
- 6 A Yes, ma'am.
- 7 Q And some gloves on the passenger's side floorboard. A glove
8 on the passenger's side floorboard?
- 9 A Yes, ma'am.
- 10 Q And you put them in the bag together; right?
- 11 A Yes, ma'am.
- 12 Q And did you take any photographs of any footprints in the
13 yard?
- 14 A I do not recall if I did.
- 15 Q We haven't seen any?
- 16 A Not that we've seen.
- 17 Q And the photograph that you took in the master bedroom, of
18 the bed, that's the way it looked when you got there. Right?
- 19 A Yes, ma'am.
- 20 Q And, to your knowledge, nobody had disturbed it since this
21 incident occurred, is that fair?
- 22 A Yes, ma'am.
- 23 Q So that's the way it was; right?
- 24 A Yes, ma'am.
- 25 Q And you found what's now all combined in Exhibit 22, some

- 1 marijuana. Right?
- 2 A Yes, ma'am.
- 3 Q But it wasn't altogether in one place, right, fair to say?
- 4 A No, ma'am. It was in different locations.
- 5 Q All throughout the house?
- 6 A There was marijuana in the kitchen, as well as in the back,
- 7 right bedroom.
- 8 Q And that's the master bedroom, Mr. Porter's bedroom; right?
- 9 A I believe that's -- Yes, ma'am.
- 10 Q I mean, you opened the door and there was marijuana; right?
- 11 A Yes, ma'am.
- 12 Q Wasn't very hard to find; right?
- 13 A No.
- 14 Q And this jar, Exhibit 21, this is the jar that you're
- 15 referring to as a mason jar; right?
- 16 A Yes, ma'am.
- 17 Q It's really just a glass jar; right?
- 18 A Yes.
- 19 Q It doesn't say mason on it; it doesn't have a canning lid.
- 20 It's just a jar; right?
- 21 A Yes, ma'am.
- 22 Q But this lid that you took a picture of in Exhibit 100, it's
- 23 an actual, like, mason jar lid, right, it's a canning lid; right?
- 24 A Yes, ma'am.
- 25 Q It's not a lid that goes with that mason jar; right?

1 A No, ma'am.

2 Q Because that's not really a mason jar; right?

3 A No.

4 Q I don't want to belabor the point, but I just need to be

5 sure I know all the evidence that you collected in the house,

6 okay. So you've got counterfeit money; right?

7 A Yes, ma'am.

8 Q Seven cellphones?

9 A Yes.

10 Q A bunch of scales?

11 A Yes, ma'am.

12 Q I know two in one place; right?

13 A Uh-huh.

14 Q Then you found some syringes ---

15 A Yes, ma'am.

16 Q --- that are consistent with methamphetamine use; right?

17 A That's one of the uses for it.

18 Q Among other things, okay.

19 A Yeah.

20 Q I'm not trying to trick you; I'm just trying to be sure I

21 understand. And then found some sandwich bags?

22 A Yes, ma'am.

23 Q Were those sandwich bags consistent with the kind of bags

24 that this marijuana was bagged up in?

25 A I do not recall off the top of my head.

- 1 Q But you did put in your report that it was consistent with
2 the way drugs are packaged; right?
- 3 A Yes, ma'am.
- 4 Q And you found 11 pills?
- 5 A Yes, ma'am.
- 6 Q And two more digital scales?
- 7 A Yes, ma'am.
- 8 Q So now we've got four; right?
- 9 A Uh-huh.
- 10 Q And then marijuana scattered throughout; right?
- 11 A Uh-huh.
- 12 THE COURT: Those are yes answers?
- 13 A I'm sorry, Your Honor. Yes, ma'am.
- 14 Q A black pipe ---
- 15 A Yes, ma'am.
- 16 Q --- that you could use for smoking marijuana?
- 17 A Potentially.
- 18 Q Or methamphetamine?
- 19 A Potentially.
- 20 Q And some more counterfeit money?
- 21 A Yes, ma'am.
- 22 Q And another digital scale?
- 23 A Yes, ma'am.
- 24 Q So now we've got five; right?
- 25 A I believe so.

- 1 Q And then the gun?
- 2 A Yes, ma'am.
- 3 Q And you collected some DNA?
- 4 A I collected swabs. Yes, ma'am.
- 5 Q Right. So for the purposes of extracting DNA from the
- 6 swabs; is that correct?
- 7 A Yes, ma'am.
- 8 Q And you measured that shoe print, right ---
- 9 A Yes, ma'am.
- 10 Q --- that was found on the back door?
- 11 A Yes, ma'am.
- 12 Q And you actually compared that shoe print to some shoes that
- 13 were taken into evidence; correct?
- 14 A Yes, ma'am.
- 15 Q And you compared that shoe print to Devonte Major's shoe;
- 16 right?
- 17 A Yes, ma'am.
- 18 Q And it did not match Devonte Major's shoe?
- 19 A It was inconsistent with it.
- 20 Q And it was inconsistent with Muanah Fortune's shoe?
- 21 A Yes, ma'am.
- 22 Q It was inconsistent with Elijah Green's shoe?
- 23 A Yes, ma'am.
- 24 Q And it was inconsistent with Polo Salazar's shoe?
- 25 A Yes, ma'am.

1 Q You didn't check any other shoes; right?

2 A No, ma'am.

3 Q You didn't have any shoes from anybody who lived in the
4 house; right?

5 A No, ma'am.

6 Q And if there had been mud tracked into the house, that would
7 certainly be in your photographs of inside the house; correct?

8 A Yes, ma'am.

9 ATTORNEY HENSLEY: That's all the questions that I have.
10 Thank you, ---

11 A You're welcome.

12 ATTORNEY HENSLEY: -- Detective Brooks.

13 ATTORNEY OSBORNE: Briefly, Judge.

14 THE COURT: Sure. Redirect?

15 **REDIRECT EXAMINATION**

16 BY ATTORNEY OSBORNE:

17 Q Do you, as a crime scene technician, have a way of
18 time-stamping a footprint?

19 A No, I do not.

20 Q So if there's a footprint on the door, you can't measure it
21 and say when it was put there?

22 A No, I cannot.

23 Q Okay. So if there was a footprint on the door, it could
24 have been put there a week earlier?

25 A Yes, sir.

1 Q Okay. I think Ms. Hensley asked you something about
2 photographs that you took. I just printed off a few of them.

3 ATTORNEY OSBORNE: Your Honor, may I approach?

4 THE COURT: You may.

5 (WHEREUPON, States Exhibits 606, 607, 608, 609, 610 and 611
6 are marked for identification.)

7 Q Showing you 606 to 611. Do you recognize those?

8 ATTORNEY GAY: Could I see those?

9 ATTORNEY HENSLEY: Could I see them?

10 ATTORNEY OSBORNE: Those are the photographs you were
11 talking about.

12 ATTORNEY HENSLEY: I just don't remember the numbers.

13 ATTORNEY OSBORNE: All right, 606 through 611. And for the
14 record, these were also provided to defense.

15 A Yes, sir. I recognize these.

16 Q All right. And what are they?

17 A Those are photographs I took of the guns outside on the side
18 of Highway 78.

19 Q Photographs that you took that night?

20 A Yes, sir.

21 Q And this isn't all of them, is it fair to say?

22 A That's just a selection of the photographs I took.

23 Q Just a few of them?

24 A Yes, sir.

25 ATTORNEY OSBORNE: Your Honor, at this time I'd seek to

1 admit 607 through 611 into evidence.

2 ATTORNEY GAY: No objection from Mr. Green.

3 ATTORNEY HENSLEY: Without objection, Your Honor.

4 THE COURT: All right. Very well.

5 (WHEREUPON, State's Exhibits 606, 607, 608, 609, 610 and 611
6 are entered into the record.)

7 Q 606 to 611. All right. Starting off by showing you 606.

8 A I believe that's going to be the Smith & Wesson that I
9 recovered, a revolver.

10 Q You know, I notice that -- is it fair to say that there were
11 some exposure issues with these photographs?

12 A Yes, sir.

13 Q 607?

14 A An additional photograph of the revolver.

15 Q 608?

16 A That is one of the firearms laying in the mud.

17 Q 609?

18 A Further photograph of the firearm in the mud.

19 Q 610?

20 A One of the firearms laying on the grass.

21 Q And again, you know, I'm not doing anything with these
22 pictures, this is just how it come out. Right?

23 A Yes, sir, that's how they came out when I photographed them.

24 Q 611?

25 A One of the firearms, again, in the mud.

1 Q Okay. Oh, the counterfeit money, what type of marking did
2 it have on it?

3 A I believe the money had Chinese markings on them.

4 Q Chinese markings on them?

5 A Yes, sir.

6 ATTORNEY OSBORNE: All right. No further questions.

7 THE COURT: Recross?

8 ATTORNEY GAY: May I confer with Ms. Hensley?

9 THE COURT: All right.

10 **RECROSS-EXAMINATION**

11 BY ATTORNEY GAY:

12 Q So you testified that the back door had a shoe print on it.

13 A Yes, ma'am, it had an impression.

14 Q An impression. And that's in your report?

15 A Yes, ma'am.

16 Q And that's what you took some pictures of?

17 A Yes, ma'am.

18 Q That it was an impression of a shoe?

19 A Yes, ma'am.

20 Q Now, you know, this is commonsense, but everybody kind of
21 knows how shoes are now. They have all these rubber pieces and
22 different, like, you know what I'm talking about.

23 A They have the tread pattern.

24 Q Impressions.

25 A They have a tread pattern.

1 Q Tread pattern, that's the right word.

2 A Yes.

3 Q So what you took a picture of on the door that day had a
4 tread pattern?

5 A Yes, ma'am.

6 Q And so it was, as an investigator, crime scene investigator,
7 you believed that this would be an important piece of evidence
8 because you had been told this night that these victims said that
9 the door was kicked in?

10 A Yes, ma'am.

11 Q And I think Ms. Hensley was very clear when she said you did
12 a comparison because you're the crime guy, ---

13 A Yes, ma'am.

14 Q --- the evidence guy, to look at the shoes that were taken
15 into evidence from the four defendants in this case.

16 A Yes, ma'am.

17 ATTORNEY OSBORNE: Objection, Your Honor. Asked and
18 answered, and beyond the scope.

19 ATTORNEY GAY: The last thing I want to say is that, and
20 there was no match.

21 THE COURT: Was that a question?

22 ATTORNEY GAY: That was a statement that I was asking him to
23 agree to.

24 THE COURT: I gotcha. All right.

25 ATTORNEY GAY: I mean, I think that I can withdraw the

1 question and it can be over now.

2 THE COURT: There was an objection that was interposed.

3 ATTORNEY OSBORNE: Objection. Asked and answered, and
4 beyond the scope.

5 THE COURT: All right, very well. Please answer it. You
6 may proceed.

7 ATTORNEY GAY: Well, I don't think ---

8 THE COURT: I'm not going to get beyond the scope. You may
9 proceed.

10 ATTORNEY GAY: Right. I have no further question.

11 THE COURT: All right. Yes, ma'am?

12 ATTORNEY HENSLEY: I have nothing further from Defendant
13 Major, Your Honor.

14 THE COURT: Very well.

15 ATTORNEY HENSLEY: Thank you.

16 THE COURT: And is this witness free to leave, and is there
17 any objection?

18 ATTORNEY OSBORNE: None from the state.

19 THE COURT: Very well. Thank you.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: All right. Call your next witness, please.

22 ATTORNEY OSBORNE: The state calls Officer Moy.

23 CLERK OF COURT: If you'll please raise your right hand, and
24 state your full name for the record.

25 THE WITNESS: Phillip Moy.

1 CLERK OF COURT: Can you spell your last name for the
2 record, please.

3 THE WITNESS: M-o-y.

4 PHILLIP M. MOY,

5 having first been duly sworn, was examined and testified as
6 follows:

7 **DIRECT EXAMINATION**

8 BY ATTORNEY OSBORNE:

9 Q Okay. Officer, what's your name?

10 A Phillip Moy.

11 Q And where do you currently work?

12 A City of Charleston Police Department.

13 Q How long have you been with the City of Charleston Police?

14 A Since November 2020.

15 Q Any prior law enforcement?

16 A Yes.

17 Q And where?

18 A I was with the Summerville Police Department between
19 September of 2017 to November of 2020, and the Metropolitan
20 Police Department in Washington, D.C., from September 2013 to
21 September 2017.

22 Q And I'm going to ask you, just pull that mic a little bit
23 closer and just speak louder than you normally would, I guess.

24 A All right.

25 Q So let's get into it. On the night of January 27th of 2019,

1 going into the January the 28th, were you working that night?

2 A I was not.

3 Q Did you happen to come in to work?

4 A I did.

5 Q And what was your position with Summerville Police at that

6 time?

7 A Detective.

8 Q And what was your role in this investigation?

9 A I was the case agent.

10 Q Okay. And when you came in where did you first respond?

11 A Trident Medical Center.

12 Q Okay. And when you got to Trident, who did you meet with?

13 A I met with then-Sergeant Driscoll.

14 Q Okay. And who did you meet with after that?

15 A I met with the surviving victim.

16 Q And who was that?

17 A That was Mr. Marcus Porter.

18 Q Did you make any observations to Mr. Porter when you saw

19 him?

20 A I did; yes.

21 Q And what was that?

22 A He had sustained a single gunshot wound. It was a

23 through-and-through wound through his chest.

24 Q I know it's obvious, through and through, the bullet's not

25 in him, it came out?

1 A Right. It goes in one and comes out another.

2 Q All right. After speaking with Mr. Porter, what did you do
3 then?

4 A I then assisted in taking a verbal statement from
5 Mr. Porter.

6 Q And after you spoke to Mr. Porter, what did you do then?

7 A We collected clothing from both he and the decedent.

8 Q Okay. And once you left the hospital, where did you go?

9 A I responded to the Summerville Police Department.

10 Q Once you got to the Summerville Police Department, did you
11 have the occasion to see Defendants Devonte Major and Polo
12 Salazar?

13 A I did.

14 Q And did you observe what Defendants Devonte Major and Polo
15 Salazar were wearing?

16 A I did.

17 Q Okay.

18 ATTORNEY OSBORNE: Your Honor, may I approach?

19 THE COURT: You may.

20 Q I'm showing you State's 193 and 194. Can you take a look at
21 these and tell me if you recognize them?

22 A Can I open them up?

23 Q Yeah, you can open them up.

24 A Can I get them out?

25 Q Yes, go ahead. Okay. So I believe you're looking at

1 State's 193 right now. Do you recognize 193?

2 A I do.

3 Q And what is that?

4 A This is the jacket that was worn by Defendant Major.

5 Q And you can just put it down for a second. And when you saw
6 that jacket, where was that jacket?

7 A It was on his person.

8 Q He was wearing it?

9 A That's correct.

10 ATTORNEY OSBORNE: All right. Your Honor, at this time I
11 would seek to admit State's 193 into evidence.

12 ATTORNEY GAY: I believe, Your Honor, at this point we have
13 no objection on behalf of Mr. Green.

14 THE COURT: Very well.

15 ATTORNEY HENSLEY: And no objection on behalf of Mr. Major.

16 THE COURT: Very well. Admitted. Thank you.

17 (WHEREUPON, State's Exhibit 193 is entered into the record.)

18 Q And now you can go ahead and put that up and publish that to
19 the jury. Okay. And as best you can, kind of fold it back up.
20 You know what? We'll put that back in there in a minute.

21 We can go ahead to 194 then. Okay. Without publishing it,
22 do you recognize 194?

23 A I do.

24 Q And what is that?

25 A This is the sweatshirt that was worn by Defendant Salazar.

1 Q And on the night of the incident, where did you see that?

2 A On his person.

3 ATTORNEY OSBORNE: Your Honor, at this time the state seeks
4 to admit 194 into evidence.

5 THE COURT: Ms. Gay?

6 ATTORNEY GAY: I have no objection on behalf of Mr. Green.

7 THE COURT: Very well.

8 ATTORNEY HENSLEY: No objection, Your Honor.

9 THE COURT: Very well.

10 (WHEREUPON, State's Exhibit 194 is entered into the record.)

11 Q All right. Go ahead and publish that one.

12 And in particular, on this jacket, I'd like you to focus
13 your attention to where your head, I guess, would go through
14 there. Is there something in particular about this jacket?

15 A There is. There's a, like a, face-covering portion.

16 Q A face-covering portion?

17 A Correct.

18 Q What do they call that? I know it's not baclava. It's
19 balakla (sic)?

20 A Balaclava, or something like that.

21 Q Balaclava, okay. All right. And you can put that back
22 down. Okay. And we'll put those back together in a minute. And
23 moving ahead, did you have the occasion -- did you have the
24 occasion to speak to Devonte Major?

25 A I did.

1 Q Was there anyone else present during that interview?

2 A Detective Edward Farr.

3 Q And it started about what, like about 4:30 in the morning,
4 does that sound right?

5 A About.

6 Q About how long did the entire interview with Mr. Major last?

7 A About an hour.

8 Q Was it audio and video recorded?

9 A It was.

10 (WHEREUPON, State's Exhibits 198, 199 and 200 are marked for
11 identification.)

12 ATTORNEY OSBORNE: All right. Your Honor, may I approach?

13 THE COURT: You may.

14 Q Showing you State's 198, 199 and 200. Take a look at those
15 and tell me if you recognize those.

16 A I do.

17 Q All right. What is 198?

18 A 198 is going to be the full recording of the interview.

19 Q All right. And what is 199?

20 A 199's going to be a clipped version of the interview.

21 Q All right. And how about 200?

22 A This is going to be Summerville Police Department's
23 advisement of rights form.

24 Q All right.

25 ATTORNEY OSBORNE: All right, Your Honor.

1 Q Okay. So is it fair to say that 198 is the entire recorded
2 interview, and 199 is just a couple very short clips?

3 A That's correct.

4 ATTORNEY OSBORNE: Your Honor, at this time I'd seek to
5 admit 199 and 200 into evidence.

6 ATTORNEY GAY: I have no objection, Your Honor.

7 ATTORNEY HENSLEY: Without -- just subject to my pretrial
8 motion, but without objection.

9 THE COURT: Very well.

10 (WHEREUPON, State's Exhibits 199 and 200 are entered into
11 the record.)

12 Q While I'm waiting for this to fire up, during your time with
13 Defendant Major, during the interview did he appear to be
14 intoxicated or under the influence of any alcohol, drugs or
15 anything like that?

16 A No.

17 Q Did Mr. Major appear to have any physical or mental
18 disability that would have impaired his ability to understand
19 what was being said to him?

20 A No.

21 Q And prior to or during the interview with Mr. Major, did you
22 offer him any breaks, bathroom, otherwise or, if you didn't, in
23 the alternative, did you deny him bathroom breaks or anything
24 like that?

25 A We did not deny him.

1 Q And was Mr. Major denied access to telephone, food or
2 drinks?

3 A No.

4 Q Were there any threats or promises made by you or the other
5 officer present during the interview in exchange for Mr. Major's
6 statement?

7 A No.

8 Q I believe this first clip is going to be about five minutes.
9 The second one is short.

10 (WHEREUPON, State's Exhibit 199 is published to the jury.)

11 Q Okay. Who are we looking at here?

12 A That's Defendant Major and myself.

13 Q Okay.

14 (WHEREUPON, the video resumes.)

15 Q I did hear him correctly, did he say he was from Beaufort?

16 A That's correct.

17 Q All right. I'm showing you State's 200. We're not going to
18 go through this. I just want you to tell us, what are we looking
19 at here?

20 A This is the P.D. advisement of rights form.

21 Q Whose writing is this up here at the top?

22 A That's mine.

23 Q And so these are the Miranda rights right here, 1 through 5?

24 A Correct.

25 Q And whose initials are these next to each right?

1 A That's going to be Defendant Major.

2 Q And how did that happen? Did you read one and he initialed
3 it, or did you read all five and then he'd go back and initial
4 all five?

5 A I put this piece of paper in front of him, and I grabbed a
6 separate one for myself. So I read. He read along, and then he
7 would initial. And we just did sequentially 1 through 5, one at
8 a time.

9 Q Whose signature is here?

10 A That's mine.

11 Q And here?

12 A That's Detective Farr.

13 Q Underneath the witnesses, for the record?

14 A That's correct.

15 Q And over here, whose signature on the right?

16 A That's Devonte Major.

17 Q And then we have a waiver of rights. Is this what you read,
18 this paragraph here?

19 A That's correct.

20 Q And what we heard, again, the signature underneath witness?

21 A That's correct. That's mine.

22 Q That's your signature. And underneath your signature?

23 A Detective Farr.

24 Q And then to the right?

25 A Defendant Major.

1 Q And again, I'm not going to ask you to re-read it now, but
2 this is what you read to him, this is what we heard during the
3 clip?

4 A That's correct.

5 Q Okay. Before I play the second clip, I just want to ask you
6 a couple questions about what Mr. Major's story was. And again,
7 we're only going to talk about what Mr. Major said he did, all
8 right. What was his story? What was his basic story that night?
9 Where was he coming from?

10 A That he was coming from Beaufort, South Carolina, and
11 traveling to Summerville, South Carolina.

12 Q And for what purpose?

13 A To purchase 3.5 grams of marijuana for 20 or \$25.

14 Q Okay. What, if anything, did he say about the Honda, about
15 his -- did he know anything in particular about the Honda?

16 A He stated that he knew that the car was stolen.

17 Q And was the car, in fact, reported stolen?

18 A That's correct.

19 Q Okay. And this goes into the second clip. Did he mention
20 anything else of interest to you during this second clip? Or I
21 guess I should say, Did he show you anything during the interview
22 that was of interest to you?

23 A Yes. When discussing the purchasing and smoking marijuana,
24 he reached into his right coat pocket and pulled out small
25 quantities of marijuana, often called shake, which is just small

1 quantities, and even notices a stem and throws it on the
2 interview room floor.

3 Q Was it packaged or anything?

4 A No.

5 Q It was just loose?

6 A Loose.

7 (WHEREUPON, the video resumes.)

8 Q Okay. Did you inquire at all about a trip all the way from
9 Beaufort to Summerville to buy \$25 worth of marijuana?

10 A We did.

11 Q Did he tell you how much marijuana went for in Beaufort?

12 A He said that he would pay \$30 in Beaufort for the same
13 amount.

14 Q All right. After speaking to him, did you have the occasion
15 to respond back to the crime scene at [REDACTED] Myrtle Place and
16 collect additional evidence?

17 A I did.

18 (WHEREUPON, State's Exhibit 188 is marked for
19 identification.)

20 ATTORNEY OSBORNE: May I approach?

21 THE COURT: You may.

22 Q Showing you 188. Do you recognize this?

23 A I do.

24 Q And what is it?

25 A These are going to be bullet fragments that were found

1 inside the house.

2 ATTORNEY OSBORNE: And we'll just do for ID purposes now,
3 Judge.

4 THE COURT: All right.

5 Q Okay. Did you have the occasion to attend the autopsy of
6 victim J.B. Weaver?

7 A I did.

8 Q And did you collect evidence once there?

9 A I did.

10 (WHEREUPON, State's Exhibits 186 and 187 are marked for
11 identification.)

12 Q All right. I'm going to show you 186 and 187. Can you take
13 a look at those and tell me if you recognize those?

14 A I do.

15 Q Okay. What is 186?

16 A 186 is going to be the blood spot card from the victim.

17 Q And 187?

18 A Those are going to be the projectiles recovered from the
19 victim.

20 Q And I'm just going to speed it -- 187 is the projectiles?

21 A That's correct.

22 Q And 186 is the blood spot?

23 A That's correct.

24 Q Blood standard. Okay.

25 And lastly, did you have the occasion later on in this

1 investigation to collect a buccal swab from one Defendant Muanah
2 Fortune?

3 A I did.

4 (WHEREUPON, State's Exhibit 214 is marked for
5 identification.)

6 Q We've already heard an explanation of the buccal swab. I'm
7 going to show you 214. Do you recognize that?

8 A I do.

9 Q And what is it?

10 A This is going to be the buccal swabs from Defendant Muanah
11 Fortune.

12 Q And what date did you collect that?

13 A Let's see. Looks like the 30th of January, 2019.

14 Q Okay.

15 ATTORNEY OSBORNE: No further questions, Your Honor.

16 THE COURT: Cross-examination, Ms. Gay?

17 ATTORNEY GAY: One moment, please, Your Honor.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY GAY:

20 Q Good afternoon. I'm Melisa Gay, and I represent Elijah
21 Green. So it's my understanding that you were brought into this
22 investigation sometime around midnight right after it happened?

23 A That's correct.

24 Q And I believe your first encounter with this group of people
25 was at the hospital when you talked to Marcus Porter?

1 A I talked -- correct.

2 Q And then you said that verbally Mr. Porter told you some
3 things, and then later on it was written down?

4 A He dictated while an officer scribed. Due to his injury, he
5 was unable to write it himself.

6 Q So the first formal statement that Mr. Porter gave to the
7 police was given to you?

8 A Correct.

9 Q Are you making notes as part of this case, and as part of
10 this case file?

11 A Correct.

12 Q And you obviously reviewed those notes as you prepared for
13 this hearing today, this trial?

14 A Correct.

15 Q And in those notes, you wrote down what he was telling
16 you ---

17 A That's correct.

18 Q --- in your notes. So there was this written statement that
19 eventually Mr. Porter signed, and there was also your notes of
20 what was said?

21 A Okay.

22 Q And I believe -- and if you need to refresh your
23 recollection, just let me know, but I believe -- that you said
24 that he told you that Weaver arrived, and they talked and did
25 some drinking.

1 ATTORNEY OSBORNE: Objection, Your Honor. Calls for
2 hearsay.

3 ATTORNEY GAY: It's on his notes.

4 ATTORNEY OSBORNE: It's still hearsay.

5 Q Question. Did you write down on your notes that the word
6 drink was used?

7 ATTORNEY OSBORNE: Objection, Your Honor. It's still
8 hearsay.

9 THE COURT: Yes, ma'am, it's hearsay. Let me see you guys.
10 (WHEREUPON, an off-the-record discussion was held at
11 sidebar.)

12 Q It's getting late in the day, and I think I decided at this
13 point that I'm not going to say anymore and let Ms. Hensley ask
14 you some questions.

15 A Okay.

16 Q Thank you.

17 THE COURT: All right. Cross-examination, Ms. Hensley?

18 ATTORNEY HENSLEY: Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 BY ATTORNEY HENSLEY:

21 Q Hi, Detective Moy. We've met before. I'm Laree Hensley. I
22 represent Devonte Major; right.

23 A Yes.

24 Q So you're not on Summerville anymore; now you're in
25 Charleston. Right?

1 A That's correct.

2 Q So when you were up here on this case, you were the case
3 agent; right?

4 A That's right.

5 Q So you're the guy who's pulling it all together at that
6 point; right?

7 A Correct.

8 Q You're kind of directing what's going on?

9 A It was an effort with everybody involved but, yes.

10 Q Sure. There's a lot of people, lots of moving parts in
11 this, fair to say?

12 A Right.

13 Q So you went to the hospital and spoke to Marcus Porter?

14 A That's correct.

15 Q And at the hospital Marcus Porter never told you his house
16 had been ransacked; right?

17 ATTORNEY OSBORNE: It's the same objection, Your Honor.
18 It's hearsay. Marcus Porter told you.

19 ATTORNEY HENSLEY: I said, Marcus Porter never told you.

20 ATTORNEY OSBORNE: Same objection.

21 THE COURT: In other words, you're eliciting hearsay.

22 ATTORNEY HENSLEY: Well, Your Honor ---

23 THE COURT: Go ahead. Just hold on. All right. Counsel,
24 let me see you a sec.

25 (WHEREUPON, an off-the-record discussion was held at

1 sidebar.)

2 ATTORNEY HENSLEY: Thank you, Your Honor.

3 THE COURT: Yes.

4 Q You did a bunch of investigation in this case; right?

5 A Correct.

6 Q Detective Moy -- is it still Detective Moy?

7 A Officer.

8 Q Officer Moy. I'm not good at that, so I apologize. So you
9 met with a bunch of people, talked to a bunch of people; right?

10 A Correct.

11 Q Collected a bunch of statements, interviews, all kinds of
12 stuff; right?

13 A Correct.

14 Q You went to the hospital and watched an autopsy?

15 A Correct.

16 Q And collected some evidence there?

17 A Correct.

18 Q And you met with witnesses and people involved in this case,
19 victims, Mr. Porter, Mr. Swibaker, a couple of times; right?

20 A Correct.

21 Q And you met with Mr. Porter one time, I guess, at the
22 Summerville Police Department; right?

23 A That's correct.

24 Q At least once?

25 A At least once.