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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Honorable Thomas W. Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERMAINE SILAS WHITE,

APPELLANT

APPELLATE CASE NO. 2021-000452

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF COLLETON) 2018-GS-15-00648 and
) 2018-GS-15-00649

THE STATE OF SOUTH CAROLINA)
)
 VS.) TRANSCRIPT OF RECORD
)
 JERMAINE SILAS WHITE)

Tuesday, April 19, 2021
 Wednesday, April 20, 2021
 Thursday, April 21, 2021

WALTERBORO, SOUTH CAROLINA

B E F O R E:

The Honorable Thomas W. Cooper, Jr., Judge, and a jury

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Reported by: Cathy J. Provost, RPR/RMR

Official Circuit Court Reporter

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1 cross-examination of lawyers from both sides. And that's a test
2 that the case should be decided on, what you find to be the facts
3 after having heard all that. Not what you might hear from
4 outside source where there are no rules that apply. So, please,
5 I'm sure you will do that. I emphasize that to you now just to
6 bid you over between now and tomorrow.

7 Enjoy the rest of your evening, ladies and gentlemen,
8 please, and be in the jury room at 9:30 tomorrow. And we'll
9 start the trial at that time. Thank you.

10 (WHEREUPON, the jury is excused for the day at 2:02 p.m.)

11 MATTERS OF LAW

12 THE COURT: Folks, I'm about, I'm almost, all the way
13 through the portion of the DVD dealing with *Jackson v. Denno*.
14 I'll take my final minutes and I'll finish that. The other two
15 parts, I haven't even started those yet. And I just got this,
16 too, so I need some time to look at those before we start our
17 pretrial stuff. How much time, 45 minutes for lunch, is that
18 enough? Do you need more time than that?

19 ATTORNEY MATHEWS: Your Honor, I also have a couple of
20 *Bruton* motions related to those, if I can hand those up. I'm
21 giving a copy to Mr. Evans.

22 THE COURT: You give those up, I can look at those during
23 the lunch break, as well.

24 ATTORNEY EVANS: Judge, if it helps, the disk that I've
25 handed you, there should be one video marked "in car" or

1 something like that, and the second video marked "bodycam". I
2 think Mr. Mathews' motions concerning that only deal with the
3 bodycam, and probably only the first six minutes. So I think you
4 could ...

5 ATTORNEY MATHEWS: And these are my transcriptions, Your
6 Honor. I watched the tapes and I wrote down what I thought they
7 said. If Your Honor disagrees, obviously go with what you
8 understand. But I have summarized, or cited where I could, from
9 these.

10 THE COURT: Let's see. The bodycam on this one?

11 ATTORNEY EVANS: Yes, sir.

12 THE COURT: All right.

13 ATTORNEY EVANS: I did not file those. Your Honor,
14 afterwards, if you give them back to the court reporter.

15 THE COURT: Okay. We'll make them Court's exhibits after
16 that. Right now I'm thinking about it. Unless you all tell me
17 otherwise, the message on the recording will be call back
18 tomorrow at 6:00.

19 CLERK OF COURT: Okay.

20 THE COURT: Sometimes I forget that and I'll be across town
21 on my way home.

22 CLERK OF COURT: We could call you, too.

23 THE COURT: All right. Folks, let's start back at 3:00.

24 (WHEREUPON, a recess was taken at 2:05 p.m. and reconvened
25 at 3:15 p.m.)

MATTERS OF LAW

1
2 THE COURT: Folks, I've had a chance to look at all of the
3 CDs. I didn't look at all of the *Neil v. Biggers* with
4 Ms. Benton's. I looked at the first part you mentioned in the
5 motion, Mr. Mathews. I didn't look at all of it. But if I need
6 to, I brought it all out here so that I can bring it up again if
7 I need to. But I think I'm in a position now to go forward with
8 the motions. I did watch all of the *Jackson v. Denno*, all of the
9 car cam and all of the bodycam.

10 All right. We've got *Jackson v. Denno*. We've got motions
11 in limine. Where are we going to start, gentlemen?

12 ATTORNEY MATHEWS: Your Honor, I think it's all -- it
13 doesn't matter, whatever Your Honor wants to do. The two in
14 writing obviously are the ones I care most about. I had an idea
15 depending on which -- there were several objections entered,
16 there were several interviews that Mr. White gave.

17 One of them, the one that I have the most serious objections
18 about are Officer Grant talking to Mr. White in the sally port at
19 the jail. But I don't believe they're going to present that.

20 The others, there's nothing that I can perceive in there
21 that suggests that they weren't knowing. I believe that he was
22 Mirandized. And so in an abundance of caution, I feel like I had
23 to step forward with that.

24 But the only serious objection I would have would be to the
25 one in sally port with Officer Grant, which I understand they're

1 not putting forth.

2 THE COURT: Okay. I'm not sure I heard the one in sally
3 port.

4 ATTORNEY MATHEWS: They may or may not have presented that.
5 I'll pick one of these things, that might be a little easier.
6 There were several, probably four, interviews that Mr. White
7 gave. One with Officer Stivender, I understand, and I'm going to
8 present that. There's two, I think, with Officer Kinard, and I
9 imagine I'll use one of those. And one with Officer Grant and
10 Officer Kinard, and then one with Officer Grant. That, I
11 understand that they're not using. That's the one I had the
12 biggest problem with because Officer Grant said before the
13 interview, just a few minutes earlier, he was going to question
14 but didn't really question, but they're not using that.

15 So mostly as long as I know which ones they're using. I
16 looked at all of them. And it would be an uphill battle for me.
17 I think I need to argue that they weren't voluntary, but I'm not
18 sure that they weren't involuntary.

19 THE COURT: And certainly I'll be glad to hear arguments.
20 In that I will say without this additional testimony to be given,
21 the testimony of -- *Jackson v. Denno*, of course, is all on the
22 video of the Miranda warnings being given and signed. Of course,
23 I didn't see what was being signed, obviously. But the officer
24 went through Miranda with him as he was seated. He was reading
25 it and seemed to be initialing it and agreeing to go forward and

1 make a statement.

2 On the basis of the video alone, without any additional
3 testimony, that certainly appeared that he was given his warnings
4 and that he understood what the Miranda warnings were, and what
5 from that point on was free and voluntarily. There was nothing
6 coercive about it. Clearly he appeared to be in custody, so he
7 was entitled to one.

8 But unless there's more to be offered in that regard on
9 either side, I think the video speaks for itself insofar as
10 that's concerned.

11 And there were two *Jackson v. Denno*, one on Ms. Benton and
12 then I'm not sure if there was another individual. I think
13 Ms. Benton is the one which you raised some questions about.

14 ATTORNEY MATHEWS: Yes, sir.

15 THE COURT: So I'll be glad to hear from that. And then the
16 bodycam, when he approached the victim and the gentleman, I take
17 it who -- I'm trying to make sure I got these names right,
18 Mr. McQune apparently standing there when the officer came up,
19 and Mr. Poland was in the chair, and Mr. McQune made some
20 statements which, I think, you object to. And, of course, the
21 victim made some statements, as well. I heard all of those.

22 But I didn't hear anything about the sally port or anything
23 else other than that.

24 ATTORNEY MATHEWS: I agree. Those are separate videos, your
25 Honor, and they are separate issues. The one in sally port, they

1 are not presenting, so I don't care.

2 And the one, I do care an awful lot, and I know that
3 Mr. White would, about the statements made on Ballard's bodycam
4 when he approached. And obviously it's all hearsay. Mr. McQuine
5 was later interviewed and he said he didn't actually see
6 anything. He was told what happened.

7 THE COURT: Right.

8 ATTORNEY MATHEWS: But the person who did make a statement
9 that he did know what was going on was the person approached a
10 little bit later, he never said anything. But there was one
11 picture with two middle-aged, or older, black males, and one was
12 Mr. McQuine and one was Mr. McCord. And Edwin McCord's the one
13 who gave the statement at the office saying that he did see
14 everything. McCord and McQuine both gave statements and were
15 interviewed at the Walterboro Police Department. Each said the
16 other was not there.

17 But that's, you know, if McCord or McQuine shows up and
18 testifies, I can obviously impeach with that because I can
19 cross-examine and I can show their videos.

20 Obviously that's a bigger problem with the victim, Lennon
21 Poland. And the only thing he says is, White, but he says that
22 after he's shot in the back of the head. And at one point I
23 understand Ballard's rationale in the later video, Ballard
24 says/talks to the victim's mother. And I don't know if that's
25 his stepdad or boyfriend or whoever it is, and says he didn't see

1 anything. He's probably just trying to get him, you know, to
2 avoid, trying not to make sure they don't take justice in their
3 own hands. He may have had other reasons. But he did say that
4 the victim didn't see anything because he was shot in the back of
5 the head. His rationale may be, and he may testify that he just
6 said that to make sure they didn't come after White. But he was
7 shot in the back of the head.

8 And the only -- there's no indication that he saw what
9 happened. And he was asked, Were you arguing? He says, I didn't
10 say nothing, or, I didn't say anything. And the only person that
11 identifies him says it was Jermaine, Jermaine, Jermaine White,
12 Silas White's son, and that's coming from McQune who later says
13 he didn't see it.

14 That puts the idea into the victim's head, into his mind of
15 who it was. If he didn't see him he could just repeat what the
16 officer said. I have no way to know that since he's not here.
17 But the normal indicator of reliability that you might find in a
18 dying declaration of someone is gone, and it's gone because the
19 name has been told to him, even if he didn't know him, never met
20 him, never seen him before, never heard his name uttered before.

21 He didn't describe him. Now, granted, he wasn't in great
22 shape to be doing that. But he didn't say what the guy looked
23 like, he didn't say what the guy was wearing, he didn't say any
24 of that. He just repeated what McQune said. And I think that
25 takes away the indicia and indicator of reliability that you

1 might find in the dying declaration and just reduces it to simple
2 hearsay. And obviously I have no way to cross-examine
3 Mr. Poland.

4 And so I think, obviously, it's greatly prejudicial, and for
5 at least the three different reasons, and mostly hearsay. And
6 without an indicator of reliability that you might find in a
7 dying declaration, this should not be -- it's too prejudicial and
8 it's not inherently reliable. And I would ask that it be
9 suppressed, Your Honor.

10 THE COURT: Mr. Evans, let's chop this up in little pieces.

11 ATTORNEY EVANS: Thank you, Your Honor.

12 THE COURT: And deal, first of all, if you will, with the
13 bodycam and with the statements made by McQune, and dealing with
14 the hearsay nature, if you would, please, first of all. And then
15 we'll deal with the statements made by Mr. Poland.

16 ATTORNEY EVANS: Yes, sir. Thank you, Your Honor. I think
17 that Mr. Mathews' motion anticipates or sort of stipulates that
18 Mr. McQune was not an eyewitness to the shooting by his own
19 admission in an interview with Detective Kinard, who I have not
20 introduced to you yet, Your Honor, but he was obviously standing
21 and sitting with me as the police officer, and you saw him in the
22 interview videos.

23 We didn't provide you with that interview video, but I'm
24 more than happy to play it. I think it's agreed on that
25 Mr. McQune came to the scene after the shooting. He admits that

1 he didn't even hear the shooting but was approached by someone
2 else. Then when Mr. Mathews -- I don't think I heard him mention
3 that Mr. McQune, in his interview, asked Lennon Poland, Who did
4 this to you; what happened? And that's the first dying
5 declaration by Mr. Poland, is, he says, You know, Jermaine White.
6 Mr. McQune then transmits that to Billy Ballard when he drives up
7 and gets out of his car.

8 My argument essentially, Judge, as to Mr. McQune and his
9 statement is that it's, you know, it's an excited utterance with
10 a dying declaration inside.

11 I would argue, that even without seeing a gunshot to
12 someone's head, that would obviously be an exciting incident
13 which would, you know, shock the system and lead to an excited
14 utterance.

15 I would argue that coming up on someone that you know and
16 seeing them bleeding from the head, and suffering as you can see
17 in the bodycam which, of course, takes place after this, but
18 coming up to that scene could be the type of incident which could
19 overcome the senses and allow Mr. McQune to speak to Detective
20 Ballard about the fact that he had gotten that -- now, he didn't
21 say it, unfortunately, but we have to take the statements as they
22 are.

23 I've got a case, Judge, and I was hustling so I can't tell
24 you that I've read every word of all the cases that I'm going to
25 mention, but I've got copies for you, and I'll certainly read

1 every word of them tonight. This is *Paden*, P-a-d-e-n, v.
2 *Cartledge*, which is a federal case, it's a habeas case, but it
3 comes out of South Carolina. And the testimony in that case was
4 someone named Espinoza (phonetic sp) told an officer that a black
5 male had stabbed the victim. And that came in through the
6 officer, not through Espinoza.

7 That's important here, because you'll see on my witness list
8 that Mr. McQune is not on there. He has, since this incident,
9 moved to Pennsylvania. And regrettably we thought he was going
10 to be cooperative. He since stopped being cooperative in
11 answering my calls, or we would have certainly, strongly
12 considered, at the very least, bringing him down to testify as to
13 that dying declaration. But as to his statement, I certainly
14 concede that he didn't have personal knowledge.

15 But I think you're entitled to consider his later statements
16 to Detective Kinard as part of the foundation for the hearsay
17 exception. And I don't think it's testimonial because obviously,
18 Judge, it's just a few minutes into the whole, the whole affair.

19 And we know that Mr. McQune wasn't planning on testifying
20 because he's not here to testify, unfortunately. That's what
21 I've got for his statement.

22 Would you like me to take up the dying declaration itself,
23 what you can see on the video?

24 THE COURT: And that's the one word, White; right?

25 ATTORNEY EVANS: Yes, sir. I would contend that there is

1 actually more. And I didn't realize this until Friday when I was
2 preparing with Detective Ballard ---

3 THE COURT: Right.

4 ATTORNEY EVANS: --- and going over his video with him. But
5 shortly after that dispatch, you can hear on his radio, calls
6 back to him, because by this point he was given the name Jermaine
7 Silas White as a suspect to them.

8 THE COURT: Right.

9 ATTORNEY EVANS: They called back to ask for confirmation of
10 that. You can hear, though not see, Mr. Poland, the victim, say,
11 I think he says, What, and then, Yeah. And Detective Ballard
12 will testify -- I confirmed with him on Friday -- that Mr. Poland
13 was confirming to him that Jermaine White is the person
14 responsible for what happened to him.

15 THE COURT: Can you hear that?

16 ATTORNEY EVANS: Yes, I believe you can clearly hear that.
17 I don't have a timestamp for you, I regret to say, but I believe
18 that's in the video, what you viewed. Yes, sir.

19 THE COURT: Insofar as Mr. Poland's statement, it's not
20 directly responsive because the question, Who was the victim,
21 that's when he says, White.

22 ATTORNEY EVANS: Yes, sir.

23 THE COURT: But I take it, in context with everything that's
24 going on at the time, is a discussion Mr. McQuine's making a
25 statement about Jermaine shooting and who he was and things of

1 that nature. And then the total statement, in the mix of all
2 that swirl, as to the name White when there's no other discussion
3 going on at the time. He is a victim. That's not the question,
4 he's not answering that to be responsive to that question.

5 So I think that Poland meets the definition, when he says,
6 White, that that's a dying declaration in my view. The fact that
7 he was shot in the back and, by supposition, if somebody else
8 says he didn't see who shot him, I suppose that's one argument
9 that can be made out of the context of things that happened at
10 the time. Of course, that is supposition unless there's some
11 eyewitness that says he came up behind him and he didn't see him.

12 I think the fact that he was shot in the back, in the back
13 of his head in and of itself, does not negate whatever
14 credibility to be attached to the man identifying, or supposedly
15 identifying, the shooter as Mr. White.

16 More problematic, of course, is what Mr. McQune has said.
17 I'd be glad to look at those other cases that you've got ---

18 ATTORNEY EVANS: Yes, sir.

19 THE COURT: --- because we would normally call it hearsay
20 within hearsay. You know, you've got the dying declaration. The
21 exception to dying declaration being hearsay, of course, as we
22 know, the indicia of reliability that attach itself to it and all
23 those sorts of things.

24 But then to waive that exception to the hearsay because it's
25 established in the rules of evidence, and then take another

1 hearsay exception and sort of piggyback it on each other to get
2 those two things in, that's the ...

3 ATTORNEY EVANS: Yes, sir, I understand. And I'll certainly
4 keep looking. I think I understand where your ruling is likely
5 to head. And I already prepared two versions. I gave to you,
6 obviously, the version which I wanted you to hear everything.

7 THE COURT: Right.

8 ATTORNEY EVANS: But we have a version of the video prepared
9 which does not include the initial statement by Mr. McQuine.

10 Now, as to everything, as you know, you've seen it, there's
11 a pause, and I think after that he says, Silas White's son. I'll
12 have to double-check because I'm not positive whether I removed
13 that or not. But certainly if you rule the way it looks like
14 you're going to rule, we'll remove that.

15 THE COURT: Right.

16 ATTORNEY EVANS: But then when he says he left in a brown
17 car, that, if you review his statement to Detective Kinard, that
18 is personal knowledge.

19 THE COURT: Right.

20 ATTORNEY EVANS: And I think that is nontestimonial and, you
21 know, part of the initial investigation sort-of side thing. So I
22 would ask that even if you remove the identification statement,
23 you ask us to hold that out, I would ask that the rest of
24 Mr. McQuine's very brief comments as to, you know, the brown car
25 and the fact that he saw him leave.

1 THE COURT: I'll be glad to hear from Mr. Mathews further on
2 that ---

3 ATTORNEY EVANS: Yes, sir.

4 THE COURT: --- but the brown car doesn't create the
5 evidentiary anguish to me that some of the other stuff does.

6 ATTORNEY EVANS: Yes, of course. But I'm sure he'll
7 something to say about it.

8 THE COURT: Okay.

9 ATTORNEY EVANS: There is quite a lot that he went on to, so
10 I'll ask you for what you want me to comment on next.

11 THE COURT: Frankly, some of it, I did not understand.

12 ATTORNEY EVANS: Yes, sir. So I'll try to shed a little bit
13 of light. So, yes, we have three videos. And as far as -- he
14 counted four. I'm not aware of a fourth statement but will
15 certainly, you know, double-check everything tonight to see.

16 THE COURT: Right.

17 ATTORNEY EVANS: I'm aware of three statements made by
18 Mr. White to members of law enforcement. The first, as
19 Mr. Mathews correctly points out, was after he was arrested the
20 day following, which is July the 16th.

21 THE COURT: Right.

22 ATTORNEY EVANS: And, yes, he brings him back to the sally
23 port at the jail. And that's Detective, what is his rank,
24 Captain, Captain Theron Grant -- just, we call him Ron Grant --
25 is speaking with Mr. White. And I don't believe there's any

1 Miranda. But Mr. White is impaired at that point, and it's
2 certainly a very casual, you know, kind of conversation outside
3 when he's allowing Mr. White to have one more cigarette before he
4 goes in, if I'm not mistaken. We're not seeking to put that in.
5 I don't really think I can gain anything out of that. And out of
6 an abundance of caution, I'm not interested in playing it.
7 That's why I didn't even provide it to you. So I regret any
8 confusion from Mr. Matthews' comments caused by my failure to get
9 you a video.

10 Judge, unfortunately it takes longer than it used to to burn
11 these videos. I see, I think, you have an external DVD drive.
12 And you might find like me that they are slower to burn a disk
13 than the old ones.

14 THE COURT: That's right.

15 ATTORNEY EVANS: So I apologize for not having every single
16 disk, every single video, for you before we came in here today.

17 THE COURT: I'm delighted that you didn't give me any more
18 than I need. There's no complaining there. And speaking of
19 external, I didn't know if that was a problem with my drive or
20 not, but there were places that obviously were delays in the
21 bodycam, especially that. And I didn't know whether ---

22 ATTORNEY EVANS: They have so much data in a bodycam video,
23 because I guess the pixilation is so high, they are easily the
24 most sheer volume of evidence, because we get everything
25 electronically now. It is -- obviously they're great, they can

1 produce great evidence for either side, civil or criminal. But,
2 man, do they take up a lot of time just getting ready.

3 So that video, I don't think, is an issue. We have no plans
4 to play it whatsoever.

5 Then there is a second interview, which is the day after the
6 arrest, which is two days after the murder. That's what we just
7 went over, *Jackson v. Denno*. It sounds like there's no
8 objection. I think it's, you know, very clear Mr. White knows
9 what he's doing.

10 I did email Your Honor a copy of the Miranda form, but I
11 will hand one up.

12 THE COURT: Okay.

13 ATTORNEY EVANS: You know, it sounds like we're going
14 forward on that. Again, out of abundance of caution, you can
15 make that a Court's exhibit, if you'd like.

16 THE COURT: And I'm prepared, in that regard, to note a
17 timely objection to the *Jackson v. Denno* in the office, the
18 police office there. And that was Detective Kinard?

19 ATTORNEY EVANS: Yes, sir. Detective Kinard is the person
20 in that video who you can see his back. And then he does leave
21 for a little while and Captain Grant sort of slides in and takes
22 over. But Captain Grant was there for the Miranda. I thin it's
23 all seamless.

24 And then there is a third statement which, again, I have no
25 plans to enter that. That was conducted by Craig Stivender,

1 formerly of WPD, and, again, Captain Grant. That interview, I
2 don't think is appropriate and doesn't really have anything to
3 shed light on the case, anyway. So again, with that one, I
4 didn't prepare that one for you. But I have no plans to play it,
5 so I didn't feel it was necessary for these motions.

6 THE COURT: Insofar as the interview before Detective Kinard
7 is concerning, the videotape speaks for itself.

8 And I'm now looking at the Miranda warning sheet which was
9 initialed by Mr. White, acknowledging the rights which Detective
10 Kinard gave him there on the video itself, and his waiver of
11 those and the fact that he continued to make a statement under
12 the circumstances, I think, is sufficient to carry the state's
13 burden that it was freely and voluntarily made it without any
14 promises or fear or threats or anything like that that would be
15 against him in that regard.

16 So in the absence of credible testimony to the contrary, I
17 think that the state's admissibility test has been met.

18 ATTORNEY EVANS: Yes, sir. Thank you. I guess that leaves,
19 the next thing will be *Niel v. Biggers*, which he already got
20 into. And I do have copies for Your Honor of the two -- one,
21 there are no lineup forms. I know SLED uses a lineup form sort
22 of similar to a Miranda form, but Walterboro PD doesn't do that.
23 They just, you know, go by the common practices, and the best
24 practices, I would say.

25 And frankly, I don't see -- now, Mr. Mathews has a separate

1 objection concerning Ms. Benton's, which is in his written
2 motion, and I don't think I've heard it. You know, I don't want
3 to speak for him since that's his motion, but I don't think -- he
4 would not be quite there yet.

5 But just as the regular *Niel v. Biggers*, I don't think
6 there's any issue. It's obviously the same, the two six-packs
7 are the same, so if you see an issue with one it would be the
8 same for the other. But I don't see any photograph that's so
9 grossly out of whack with Mr. White's appearance that there's a
10 problem with the actual photos.

11 And, Judge, it's the same program that you've heard over and
12 over again. It's the SLED. They pull them from the DMV, as you
13 know. So it's the same sort of practice that all the lineups,
14 for I don't know how long, have been pulled from.

15 So I don't think there's a problem with the actual six-pack.
16 I know Mr. Mathews prefers a one-at-a-time approach, but
17 obviously the six-pack has been approved over and over again.

18 As far as the actual questioning, as I said with *Jackson v.*
19 *Denno*, I think the videos speak for themselves. I don't think
20 there was any kind of pressure put on or suggestion put to
21 Ms. Benton.

22 And Mr. McCord, he clearly knows Mr. White. He calls him --
23 before the lineup he calls him out by name, and full legal name,
24 which I don't know about Manning, Judge, but in the 14th Circuit,
25 that's kind of rare, it's usually a street name of some kind.

1 But, you know, again, on just the regular *Niel v. Biggers*
2 factors, leaving his other motion aside for now and we'll get to
3 it, I just think the videos speak for themselves. And I'll await
4 your ruling.

5 THE COURT: Mr. Mathews, I'll be glad to hear from you in
6 regard to *the Niel v. Biggers* issues on Mr. McCord, which is very
7 brief. Now, Ms. Denton, or Ms. Benton, Ms. Benton is somewhat
8 more complex. But I'll be glad to hear from you in regard to
9 both of those.

10 ATTORNEY MATHEWS: So am I to understand that Edwin McCord
11 will be testifying?

12 ATTORNEY EVANS: Yes. And I can -- yes, Mr. McCord is
13 subpoenaed. I have met with him. I would go ahead and let Your
14 Honor know how that is likely to play out. He has indicated
15 face-to-face and several times over the phone with me that he has
16 said that he will not testify; that I cannot make him testify;
17 that you, Your Honor, cannot make him testify or do anything that
18 he doesn't want to do.

19 That being said, in our meeting -- well, actually, you were
20 there, too, Ceth. Detective Kinard, Ceth and I all sat down with
21 him, and he agreed that he would be present to tell you, Your
22 Honor, that you cannot make him testify or do anything he does
23 not want to do. Obviously I didn't tell him, Oh, that's great,
24 because then I can impeach you. But, of course, that's the plan
25 in the back of my mind. I would prefer that he just testify.

1 And then if Mr. Mathews wants to impeach him with his interview
2 video, you know, that's fine.

3 But my anticipation is that he will arrive here tomorrow
4 morning. He will be the, probably, third witness overall right
5 after Detective Ballard. And I anticipate that he will take the
6 same approach, refuse to testify. And then we'll have to either
7 stipulate to his video or have Detective Kinard testify, you
8 know, once to admit it, and then again about everything else he
9 did later in the trial, and then we would impeach him with his
10 own video.

11 I have not done that actually with a jury before, Judge,
12 because the first time that I had to do it Judge Mullen asked to
13 do it all in open court but, you know, outside the presence of
14 the jury. And after the video was played that witness, in that
15 trial, you know, sort of broke down and agreed to cooperate,
16 begrudgingly.

17 Because Mr. McCord, as I understand it, has had some strokes
18 since this time I'm not quite sure that it will play out that
19 same way. I think there is a definite possibility that he just
20 steadfastly refuses to testify or say anything, Judge. And so
21 that's a housekeeping matter, but I suppose it is part of the
22 actual evidentiary matters before us this afternoon. So that's
23 our plan with Mr. McCord.

24 But as to whether he was served, whether he will be here, we
25 have every anticipation he's going to be picked up, in all

1 likelihood, because I believe he is homeless, or certainly
2 carless. So I believe he'll be transported here by Walterboro PD
3 in the morning, Judge.

4 THE COURT: Okay. Where is he? Where is he? He's in
5 custody now, of course?

6 ATTORNEY EVANS: No, sir. He's in Walterboro.

7 THE COURT: Okay.

8 ATTORNEY EVANS: He has a place. So he was homeless at the
9 time. He has now got a place and we know where to find him, and
10 we'll find him. Probably check on him tonight, have somebody go
11 by, at least. I won't. But, yeah.

12 THE COURT: Okay. Like a good friend of mine says, We will
13 drive over that bridge when we get to it.

14 ATTORNEY MATHEWS: Your Honor, are we now proceeding to the
15 Chastity Benton's ---

16 THE COURT: Yes.

17 ATTORNEY MATHEWS: The conundrum I have on the other thing
18 is that McCord and McQuine both say different things about what
19 happened, and each says the other didn't see anything.

20 McCord says in his that Jermaine Silas White walked up
21 behind him, didn't say anything, walked by the woods and grabbed
22 him around the neck and shot him. And if the jury believes that,
23 that's all they need to hear, right.

24 But McQuine says that he wasn't there and he didn't see
25 anything. But anyway, that's just a matter, at the top of my

1 head, is hearsay, the dying declaration, all that stuff.

2 Going forward, Your Honor, to Chastity Benton, I wrote out
3 what I understood the video to say.

4 THE COURT: Right.

5 ATTORNEY MATHEWS: When she was shown the sheet, she got the
6 idea to call in after she saw the news report. She said, Oh,
7 that may be him. And, you know, I presented a couple of
8 representations of what was presented on the video, and they're
9 the same pictures of the proposed lineup, the same pictures. And
10 Ms. Benton says, when she's asked about the six-pack, she says, I
11 don't think he's in any of these, I don't think he's any of them,
12 or something to that effect. I wrote down what I heard.

13 THE COURT: That's what she said.

14 ATTORNEY MATHEWS: And this is the one that looks most like
15 the guy I saw afterwards, essentially. And I don't know whether
16 she said in the paper or on Facebook, I couldn't hear that
17 clearly, but she saw something in the media and basically said
18 the picture that she circled looked like the picture she saw in
19 either social or broadcast media.

20 And so I think that's sort of the definition of the kind of
21 identification that is influenced and not stand alone. I mean,
22 she says that she didn't think that he was in there but this is
23 the one that looks most like him.

24 And I just don't think that meets the standard. It's
25 certainly an important-enough bit of information. She says where

1 the source came from. I just don't see how that can meet the
2 standard, Your Honor.

3 THE COURT: All right. Mr. Evans, let's deal with that.

4 ATTORNEY EVANS: Yes, sir.

5 THE COURT: Let me hear from you first. And then I'll raise
6 the concerns that I've got on this.

7 ATTORNEY EVANS: Yes, sir. So I have also met with
8 Ms. Benton. Just to help Mr. Mathews, in our meeting she said
9 that I believe she was shown a picture on Facebook, for what it's
10 worth.

11 THE COURT: I thought that's what she said.

12 ATTORNEY EVANS: But there is no question that she did not
13 see any picture of Mr. White from law enforcement.

14 And I believe the case law is saying, Judge, and I've got
15 *U.S. v. Freeman*, which is Fourth Circuit from 2017, as well as
16 *State v. Tisdale*, which is our Court of Appeals from 2000.

17 And the standard appears to be, the best I can tell, if the
18 evidence comes before the witness before the lineup from a
19 nongovernmental source, then it is not tainted.

20 THE COURT: Right.

21 ATTORNEY EVANS: And I think that just in the real world,
22 Judge, we have so much trial publicity these days, to suggest
23 that if someone sees a picture of a defendant or a suspect on the
24 news and then has information about the case as Ms. Benton did --
25 she was not a witness to the actual murder. You reviewed enough

1 of her statement to know that she encountered Mr. White near the
2 incident location at Williams Seafood two days prior.

3 And what we're trying to get out of her is a statement by
4 Mr. White that I think is perceived as threatening. She didn't
5 believe it to be threatening when she heard it, but then two days
6 later learned that her close family friend, Mr. Poland, had been
7 murdered, saw that this was the suspect, it clicked with her and
8 she believed that, as a good citizen, she needed to speak to the
9 police.

10 Again, the case law seems to be that if you see something in
11 the news or Facebook that would, of course, would be analogous,
12 then as long as that wasn't presented to you by law enforcement.

13 Now, if Kevin had said, Take a look at this picture that was
14 in the news, this is his mugshot from two days ago or whenever it
15 was, do you see anybody in this six-pack of people that looks
16 like his mugshot, that would obviously be grossly inappropriate
17 and easily suppressed.

18 But I don't believe that's what we have here. I think that
19 this was confirmation at the tail end of, you know, of a citizen
20 doing their duty, honestly, Judge.

21 THE COURT: Now, as I understand it, she called in and said,
22 I've seen this and I know this guy. Is that what it was?

23 ATTORNEY EVANS: She didn't know him. She wouldn't be able
24 to have given his name, I don't believe.

25 THE COURT: All right.

1 ATTORNEY EVANS: The basics of her testimony are going to be
2 she and her boyfriend were driving around Walterboro selling
3 watermelons out of the back of a truck. I mean, we couldn't come
4 up with a more low-country set of facts than that, Judge.
5 They're literally just going around town selling to whoever they
6 encounter. So they went to Williams Seafood to try to sell a
7 few.

8 Mr. White approached them and inquired about buying
9 watermelon. Heard what the price was. These were statements
10 from Mr. White to Ms. Benton's boyfriend, now, I believe,
11 husband, but she was nearby enough to hear them. They were
12 discussing a price, and Mr. White said something to the effect
13 of, You know, that's too much, can't you make me a deal,
14 displayed that he was armed at the time.

15 That's when Ms. Benton started to pay close attention,
16 started to get a little bit nervous. Mr. White then, apparently
17 knowing or realizing that these two had a connection to
18 Mr. Poland, asked, you know, Have you seen Lee-Lee, which is what
19 Mr. Poland went by in the community. Ms. Benton then enters the
20 conversation proper and says no, because she's trying to, like,
21 let's finish this up, this guy's got a gun. She said something
22 to the effect of, We don't see him that often. And Mr. White
23 says to her, Well, if you see him, tell him I've got him.

24 And what she said to me in our pretrial interview was she
25 didn't take that as a threat at the time because, you know, it's

1 not going to be a secret from any member of the jury that
2 Mr. Poland was a drug user. She thought that it might be some
3 kind of, you know, drug-related comment like, like I can provide
4 those to him, or I like to purchase drugs from him, whatever the
5 case may be. She sort of said, Okay, well, and then left. And
6 it didn't occur to her -- again, that's two days before the
7 incident, and then Mr. White, of course, is arrested the day
8 after the incident, so three days after the comments.

9 And that's when -- I'm not sure the precise date that she
10 saw the photo, but she spoke to the police on ---

11 THE COURT: 2/26.

12 ATTORNEY EVANS: Thank you, Judge. On 2/26?

13 THE COURT: That's what I've got.

14 ATTORNEY EVANS: I think that might be a time of day, Judge,
15 because this is all in July.

16 THE COURT: There might be a time on this statement. It
17 says C. Benton interviewed for *Niel v. Biggers*, 2/26/21 at
18 11:47 a.m.

19 ATTORNEY EVANS: I think that's probably a time in which I
20 downloaded it or something, Judge, because the report indicates
21 it's July 19th.

22 THE COURT: Okay.

23 ATTORNEY EVANS: Approximately six days from the comment and
24 four from the shooting.

25 THE COURT: So all of her memory being triggered in that

1 regard about here's the guy with the watermelon and the gun, and
2 I'm coming after you, all that sort of stuff, you say that none
3 of that was triggered by the lineup by what she saw on Facebook
4 or TV?

5 ATTORNEY EVANS: She was speaking with Mr. Poland's mother,
6 who's not a witness to anything.

7 THE COURT: All right.

8 ATTORNEY EVANS: But, you know, obviously was aware. I will
9 say she was a witness in the sense that, yes, she did arrive on
10 scene after Mr. Poland had been taken away. Mr. Mathews is
11 correct. So, going backwards, Mr. Ballard's body camera video
12 does depict her and her other son arriving. We prepared a
13 version of the video where, after Mr. Poland's loaded into EMS,
14 that's where it cuts off because I think everything after that is
15 not really the kind of stuff that needs to be covered with a body
16 camera.

17 But, anyway, Mrs. Poland, the victim's mother, spoke to
18 Ms. Benton, who are close family friends, not related but the
19 sort of, you know, closest where you'd call someone a cousin that
20 you have around here, and essentially said, you know, Lee-Lee was
21 murdered two days ago. You know, probably, Do you know this
22 person, and showed her the Facebook. Because at that point he
23 had been arrested.

24 THE COURT: Right.

25 ATTORNEY EVANS: And there was a mugshot out, you know, in

1 the press with Mr. Mathews. And I was not around, I was working
2 in Hampton County at that time, but apparently quite a bit of
3 news coverage during these events, Judge. And so there was the
4 photo out there in the media.

5 And obviously, you know, that's something that she saw, and
6 we're not trying to hide that fact. But it was not presented to
7 her by law enforcement. It was not in front of her when she went
8 to do her interview. And she's been -- she's been forthright
9 about how she realized that she had something to share.

10 THE COURT: Mr. Mathews, let's talk about that part of
11 Ms. Benton's involvement, that there's a watermelon, the gun and
12 all this other thing, and a couple days later the victim's mother
13 says, My son's been killed and here's a picture of him.
14 Ms. Benton puts all that together and said, I saw that guy
15 before. Now, is there anything wrong with that identification?

16 ATTORNEY MATHEWS: Certainly that's not law enforcement
17 activity, I understand that, but it certainly gets to the
18 reliability of identification. I mean, it is, if the victim's
19 mom says, Here's the guy that did it, do you know this guy, she
20 goes back and then she's presented a photo lineup, she says, she
21 still says, I'm not sure if he's in there. That more goes to
22 police action.

23 Now, there are some things, there are subtle ways, not
24 necessarily intentional, but people, police particularly, you can
25 sort of steer them, whether you do it on purpose or whether

1 you're not. And I think that some of the questions, you can see
2 Ms. Benton's answers sort of change as her responses are met with
3 infidelity by Officer Kinard.

4 You know, one of the things that she didn't manage to get
5 correct was the size of the gun. I mean, she points out
6 something that is as big as a desert eagle. I mean, if he
7 secures a wallet down there and the wallet is much bigger than
8 her phone, and then it's two inches out or an inch or so out with
9 her hands from there, and Officer Kinard says, That's huge, well,
10 that can be a big deal since the alleged murder weapon is a .25
11 caliber gun. It's tiny, it's the size of your hand, it's very
12 small.

13 So in terms of what she saw, there are a number different
14 things to show that this was not -- I don't want the jury to hear
15 any of it, as far as that goes. I've got plenty of arguments why
16 it's not reliable if we have to get there, but I don't want to
17 have to get there because I don't think the jury actually should
18 see it.

19 You know, she says, she eventually says, that she thought it
20 was about drugs as far as what it was to start with. And Officer
21 Kinard asked again, not doing anything wrong but asked, Well, did
22 you find it threatening? And she says, Very threatening.

23 Well, the first thing she said was, I've got something for
24 you, and I figured he was talking about marijuana because people
25 in that area buy drugs. Nothing in that suggests that it was a

1 threat. But when you get the follow-up question, Was it
2 aggressive, it was very aggressive, because that's the right
3 answer.

4 And throughout her interview she gives that same sort of
5 thing, she's responding to where she thinks she needs to go.

6 She did that when Mrs. Poland talked to her about her son
7 and showed the picture, Is this the one. But still, in spite of
8 that, she shows up and she says, I'm not sure he's in this. You
9 know, I think it's a lot for a jury. It's a lot for me. I think
10 it would be a lot for a jury to parse through all that stuff.

11 And, you know, it creates, you know, I mean, there are --
12 these are people I've never met, she says, I didn't know him. I
13 recognized that it's somebody that I talked to from the picture,
14 but she doesn't know him. There's no background other than the
15 Facebook pictures shown.

16 And I just think it's -- I think that the prejudice from the
17 unfair suggestion outweighs the probative value given where the
18 source of her information seems to come from.

19 THE COURT: And I think that is what that Mr. Evans is
20 raising, is between nonpolice and police activity. And that's
21 the reason I was trying to divide Ms. Benton's exchange with the
22 mother as opposed to Officer Kinard, Detective Kinard.

23 Because where I think there's the problem of -- I won't say
24 reliability, perhaps, but that's a good way to put it -- is a
25 level of certainty, perhaps, to use the language of *Neil*

1 v. *Biggers* itself, I think that problem exists within the lineup
2 that was shown that we have the video on and the conversation.

3 There's nothing wrong with the picture. I mean, I think
4 that stereotypically they do about as good as you can do in
5 depicting six black males that are approximately the same age, so
6 far as you can tell almost the same complexion, many of the same
7 facial features, including a shaved head in almost every
8 instance. You would have difficulty picking out six people who
9 looked any more like each other as far as those features are
10 concerned to satisfy the fact that none of them suggested as
11 being the right one. That's fine.

12 The problem that I see is not in the way it was presented,
13 and certainly nothing the detective said. He said, Here it is,
14 and he gave it to her, and, you pick one out and start with it.
15 The problem is in her response to it, and that is, I don't think
16 he's on there; well, this is the one that's most like. And she
17 circled it, and she made the statement about Facebook.

18 Of course, one of the factors to be considered in that
19 regard is the level of certainty demonstrated by the witness at
20 the time, and the length of time between the crime and the
21 confrontation. That's what I'm confronted with when I'm trying
22 to decide the admissibility of the identification at the police
23 station that day.

24 When she said, I don't think he's on there, but, wait a
25 minute, this one's more like it than the others. In my view, the

1 connection has to be more certain, the level of certainty has to
2 be higher. Now, I'll be glad for y'all to do some casework on
3 that and find out how equivocal a witness can be and still pass
4 the smell test. But that's a problem I have with that.

5 I don't have that problem with the mother in her exchange
6 with Ms. Benton when she says, That looks like the guy, the
7 watermelon guy. That's a different thing.

8 So I'll let you all -- based on what I know so far and what
9 I've heard so far, you understand what my concern is. And I'll
10 give you all overnight to do some research to try to address
11 those concerns.

12 ATTORNEY EVANS: Yes, sir. And she will be here tomorrow.
13 So perhaps if, you know, depending on what we do find, we might
14 be able to put her up, you know, in camera.

15 THE COURT: If she's going to testify, then that scrubs away
16 a lot of the concern. Then, you know, she can testify and
17 Mr. Mathews can cross-examine her on, Didn't you say you weren't
18 sure, and all sorts of things like that, let her try to explain
19 that.

20 ATTORNEY EVANS: And I will let her know part of all this is
21 we will ask, Do you see him present in the courtroom?

22 THE COURT: Sure.

23 ATTORNEY EVANS: And, you know, I want the truth. I've had
24 trials where people, actual murder victims, have not been able to
25 identify the person. So I want you to expect that question, but

1 I want you to answer it truthfully. And I believe that she
2 understood.

3 THE COURT: I think that minimizes it. It doesn't
4 completely erase any appellate issues that arise over my letting
5 the in-jail, or in police station's identification, in view of
6 her uncertainty that she expressed, I don't think is there.

7 ATTORNEY EVANS: Yes, sir.

8 THE COURT: So there you go, gentlemen. Once again, as
9 always, you have a firm ruling. I don't know, or maybe so or
10 maybe not. But, seriously, I think you understand what my
11 concern is. These concerns have to be addressed. In other
12 words, a concern with the level of uncertainty has to be overcome
13 before I will let the police station's identification go in.

14 The mother's exchange, in light of the gun, I mean, I'm
15 inclined to let that in for reasons I explained.

16 ATTORNEY EVANS: Yes, sir. So I think that takes care of
17 your motions, Dave, unless you have anything else.

18 ATTORNEY MATHEWS: No. I don't know that I have anything
19 other than those two written things. But I just want to make
20 sure I understand, though, we still have not yet received a
21 ruling on the Ballard bodycam? Or, we have?

22 THE COURT: On Ballard?

23 ATTORNEY MATHEWS: On what Poland said on the scene and what
24 McQuine said on the scene. I guess McQuine's is not exact.

25 ATTORNEY EVANS: My understanding is that the Judge is

1 leaning towards aliquid. I'm being afforded a little more time
2 overnight to do some more research to see if I can fit a dying
3 declaration inside of an excited utterance.

4 THE COURT: That's right.

5 ATTORNEY EVANS: I believe he ruled on the dying
6 declarations audio on video themselves, and that those are ---

7 ATTORNEY MATHEWS: Which, at what point in the video, are
8 those?

9 ATTORNEY EVANS: The word White, and then the communication
10 between Billy and himself where ---

11 ATTORNEY MATHEWS: Your Honor, this is the conundrum I have
12 with the Court's ruling. And, you know, I don't want to belabor
13 that. Judge Buckner wanted to put me in jail a number times for
14 this. I don't want to go down that -- Judge Smoak actually did
15 tell me he was going to put me in jail.

16 But the problem I have is, on the one hand, you know, if it
17 comes in at all I want to argue that it was because somebody else
18 said it, but I don't want the other person, you know. That's the
19 conundrum I have. You said that because he said that, but if it
20 comes in at all, then they both have to come in, and I don't want
21 that.

22 So if Poland said it was White because McQune said it was
23 White, as I think is the case, you know, McQune's hearsay
24 prompted the declaration. I mean, I don't know that there's any
25 indication other than through Chastity Benton who doesn't know

1 this person, there's no reason that Mr. White would know that
2 this lady -- this lady didn't know her, that you would take a
3 chance and just say, Either tell this person that I don't know if
4 you know and I don't know that you need to do this. You know,
5 the problem is it gets, it starts getting, to be very confusing.

6 And I think that, you know, that's the problem I have. And
7 if it comes in at all, that's a problem because, you know, he
8 came up with the name. Did he come up with it on his own? No,
9 he didn't. He did on what somebody else said. And if somebody
10 else said it, then you've got somebody repeating somebody else's
11 hearsay, and it's just a mess. I don't know, other than to have
12 no audio, I don't know how to deal with that, Your Honor. It's a
13 problem. I will accept whatever the Court's ruling is on it.
14 But, that's my problem.

15 And then on Benton, again, I'm concerned that, on more
16 reflection she's becoming more certain than she was at the time
17 closer. And I understand that's also an argument I can make to
18 the jury, but at that point the jury's heard this.

19 And now all of a sudden there was no motive, and for some
20 reason they've got the makings of a motive. That's one of the
21 problems with the state's case in the beginning, is McCune says
22 in his interview is, You know, Did they argue or not?

23 I don't think Jermaine knows himself why he did this.
24 That's one of the things McCord says in his interview.

25 So we don't have any -- you know, we've got hints and

1 shadows of things that create, that create suggestions.

2 And this is why, Your Honor, frankly, I need a gatekeeper on
3 this because I don't know the jury -- it's a lot for the jury do.
4 It's taken me a lot to be able to put some of this stuff
5 together. I can't imagine -- but the jury, I hope the jury --
6 the jury, I'll say, they usually get it right, I'll say they
7 usually get it right.

8 I have to go, you know, I have to, in order to combat things
9 that shouldn't come in, I have to bring in other things that
10 shouldn't come in. That is my problem.

11 But in terms of Ms. Benton, in fact, I'm more concerned that
12 if she comes up and then testifies, now at this point I'm
13 completely sure -- I mean, I certainly make the argument, and
14 I'll accept whatever guilty the Court's ruling.

15 THE COURT: I think that certainly you have, as far as
16 you're concerned, you've got the right grounds for
17 cross-examination when she says in the confines of a police
18 station that she got all the time in the world to look at this
19 thing, and I don't think he's here. Which means whatever the
20 jury thinks it might mean, as opposed to her saying some other
21 time that the guy in the picture, newspaper, is him, which I
22 think, I think the case law is replete. I haven't read *Tisdale*
23 and *Freeman* yet, but I think that's what it stands for.

24 ATTORNEY EVANS: Basically, yes, sir.

25 THE COURT: So that's going to rise and fall on the jury's

1 belief of her credibility which you get to attack on the basis of
2 her equivocation in the police station. Because I tread on
3 dangerous ground when trying a murder case. You've tried a lot
4 more than I have. But at least it doesn't seem to me that that's
5 as damaging.

6 Now, the conundrum, of course, with the victim's statement,
7 your conundrum is based on the premises that the only way that
8 Poland knew that White shot him was that somebody else said that.
9 It ignores what could be an equally plausible premise that
10 somebody came up behind him and put a gun in the back of his head
11 and pulled the trigger and he said White did it, which I think
12 certainly a conclusion that can be drawn from that without having
13 to go down the rabbit hole with these other things.

14 So I can appreciate the fact that it's, you know, there's no
15 need to tie it up, there's not. But I don't think that the
16 hearsay on hearsay is the only conclusion to be drawn from the
17 victim, who obviously got shot at pretty close range.

18 ATTORNEY EVANS: And if I may, Your Honor, just -- I think I
19 understand where you're going, but just to help the AG down the
20 line, if I can put a little more of it on the record ---

21 THE COURT: Right.

22 ATTORNEY EVANS: --- when you watch the video, Ballard is
23 talking to dispatch and asking them, Did I tell you who the
24 victim was? The victim responds thinking that he's talking to
25 him and thinking that he's asking, Who shot you, with White. It

1 wasn't, you know, I don't see any indication that that came from
2 Mr. McQune at that point.

3 And then, of course, there's the, you know, the secondary
4 statement's about a minute or 90 seconds, or whatever it is,
5 later where he's, you know, they're confirming Jermaine Silas
6 White. And again, him hearing the radio, responds to that by
7 saying, Yeah, and giving nonverbal and visual indications to
8 Detective Ballard, which you can't see on the video. But just
9 because it's not visible on the video, you know, doesn't mean
10 that Detective Ballard can't testify about it.

11 THE COURT: Right.

12 ATTORNEY EVANS: And so I think, for all those reasons, I
13 hope that I understand your ruling and that we'll be permitted to
14 play that.

15 THE COURT: You would be. And, of course, the entirety of
16 the video, of course, will be made a part of the record for
17 appellate review.

18 ATTORNEY EVANS: Of course, yes, sir. But just a few more
19 points on Mr. Mathews' comments.

20 There is also, you know, as far as not having a motive,
21 Mr. Poland makes additional comments which are visible on the
22 video other than the actual identity of the shooter. At one
23 point he says, he says, I'm telling, but I don't eat cheese. The
24 theory by law enforcement, and I think it's supported by this
25 natural language of what he's saying, is that Mr. Poland believed

1 that Mr. White did this because Mr. White believed Mr. Poland was
2 informing to the police about various things, whatever they may
3 be. There's no evidence that he was, at the time, an informant.
4 But that's evidence coming straight from Mr. Poland.

5 Also, in a jail phone call Mr. White refers to, he makes the
6 comment, That's what I told FBI, man, why did you have to come
7 out here and get in my business, damn. That's going to be played
8 for the jury as a jail phone call in which Mr. White, you know,
9 identifies himself at the start of the recording.

10 So there is some evidence of motive. Not that that's an
11 element, but it will be helpful for the jury, I believe. And I
12 don't know that you needed to hear that to defeat any of those
13 motions, but I wanted to answer it since he argued it.

14 I do have a few other matters which are more housekeeping,
15 Judge.

16 THE COURT: Okay.

17 ATTORNEY EVANS: I think, at least. We do have a, I don't
18 think it's an issue and I don't know, frankly, if Mr. Mathews had
19 even brought it up to me, but the location of this incident, the
20 reason the Waltherboro PD was dispatched was because it was
21 believed to be well inside Waltherboro city limits. Well after
22 Mr. ---

23 THE COURT: Say that again. I'm sorry, I didn't catch that.

24 ATTORNEY EVANS: It was believed to be inside Waltherboro's
25 city limits.

1 THE COURT: Okay.

2 ATTORNEY EVANS: Well after Mr. White was arrested by
3 Walterboro PD the city had, I guess --

4 ATTORNEY UTSEY: It was the line survey.

5 ATTORNEY EVANS: Survey, surveys. It came down, I suppose,
6 feet, or perhaps even inches, outside of the line. My feeling is
7 that the case has been indicted; the sheriff's office -- you
8 know, the case had already been investigated fully by the time
9 that determination, that factual determination, was reached. And
10 the case was clearly, clearly in Colleton County by many, many
11 miles, Judge. There is no dispute about that. And the case has
12 been indicted.

13 So I think any kind of issue goes away once the case is
14 indicted. That's when any warrant issues are no longer
15 pertinent, because the charging instrument is the indictment, not
16 the warrant.

17 But I just wanted to put, that's something I don't want, you
18 know, appellate defense or the AG to have an issue with down the
19 road. So wanted to make sure to get that on the record. I don't
20 see that as an issue. Mr. Mathews never brought it to me as an
21 issue.

22 ATTORNEY MATHEWS: Because I didn't see it. I didn't see
23 the issue until I started looking at the video closer, getting
24 ready for trial. Getting ready for trial I saw that they had
25 dispute over -- I'm not paying any attention to it until we're

1 getting ready for trial, and I see in there where they say,
2 Ballard says, I'm not sure if we're in the city or in the county,
3 we always make this -- this is a tough area, we always make that
4 sort of mistake. So if it's ineffective, it's ineffective. I
5 didn't see it until I was getting ready for trial, so I didn't
6 bring it up.

7 THE COURT: Alexander's rule, if it doesn't make any
8 difference, it doesn't matter.

9 ATTORNEY EVANS: Yes, sir.

10 The next thing I bring up is, I think something that was
11 going to be a big, potentially a big, part of this trial, which I
12 think has now been resolved, but I'm just going to -- I mean, I
13 won't keep you past 5:00, I promise, Judge, but I just want to
14 talk through it to make sure I'm understanding myself and that
15 you understand, sir, everything that's going on since you don't
16 know as much about the case as Mr. Mathews and I do.

17 But the day after the shooting, at this point the WPD had an
18 attempted murder warrant out for Mr. White and they're
19 preparing -- Kevin, stop me and correct me if I say anything
20 wrong, they are preparing -- to go out looking for him and serve
21 it on him. And at this point essentially what they've got is
22 Mr. McQune and the dying declaration, but that was enough for the
23 municipal court judge, and so they got a warrant.

24 It was attempted because, of course, Mr. Poland fought it
25 off for nine days. He was in a coma by the next day, probably

1 within a couple hours, actually, but he fought for nine days
2 before he passed away, at which point they obviously got a new
3 warrant for murder and the attempted has been dismissed long ago.

4 But on the second day, July 16th, they're going out to look
5 for him to serve him with attempted murder. Dispatch receives a
6 call indicating that at 638 Cleveland Street, which is just
7 outside Walterboro but certainly in Colleton, Mr. White has
8 assaulted an ex-girlfriend of his. All this, I should add, all
9 this is alleged, of course, he's not on trial for this. But
10 there is a report out there that Mr. White has assaulted an
11 ex-girlfriend of his who was down from Raleigh and is holding her
12 hostage in his home at 638 Cleveland. They have this report
13 because she called 911 to tell them so.

14 So that's a county case, as a substantive criminal case on
15 its own, but obviously Walterboro PD, hearing that there's an
16 attempted murder suspect the other day, and also just wanting to
17 help because this is an unusual and dangerous situation, they go
18 to his home at 638 Cleveland.

19 Detective -- you know, there is a host of officers in the
20 home. They've gone in to try to resolve the situation. So it's
21 a warrantless entry based on an ongoing emergency. And they are
22 trying to talk him out of the room. Eventually they succeed.

23 Captain Grant, Theron Grant, the same one who helped with
24 the interviews, he's the one who talks Mr. White out of the room.
25 And Mr. White turns himself in. At that point he's arrested on

1 suspicion of domestic violence and kidnapping. And, of course,
2 the warrant that they know is waiting to being served for the
3 attempted murder. He's taken away.

4 All through preparing for trial until Detective Kinard, who
5 was able to fully devote himself to final review of all the
6 videos and what have you, he had then indicated to me, and I
7 believe, that a gun which turns out to be the murder weapon based
8 on SLED testimony, there's a shell at the scene and it matches, a
9 gun was found in a plastic bag sitting on the kitchen table in
10 his home at 638 Cleveland.

11 Detective Kinard indicated to me that that was seized as
12 part of the emergency, which would make sense. Even though
13 someone is in another closed room from you, you know, it's still
14 a situation where you've got a potentially loaded firearm. And I
15 still believe that it would have been well within their rights
16 and procedures to have seized it. And that's what he was
17 remembering until he reviewed body camera video which showed
18 clearly that the gun and the bag within which it was found were
19 still on the kitchen table at the time that Mr. White exited the
20 home. So that clicked with Detective Kinard.

21 Again, in preparing for trial, he realized -- and it matches
22 his report, Oh, this was actually, we saw it, observed it in the
23 home, saw that it was a gun, got Mr. White out of the home, along
24 with the sheriff's office, of course. And after everyone was out
25 of the home, WPD, you know, knowing about their case from the day

1 before, gets together and says, We need a search warrant for this
2 house. The search warrant is typed up back at their office,
3 provided to Johnson, you know, signed by county judge. They go
4 back within a few minutes whenever it's signed and execute a
5 search, collect the gun, along with the magazine and a few other
6 pieces of evidence from that search. All the other pieces of
7 evidence collected was solely pursuant to the search warrant.

8 And Mr. Mathews has not given me any indication he has a
9 problem with the search warrant. That's why neither the
10 magistrate, nor Mr. Johnson, are on our witness list. I don't
11 think that's an issue.

12 But I had indicated to him, of course, you know, trying to
13 share everything that Kevin would testify to, Oh, this was
14 collected during the emergency, and then the rest of the evidence
15 due to a search warrant. I corrected that with him on Friday
16 after Kevin corrected it with me.

17 All this is to say I believe that this was going to be --
18 you mentioned Mr. Knight, of course, earlier, our old friend.
19 And his favorite, by far, theory of law was res gestae, and he
20 would raise it in cases where it was completely irrelevant just
21 because I think he liked to say it out loud, but I thought this
22 was a case where apparently we were actually going to have to
23 argue it because the gun would have come into evidence, you know,
24 as part of that emergency.

25 And I think that had that actually been what happened, the

1 jury would be entitled to hear something, perhaps not a lot, but
2 about what was going on and why they were caused to be in that
3 home to collect the gun.

4 I think that it is better for both sides now, knowing that
5 the gun was observed during the emergency but collected during
6 the search warrant, if essentially none of the evidence about the
7 kidnapping, DV and hostage situation comes in.

8 I tried to get Ms. Jordan, the victim in that case, to
9 testify because I think there's other things she could have
10 added, but she, like Mr. McQune, is out of state and
11 uncooperative. And so we're fully prepared to go forward without
12 with her because she's not a direct witness to the events of the
13 day prior.

14 But I just think that it would be better for Mr. White and
15 for the state if the testimony is essentially limited to, you
16 know, leave out everything that led to the observation and it's
17 just Mr. White was, you know, found at his home, arrested and the
18 search warrant was sought, obtained and executed.

19 But I wanted to put all that on the record to see if
20 Mr. Mathews agrees. Obviously if he disagrees and he wants the
21 jury to know about all that so that they understand why the
22 police were in Mr. White's home, that's fine. But that's my
23 feeling on it. And I'll let him speak if he wants to.

24 ATTORNEY MATHEWS: That's interesting. And I suspect that
25 Mr. Evans might be right here. It leaves out, I mean, we were

1 trying to do what's right in the best interest of our particular
2 cases. You know, I certainly don't want the jury to know that
3 they were there for a hostage situation, I'd really rather they
4 not know that.

5 On the other hand, I've got an officer that says something
6 that clearly is not true. I mean, you've taken a look at this
7 and you know there's a supplemental report that says, I saw this
8 guy leaving the house with this white package.

9 But I listened to the video and somebody asked him, Did you
10 see anything in his hand. No, I didn't see it. So that's not
11 true, you know, Judge.

12 So I always love proving to the jury that somebody has told
13 a lie. But I agree, as a matter of strategy, that probably it's
14 not worth it for the vantages that Mr. White's going to take in
15 the -- you know, I looked through this, and he talked with you
16 also, Mr. White. And that is, I looked at the video, and I
17 certainly would like to reserve the right to say, you know, to
18 certainly ask about all the other people who lived in this house
19 and had access to it. And I don't think this affects that.

20 But I think, on balance, that he is better off saying that
21 we served a search warrant and we saw it, we were there to arrest
22 him for something else and we saw the package.

23 I looked at the video very closely to find out whether
24 somebody could have put it there after the seize. Because I see
25 a picture of the search warrant, and there is a plastic bag on

1 there, and there's a woman's purse and there's some food on
2 there.

3 And afterwards I think, well, I don't remember seeing that
4 on the video where there were 15 officers inside the house. I
5 mean, Sheriff Strickland, then-Sheriff Srickland, was there.
6 Everybody. It's just like this is the place to be, you know,
7 we're here at Jermaine's house. It was on TV and all that sort
8 of stuff. It was a big deal.

9 And I looked very closely at the thing where Grant's bodycam
10 is showing that, and there's a little, you can kind of see what
11 looks like a purse, it's dark but you can't really see exactly,
12 and there's a little white spot that might possibly be the bag.
13 And that was enough to convince me that they will probably be
14 able to prove that the bag was in there during the seize.

15 So I agree on balance, that that probably is the best
16 compromise in this case.

17 I would love to be able to prove that an officer was
18 mistaken about something affirmatively stated there. It's not in
19 any of the witnesses -- they had the witness list, and I won't
20 get into that, but if they don't need to get into that, that's
21 probably better for everybody and I'd just as soon they not know
22 about the hostage situation.

23 So as a matter of strategy, I'm going to agree that that's
24 fine and we can stipulate to that.

25 ATTORNEY EVANS: I should clarify. I'm not saying that I

1 won't call Mr. Riley. What he's referring to, Judge, is another,
2 a road officer with WPD who's there as part of the whole
3 situation, he's outside. And he wrote a supplement two months
4 after the incident because he was, you know, essentially hearing
5 and talked about, Oh, remember, the gun was found in a plastic
6 bag, and he said, I saw him holding a plastic bag; I didn't know
7 what was in it, but I saw him holding a white, plastic bag. So
8 he wrote a supplement after that.

9 And, yes, he does have a bodycam in which he's posted
10 outside, you know, and shouts out the names to Mr. -- or somebody
11 who is coming out the door.

12 But my argument would simply just be the bodycam shows what
13 it shows. It doesn't show everything that's within the officer's
14 field of vision, or certainly all five of his senses.

15 So I am only saying that I don't think the jury needs to
16 know why the police -- because they were there for two purposes,
17 they had an attempted suspected murder suspect; they knew where
18 he was; and WPD was going to arrest him regardless of what the
19 outcome of what the sheriff's office situation was.

20 THE COURT: I'm trying, gentlemen, for the life of me to try
21 to figure out under what possible theory of law or strategy or
22 commonsense would want either side to have that come into
23 evidence. You get some impeachable mileage out of it, no doubt
24 about that. Now, to what extent having your client involved in
25 taken hostage outweighs the good of trying to get that in is

1 another question, but that, other than just confusing the issue.

2 ATTORNEY MATHEWS: I agree, Your Honor. Riley actually says
3 in the video, he's asked by David Long, which is why I included
4 him on the witness list, David Long asked him, Did you see
5 anything in his hand, and he says, No, I couldn't see his hand.

6 I would stipulate that the gun was found on a table in a
7 common area and where Jermaine had a room back there.

8 THE COURT: Because Mr. White said in his statement that his
9 room's in the back and that gun was out somewhere else.

10 ATTORNEY MATHEWS: Yes.

11 ATTORNEY EVANS: Exactly.

12 THE COURT: In 1997, I think it was, *State v. Felix*
13 *Cheeseboro*, Felix Cheeseboro needed \$300 to make a demo tape for
14 a rap video that he was trying to stir up, and money was tight in
15 1996, or '5, when he committed this crime, so he went into
16 Kelly's Barber Shop on Cindy Street in Columbia, lined Mr. Kelly
17 and one customer and another coworker up in the back room and he
18 shot three times, killed two, and wounded another. They didn't
19 have a clue about who had done this.

20 But the custom was in those days, and I think still is, that
21 every time they had a murder victim or a shooting victim or a
22 bullet that they could test, they tested it and they put it in
23 their bank somewhere. And so they had three or four bullets that
24 had been identified to a particular gun that had been used in
25 that crime.

1 Months, maybe a year or so later, in a burglary charge,
2 which is completely unrelated to this, they came upon a pistol
3 somewhere. And they got around to checking on that thing, and
4 found that that pistol in the burglary charge was the one that
5 was used to kill these folks. So they went back up, upstream to
6 the burglary, and worked from there and connected Cheeseboro to
7 the burglary, and then to the murders.

8 It's a big deal, the fact how they're going to tie all that
9 together because, to make matters worse, having found the murder
10 weapon to the Kelly's barbershop killing in connection with an
11 innocuous little burglary that was sitting around, and looked
12 like they would have to throw that case out, somehow in their
13 zeal to take up space, they melted the gun.

14 And you have never seen a degree of backfilling in your life
15 as to how they tried to explain melting a murder weapon in a
16 double murder, in an assault and battery and attempt to kill
17 case, and how they were going to get all that in there without
18 getting the burglary charge in there and messing up things
19 further, which is already messed up bad enough because the police
20 chief at the time had got a hypnosis expert to go in there and
21 hypnotize the victims to try to identify things. And by that
22 time the case was so convoluted.

23 But somehow we were able -- they were able -- with a little
24 bit of help from me to work around the conundrum in that case of
25 that case of how to get this weapon in that they had a right to

1 get in without going into an unrelated burglary somewhere down
2 the road.

3 Not exactly on point with this case, but it sticks in my
4 mind when you all are trying to tie all these together. And I'm
5 starting of get a headache. Of course, I still blame it on the
6 burglar alarm, or the fire alarm with my hearing aid.

7 But I think you're right, Mr. Mathews. You know, sometimes
8 just expediency is not always a bad thing, you know. You can't
9 operate on that as a role model, obviously, or a method of doing
10 business, but sometimes, sometimes it makes perfect sense. This
11 is one of them.

12 ATTORNEY EVANS: The last thing, Judge, that I have, are, we
13 do have some stipulations, some which I think need to be read to
14 the jury, but others are more for foundation for exhibits. And
15 so I think if we just put them on the record.

16 The ones that I think are just foundation are, there are
17 some gas station videos, security camera videos in this case.
18 And I think we've agreed that those are, those are business
19 records.

20 The reason that I don't -- that I wanted to avoid bringing a
21 witness is, is just because, believe it or not, Judge, we have
22 this gas station which is part of the evidence in this case. And
23 it's now an enmarket. It was a Horizon at the time. But it is
24 universally, in Colleton County, in Walterboro, Judge, known as
25 the Ghetto BP. And I find that to be -- I've been flabbergasted

1 by that name since I arrived here ten years ago, but that is what
2 they call it.

3 In any event, at the Horizon, there are so many crimes that
4 take place inside or nearby, that Kevin Kinard has access to
5 their security camera footage and pulls it himself.

6 THE COURT: I can think of two, and I'm not here all the
7 time.

8 ATTORNEY EVANS: Well, we bring it up more in nonjury just
9 because it's fun and interesting to say. So at this place they
10 pull the video so often that Kevin knows how to use their system
11 and literally just goes in and says, Hey, I need to use the
12 system.

13 So, but for a little extra foundation, we were going to have
14 somebody testify but, Mr. Mathews, to his credit, has agreed that
15 that's not necessarily. They obviously are business records.
16 And so I think we've covered that on the record. And so Kevin
17 will be able to give the rest of the foundation.

18 He doesn't need the officer who transported the evidence up
19 to SLED to testify as part of the chain. We have the first link
20 and the last link for all the tested exhibits which are the gun,
21 the magazine, the projectile and the shell casing. Shell casing,
22 gun, projectile found at the autopsy; gun and magazine found
23 during the search warrant.

24 Kevin is the first point for the gun, magazine and the
25 shell, he collected them and boxed them and sealed them. And

1 then, of course, the last point would be the firearms expert at
2 SLED.

3 And so I think we have the first and last, so everything is
4 okay, and Mr. Mathews doesn't need any -- you know, it's not a
5 drug or a DNA case, so chain isn't really as much of an issue.
6 So he's graciously stipulating to the internal chain.

7 ATTORNEY MATHEWS: And it helps me, too, Your Honor, because
8 I want some evidence in the same way. And so for fingerprint
9 expert, I'll have to present all the witnesses for how it got in
10 between who all handled it and how many people pulled it and
11 stuff. And so it is mutually beneficial. Mr. Evans gets
12 something out of that, and Mr. White gets something out of that.

13 ATTORNEY EVANS: And then there are three -- I'll just
14 preview three for now, unless we agree to any more -- that I do
15 think the jury needs to hear, which is, number one, Lennon Lee
16 Poland was transported by EMS from Walterboro to Trident Medical
17 Center in North Charleston, Charleston County, where he died on
18 July 4th, 2018.

19 Then the remains of, the remains examined by Dr. Batalis at
20 the medical university were those of Lennon Lee Poland.

21 And then I guess another foundational one is we have a
22 paramedic who graciously agreed to testify had her work not taken
23 her to the Lone Star State this week. Joslyn Merideth, who wrote
24 a written report, took Mr. Poland from here to North Charleston.
25 She wrote a report, which is also clearly a business record, and

1 upon what the status of the case is, we will recess at that time
2 to allow him to get his second COVID shot and we will not replace
3 him. There's no need to do that for that brief period of time.
4 Madam court reporter, we'll make that a Court's exhibit, as well.

5 (WHEREUPON, Court's Exhibit 2 is marked for identification
6 and admitted into the record.)

7 THE COURT: And finally, our Court's exhibit that I relied
8 upon yesterday in ruling upon the admissibility of the statement
9 of the defendant in this particular case, the video written
10 statement of the Miranda rights, it was not put into evidence at
11 that time.

12 It was obvious from the video that Detective Kinard was
13 going over these rights with Mr. White and he checked them off,
14 initialed and signed them in his presence. So this is the actual
15 document, or a copy of the actual document, that he signed. I
16 offer that as a Court's exhibit because it completes the record
17 on the basis of my ruling in that regard. So that will be the
18 Court's Exhibit next. Thank you.

19 (WHEREUPON, Court's Exhibit 3 is marked for identification
20 and admitted into the record.)

21 THE COURT: Next, I confirmed, in chambers, a ruling that I
22 had suggested yesterday in our conversations about the
23 admissibility of the testimony of Mr. McQuine which was on the
24 bodycam of the officer who was there, Mr. Ballard. I had ruled
25 inadmissible the portions of McQuine's testimony when, at the very

1 beginning of the tape, in which he repeated that Jermaine shot
2 that man and so forth, I found that to be inadmissible.

3 I have allowed into admissibility the portion of Mr. Poland,
4 the victim's statement, in which he said White in response to a
5 conversation that was going on in the background on the radio,
6 and also the conversation or dialogue between him and Mr. Ballard
7 at that time.

8 I had previously ruled, I think, definitively, on the matter
9 of Ms. Benton's identification in the police station regarding
10 the identification lineup in which he was involved at that time.

11 Gentlemen, I'll be glad to hear any additional matters that
12 you all want to put on the record about any of those
13 conversations to complete the record in case I have left them
14 out.

15 ATTORNEY EVANS: Yes, sir, Your Honor. Since Mr. Mathews
16 and I have come out of chambers before you, I showed him the
17 version of Officer Ballard's body camera with those McQuine's
18 statements redacted to let him see that discussion of leaving in
19 a brown car was still included but any reference to Jermaine
20 White or Silas White's son, those have been redacted. I think
21 he's satisfied as to that.

22 However, he did have an issue, which I thought we went over
23 in chambers, about Officer Ballard calling out to dispatch, The
24 suspect's going to be Jermaine Silas White. And so I thought the
25 best thing to do would be -- I realize we have a jury waiting but

1 if we, very briefly, play that for you. Because I thought you
2 ruled that Ballard saying that was not testimony, it was
3 investigation.

4 But certainly, you know, it's a little too late for my
5 office to redact it. But I can, I believe, mute it on the fly,
6 although it's obviously harder.

7 But have I got your objection correct?

8 ATTORNEY MATHEWS: Pretty much. Just the idea that,
9 immediately after the redacted portion, the officer says, The
10 suspect's going to be Jermaine Silas White, or Jermaine White, it
11 really doesn't -- it still perpetuates the problem that that
12 comes from hearsay, inadmissible hearsay. So as long as we
13 redact the statement that, The suspect's going to be Jermaine
14 White, and continue on, I think that answers that.

15 I continue to have an objection to McQune saying it was a
16 brown car just on basic hearsay principle, so I understand the
17 Court's ruling on that. I am less concerned about that than I am
18 about Ballard being able to repeat immediately after some
19 objectionable evidence, The suspect's going to be Jermaine White,
20 because it obviously came from either White, the victim saying
21 White, in which case that implies there's only one White and all
22 that sort of stuff, which is not the case, or it came from the
23 inadmissible testimony and, obviously, I'd ask that, also, just
24 muted for that couple seconds.

25 THE COURT: All right. So I think we're together on that

1 point.

2 ATTORNEY EVANS: Well, I disagree, Judge. But if that's how
3 you want to rule with that, I would just ask to play the video
4 quickly so you can get an idea of the sequence. I do believe
5 that it comes after the victim says White.

6 THE COURT: I'm sorry, gentlemen. Either my hearing aid's
7 not working well or you're all talking too fast ---

8 ATTORNEY EVANS: Yes, sir.

9 THE COURT: --- because I'm not following all of this
10 interchange and what we're talking about. Well, you tell me.

11 ATTORNEY EVANS: Yes, sir. The portions where Mr. McQune
12 identifies Mr. White, those have been previously and successfully
13 redacted.

14 THE COURT: Right.

15 ATTORNEY EVANS: Mr. Mathews continues to object to the
16 other portions where he's talking about the brown car.

17 THE COURT: I understand that.

18 ATTORNEY EVANS: But you've ruled on those.

19 THE COURT: Right.

20 ATTORNEY EVANS: What Mr. Mathews is objecting to now is
21 after the muted portions and the victim saying, White,
22 then-officer/now-Detective Ballard radios to dispatch and says,
23 Suspect's going to be Jermaine Silas White.

24 And my contention is that that's not testimony and it's, you
25 know, the course of the investigation, and there is already a

1 foundation for it through the victim's dying declaration.

2 But I would ask to very briefly play it so that you
3 understand it and see the actual statement that we're talking
4 about.

5 THE COURT: I'll be glad to listen to it and see. I'm
6 trying to figure out, in the grand scheme of things, what it adds
7 to your case that you don't get in some other way without
8 potential prejudicial issues.

9 ATTORNEY EVANS: I don't know that it adds anything, Judge.
10 It's more just a concern of trying to mute it without having the
11 ability to have it previously redacted.

12 THE COURT: Okay. All right. Play it.

13 (WHEREUPON, an audio disc is played in open court.)

14 THE COURT: All right. That's fine. I will let that in.
15 It comes right on the heels of the name White from the victim in
16 this particular case. The jury would have to go beyond that to
17 try to figure out if he got that information somewhere else.

18 So I'll note your objection in that regard. That comes in
19 over objection of defense counsel.

20 ATTORNEY MATHEWS: Thank you, Your Honor.

21 THE COURT: Thank you. Okay.

22 MOTION FOR SEQUESTRATION

23 ATTORNEY MATHEWS: Your Honor, I'd ask for -- Mr. Evans, I
24 believe, has already set this in motion but, just for the record,
25 I'd like an order of sequestration of the witnesses.

1 ATTORNEY EVANS: Yes, Your Honor.

2 THE COURT: Thank you. Thank you, Mr. Mathews. I have that
3 written down. Sequestration will be in effect following the
4 opening statements of the attorneys.

5 Okay. All right. All right, folks, are we now ready for
6 the jury?

7 ATTORNEY EVANS: I think we are, Judge. Thank you.

8 ATTORNEY MATHEWS: Yes, sir.

9 THE COURT: Good. All right. You can bring the jury.

10 Ladies and gentlemen, the jury will come in. I will appoint a
11 foreperson. Madam clerk, you will then swear the jury. I'll
12 make some introductory comments. And then opening statements
13 will be made, and we'll start with testimony. Thank you.

14 (WHEREUPON, the jury is seated in the courtroom at 10:07
15 a.m.)

16 PRELIMINARY INSTRUCTIONS BY THE COURT

17 THE COURT: Good morning, ladies and gentlemen.

18 (Jury responds.)

19 THE COURT: And thank you for your timely arrival this
20 morning. We have, as we always have, to deal with some pretrial
21 matters that sometimes delays us getting you into the courtroom
22 to begin with. But you are here, and we are going to start the
23 trial of this case momentarily.

24 Mr. Washington, I want you to serve as the foreperson of
25 this jury. You can stay right where you are right now, but the

1 next time you come in, if you'll sit right down here, please,
2 where Ms. Hiott is sitting, and you'll occupy that chair. That's
3 the foreperson's chair. You'll be the jury's spokesperson here
4 in court. You'll be responsible for writing the verdict of the
5 jury when it's over. I'll tell you more about that before you
6 have to do it. All you need to know right now is that you occupy
7 this chair throughout the trial in the case.

8 Mr. West, you are now going to be a principal juror in the
9 case. One of your members who was originally a principal juror
10 has become ill overnight, and she is unable to continue her
11 services as a juror. And so you have been selected to take her
12 place as a principal juror in that regard. And you will sit
13 wherever the principal jurors sit.

14 Mr. Bowers, you will continue to sit in the alternate seats
15 throughout the course of the trial of this case. The rest of you
16 folks don't have reserved seats. You've just got general
17 admission tickets, and do the best you can when you come in from
18 time to time in your service as jurors.

19 Ladies and gentlemen, you're going to be sworn in now as
20 jurors. I want you to pay attention to the oath that you're
21 about to take particularly. It is a time-honored oath; it is an
22 artfully worded oath. It tells you very completely, yet very
23 succinctly, what your duties are as jurors. And I'm going to be
24 reminding you during the trial and after the trial as to exactly
25 what you're sworn to do as jurors in this case.

1 Please listen now as the clerk administers the oath. Madam
2 clerk.

3 CLERK OF COURT: Please stand with me. If you'll raise your
4 right hand, and if you'll say "I do" after I complete the oath.

5 (WHEREUPON, the Clerk of Court administers the oath to the
6 jury.)

7 (Jury responds.)

8 THE COURT: Ladies and gentlemen, let me take just a few
9 minutes to tell you the process that we will follow throughout
10 the course of this trial and what your responsibilities as jurors
11 will be during the course of the trial.

12 You know why you were selected as jurors, you were selected
13 as jurors to make a decision in this case and to arrive at a
14 verdict at the conclusion of the trial expressing your opinion as
15 to what you have seen and heard. You know that. And if it were
16 that simple, of course, it would be almost like flipping a coin
17 and just making a choice, you know, just on the basis of what you
18 think the coin flashes out at you as to what the decision should
19 be. But it's more involved in that, there's a process to be
20 involved. And that's what I'm going to explain to you for just a
21 few minutes right now.

22 When I'm finished talking to you, in just a moment
23 Mr. Evans, on behalf of the state, is going to stand before you
24 and make a brief opening statement. And in that opening
25 statement he is going to outline for you in something of a

1 preview fashion what this case is all about from the state's
2 point of view.

3 And he may also indicate to you some of what he intends to
4 offer by way of proof in support of the charges that the state
5 has brought in those indictments that I read to you yesterday. I
6 remind you they're not proof, they're not evidence, they're just
7 charging papers. He will explain some of what he intends to
8 offer by way of proof in support of those indictments.

9 And when he is finished making the opening statement on
10 behalf of the state, Mr. Mathews, on behalf of Mr. White, the
11 defendant in this case, has a right to make an opening statement
12 he chooses to do that. He doesn't have to do it. I'll tell you
13 why in just a minute.

14 After the opening statements have been made, then you will
15 begin to see and hear the presentation of evidence. Evidence,
16 for the most part, will take the form of testimony of witnesses
17 who will take an oath and sit in this chair right here and ask
18 the questions that the lawyers from both sides will put to them.

19 Evidence will also take the form of photographs, of
20 diagrams, of some video things that you possibly will be seeing
21 during the course of the trial.

22 The state will offer its evidence and testimony first. And
23 after the state has put in its evidence and testimony, then the
24 defendant, Mr. White, once again, has a right to offer evidence,
25 but he's under no obligation to do that.

1 And after all of the evidence is in the lawyers will come
2 back before you and make their closing arguments in which they're
3 allowed to summarize the evidence and submit to you conclusions
4 that they claim you ought to draw from the evidence that you've
5 heard.

6 And then after that's been done then I will instruct you on
7 the law, I'll tell you what the law is in this case that you are
8 bound to follow.

9 And then you will be able to go back into your jury room
10 finally and start talking about this case among yourselves, to
11 deliberate it and to reach a verdict.

12 I remind you again, as I told you yesterday, you're not
13 allowed to talk about this case among yourselves at any time
14 during trial. You might hear something out here from the witness
15 stand and you go back into your jury room for a break and you
16 have some questions about it, you were interested in it and you
17 want to talk about it right then, and it would seem like a
18 logical time to do it. But you can't do it then. And the reason
19 that you cannot do it then is because once you start to talk
20 about the evidence you will start to make up your mind about what
21 you've talked about. Now, it might be -- I don't know whether it
22 will be or not, but it might be -- that later in the trial you
23 might hear some other evidence that's different from what you've
24 already heard and started to talk about.

25 But if you've already started to make up your mind based on

1 what you heard earlier, you are not likely to receive that later
2 evidence with an open mind. And so you have to keep an open mind
3 throughout the entire trial. So that's the reason you can't talk
4 about this case among yourselves at any time until this trial is
5 over and you go back and you start talking about it.

6 And then, as I've said, take as much time as you want to
7 talk about it then.

8 For obvious reasons, you can't let anybody else talk with
9 you about it. You can't try to find out anything on your own
10 about the case. I've already told you about that, you know that,
11 and you're not going to do that. And I appreciate that.

12 Now, ladies and gentlemen, I told you that the evidence is
13 going to come from this witness chair and those documents and
14 those items that will be introduced. That means that the opening
15 statements that the lawyers make are not evidence, and the
16 closing statements are not evidence, and the questions that they
17 ask are not evidence.

18 It's not the question, it's the answer to the question that
19 is the evidence, because that comes from a person who takes an
20 oath and sits here and answers questions from both sides in order
21 to stand the test of scrutiny in that regard.

22 The reason it's important that you understand what is and
23 what is not evidence is this. Because when it comes to evidence,
24 folks, you all are actually the judges. You were selected as
25 jurors, and that's your role. But when it comes to evidence, you

1 are actually the judges of the evidence.

2 Now, I'm the judge of the law. And I've got the relatively
3 easy job. All I've got to do is to decide as a matter of law
4 whether you can hear somebody tell you something from this
5 witness stand or whether you can look at an item or a photograph
6 or a document, or whatever it is, according to the rules of
7 evidence.

8 But once I decide that you can hear the testimony or that
9 you can look at the item of evidence, from that point on what you
10 do with it is entirely up to you. You've got the right to
11 believe it or not believe it; you've got the right to decide how
12 much weight you want to assign to it.

13 And so that means you've got to pay attention, obviously.
14 You've got to keep not only an open mind, as I've told you,
15 you've got to keep an open ear and listen up so that you'll be
16 able, when the case is over, go back and start intelligently
17 deliberating this case among yourselves.

18 This is not going to be a lengthy trial. It will probably
19 be over by tomorrow sometime. And you shouldn't have any trouble
20 remembering those things that are important to you. If you
21 forget them, we can deal with that as a matter of course if you
22 let me know about that.

23 But that's the importance that you all have as jurors in the
24 trial of a case like this.

25 A few minutes ago I told you that the defendant doesn't have

1 to make an opening statement, nor does he have to offer evidence
2 and testimony. And the reason for that is this. As I told you
3 yesterday, he has pled not guilty to the charges in these
4 indictments. And you all remember from the time back when you
5 were in school or getting through life since that period of time,
6 and seeing how our system of government and justice works, that a
7 person who is charged with a criminal offense is presumed, in
8 law, to be innocent of those charges, he is presumed to be not
9 guilty.

10 And so the burden of proof is on the state to prove guilt
11 beyond a reasonable doubt. The defendant doesn't have to make an
12 opening statement; he doesn't have to offer testimony; he doesn't
13 have to call witnesses to try to convince you that he did not do
14 the things he is accused of doing. He is presumed, in law, to be
15 not guilty of those charges. And so then, as I've said, the
16 burden is on the state to prove his guilt beyond a reasonable
17 doubt before you can convict him and find him guilty.

18 When the trial is over I'll explain to you in greater detail
19 what we mean by proof beyond a reasonable doubt. For right now,
20 in these preliminary instructions, let me tell you that proof
21 beyond a reasonable doubt is proof that leaves you firmly
22 convinced of the defendant's guilt.

23 So you're going to be listening to the lawyers, to the
24 witnesses, to me, and then you're going to go back in the jury
25 room and you're going to listen to each other. And while you're

1 in that jury room you're going to be talking about the issues in
2 this case, and you're going to be deciding whether or not the
3 state has met its burden of proof beyond a reasonable doubt as to
4 these charges.

5 If you find, at that point in time, that you are firmly
6 convinced that the defendant is guilty of the charges, then the
7 state has met its burden of proof and would be entitled to a
8 verdict of guilty at your hands.

9 But, on the other hand, if you find that there's a real
10 possibility that he is not guilty of the charges, then the state
11 has not met its burden of proof and the defendant, in that case,
12 would be entitled to a verdict of not guilty at your hands.

13 So you're going to be listening, and then you're going to be
14 talking among yourselves and decide whether or not the state has
15 met its burden of proof. And you'll express that by filling out
16 a verdict form that we will give you and signing that at the
17 conclusion of this trial.

18 Thank you folks, for your attention to these remarks. Now
19 please listen to the lawyers as they present their opening
20 statements to you. Mr. Evans.

21 OPENING STATEMENT ON BEHALF OF THE STATE

22 (10:08 a.m.)

23 ATTORNEY EVANS: Thank you, Your Honor. May it please the
24 Court.

25 THE COURT: Yes, sir.

1 ATTORNEY MATHEWS: Mr. Mathews. Ladies and gentlemen of the
2 jury.

3 Sunday, July 15th, 2018, was like a lot of other midsummer
4 Walterboro days. It was a scorcher, temperatures in the 90s, not
5 a cloud in the sky. It was the kind of day you might want to
6 find some shade and maybe crack open a cold drink. It was an
7 ordinary day.

8 And two men involved in this case, they tried to cool off in
9 their own way. Lennon Poland, or Lee as his family and friends
10 would call him, Lee or Lee-Lee, he tried to find some shade and
11 spend time with friends just off Francis Street behind Williams
12 Seafood in Walterboro in Colleton County. A nice, cool spot
13 where folks like to hang out.

14 Now, Lee had his problems. He was a drug user. He smoked
15 marijuana that day. He wasn't trying to hurt anybody. He was
16 minding his own business, having conversation out there in the
17 shade.

18 Jermaine White, the defendant in this case, he tried to cool
19 off, too. He got out of the house. Lived on Cleveland Street
20 just outside the city, but certainly in Colleton County, nearby.
21 Took his girlfriend's car. Went to the Horizon -- it's an
22 enmarket now, but the Horizon -- at the intersection of Hampton
23 and Robertson right there, got a couple of cold drinks the
24 morning of July 15th, and then went about his way.

25 If that's where the story ended there wouldn't even be a

1 story, we wouldn't even know about it. It would be just like any
2 other low country, hot July day.

3 Well, what Jermaine White did flipped the script, and he
4 turned that Sunday scorcher into a senseless slaughter, a hot
5 afternoon of cold-blooded murder when he walked up Lennon Poland
6 and shot him in the head one time and drove off in his
7 girlfriend's car.

8 That's why we're here today, because of what Jermaine White
9 did to Lennon Poland. Put a bullet in his brain, sent him on his
10 way to the hospital where he fought for nine days until he
11 finally died on July 24th, 2018, in North Charleston.

12 That's why Jermaine Silas White is before you on trial for
13 murder and possession of a weapon during commission a violent
14 crime.

15 Over the next couple of days you're going to hear from
16 witnesses, you're going to hear from police officers, you're
17 going to hear from members of Colleton County community, and
18 you're going to hear from, what we call, expert witnesses. The
19 Judge is going to define for you when the time comes, but
20 basically it just means someone with a special understanding of a
21 field that can help you understand evidence that comes to them.

22 You're going to hear about how Jermaine White was built as a
23 suspect, about who witnessed these events. You're going to hear
24 about how the Walterboro PD turned over stone they could, used
25 all the tools at their disposal to try to confirm that this man,

1 this defendant, is the one who killed Lennon Poland. You're even
2 going to hear from Jermaine White himself through phone calls
3 that he made from the jail, talking about his kids.

4 That's not all you'll hear, ladies and gentlemen, because,
5 in just a few moments, you're going to hear the voice of Lennon
6 Poland himself calling out the name of a man that would take his
7 life. Why.

8 Now, I expect Mr. Mathews is going to stand up here in a few
9 minutes/a few moments and tell you that you have an important
10 job; that it's an important day for Jermaine White; that he
11 deserves a fair trial; that he deserves for you to consider all
12 the evidence before you make any conclusions.

13 And I might not agree with him about a lot over the next few
14 days but, on this, he's absolutely right, it is an important day
15 for Jermaine White. He is entitled to a fair trial and for you
16 to consider all the evidence. Pay close attention and wait until
17 you've heard all the evidence before you make a decision,
18 100 percent.

19 But he's not the only side in this courtroom who's entitled
20 to a fair trial. The oath you just took entitles the State of
21 South Carolina to a fair trial. Lee Poland is entitled to a fair
22 trial. This is an important day for him and his family.

23 And just like Mr. Mathews, I'm going to ask you to pay close
24 attention, use your commonsense, wait until you've heard all the
25 evidence.

1 And in a couple of days time, after all the evidence is in,
2 I'm going to come back before you and make a closing statement.
3 And at that time I'm going to ask you to find Jermaine Silas
4 White guilty of murder. Thank you.

5 THE COURT: Thank you, Mr. Evans. Mr. Mathews.

6 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

7 (10:25 a.m.)

8 ATTORNEY MATHEWS: Thank you, Your Honor. Mr. Foreman,
9 ladies and gentlemen of the jury, can you hear me okay? The mask
10 thing, I'm trying/we're all trying to adjustment, and I want to
11 make sure I can be heard.

12 This is the part we tell you what we expect the evidence is
13 going to show. I think that Mr. Evans got some things right on
14 what the evidence is likely to show. The enmarket gas station on
15 the corner of Robertson and Hampton is commonly referred to as
16 the Ghetto PB, that's just what they call it. Just like we all
17 have gas stations and places that we go, it's almost as much an
18 identity as it is a place to get gas and snacks. But an awful
19 lot of people come and go there, an awful lot of stuff happens
20 there.

21 And then also on Hampton Street a little bit before
22 Robertson, more closer to the city, is Williams Seafood. They're
23 really, they're right next to each other. And there's a
24 laundromat and there's a car wash. It's all right there in this
25 area.

1 And behind Williams Seafood there's a place that I have
2 referred to, I have heard referred to, as the hole. And you can
3 dress it up however you'd like, but it's a place where people go
4 to buy and sell drugs and use drugs, as well as drink and hang
5 out. It's all that stuff going on. I understand that, I've
6 heard -- I have not been but I understand -- Williams Seafoods is
7 pretty good. I don't know about the hole, but that's where this
8 stuff happens.

9 I believe that the evidence is going to show that a car --
10 the state is going to show that a car that's commonly driven by
11 Jermaine Silas White was seen in the general area. And you'll
12 see that. Officer Ballard will testify that he had a bodycam,
13 and some of the stuff, it gives you a view of what he first saw
14 coming in. And as he's rolling in his car camera shows a brown
15 car coming toward the scene, not away from it. And you'll see,
16 as he's coming from Hampton Street, he's taking a left onto
17 Francis Street, just a block from, just at, the back end of
18 Williams Seafood there's a brown car coming in toward Williams
19 Seafood. And I believe the state will show that that's a car
20 that Jermaine White typically drives.

21 You'll hear, I think, I believe that you'll hear, some
22 testimony that you'll hear on Ballard's bodycam when he asked
23 who, he's calling in dispatch and said who the victim's going to
24 be, Did I tell you who the victim is, and at that point the video
25 will show that Mr. Poland says, White, okay.

1 It wasn't really in response to a question. And I believe
2 the state will try to present that as an idea that from White you
3 can derive Jermaine Silas White. And there may be some other
4 testimony. However, Jermaine is not the only White in Colleton
5 County, nor is he the only White that lives in the same house.
6 There are people that come and go.

7 The state, I believe, will present some evidence they found
8 on the scene. A shell, a casing, ammo casing, on the scene. And
9 they found that. They served a search warrant. They found a
10 .25 pistol, semiautomatic pistol.

11 And they sent these -- they took DNA samples from the scene.
12 They took Q-tips -- they're not Q-tips but they're really cotton
13 swabs -- and they wiped down places where this had to have
14 happened, where the whoever did the shooting would had to have
15 been. And they took the swab samples and they sent hem off to
16 the State Law Enforcement Division, SLED, to find out whether or
17 not their guy, their suspect, whether his DNA was present.

18 I believe the evidence will show that they did not find any
19 DNA that would link to Mr. White. If there were testimony of it,
20 you would certainly hear it, but I don't believe that you will.

21 This pistol that they found, they sent it off to SLED also.
22 And you probably will hear from a ballistics expert that will say
23 that the shell casing they found on the scene probably came from
24 that pistol. But you'll hear some other testimony about how the
25 mechanisms, how that happens.

1 When Mr. Poland was being autopsied, because anytime there
2 is a homicide you're going to have an autopsy, Dr. Batalis will
3 come and testify on behalf of the state how this happened and how
4 Mr. Poland died of a gunshot wound to the head, and testify to
5 some other things.

6 And one of the things that he did at that point was extract
7 from Mr. Poland the slug, or the bullet, the actual bullet, that
8 killed him. And that also was sent to SLED. And the ballistics
9 expert will testify, I believe that she will testify, that they
10 couldn't say for sure that the slug, even though it was in pretty
11 good shape, they can say it likely came from a .25 but they
12 couldn't say it came from that .25.

13 And, in addition to that, the magazine that you slide into
14 the pistol, the spring was broken, so it couldn't push any shells
15 into it, it couldn't chamber anything. So the only way that that
16 particular gun would work, I believe the evidence will show, is
17 the round was already chambered, because the spring couldn't push
18 the bullet up, it couldn't chamber the round. So these are the
19 things that the state will prove.

20 And why are these scientists so important? You'll also
21 hear, fingerprint expert also tested all those things, and the
22 only fingerprint that I believe she'll testify that she found is
23 from Detective Kinard. They have protocols in place so that you
24 don't do that. I think as you see Ballard pull up you see him
25 put on some gloves and all that sort of stuff. These are things

1 you're supposed to do to preserve the evidence.

2 But I believe that you'll find that the testimony will show
3 that none of this scientific evidence, other than the one
4 ballistics on the shell, indicates anything that links Jermaine
5 Silas White to this.

6 That leaves us with eyewitness testimony. I don't know for
7 sure what you're going to hear, but the thing to always be aware
8 of in eyewitness testimony, the reason that scientific evidence
9 is so valuable and so necessary, particularly now, is because
10 eyewitness testimony is notoriously unreliable.

11 Do listen carefully to -- and one thing that I think you're
12 going to have a hard time, I don't know whether the state is
13 going to show why this happened. They may. We'll find out what
14 the testimony shows.

15 But Mr. Evans is correct. I'm asking, we're all asking, you
16 to listen carefully to the evidence that is presented. But
17 consider, also, the evidence that is not presented. Listen
18 carefully. And that's all we can ask.

19 THE COURT: Thank you, Mr. Mathews. Mr. Evans.

20 ATTORNEY EVANS: Your Honor, the state calls Angela
21 Stallings.

22 ANGELA STALLINGS,

23 having first been duly sworn in by the Clerk of Court, was
24 examined and testified as follows:

25 CLERK OF COURT: State your name again for the record,

1 please.

2 THE WITNESS: Good morning. My name is Angela Stallings.

3 THE COURT: Mr. Utsey.

4 ATTORNEY UTSEY: Thank you, Your Honor.

5 **DIRECT EXAMINATION**

6 BY ATTORNEY UTSEY:

7 Q Ms. Stallings, can you tell me, who do you work for?

8 A The Colleton County Sheriff's Office.

9 Q And how long have you worked for the Colleton County
10 Sheriff's Office?

11 A Going on approximately 13 years.

12 Q And can you tell me your position with the Colleton County
13 Sheriff's Office.

14 A Yes, sir. Currently I am the captain over administrative
15 services. And that includes several different divisions within
16 the department, which is the 911 communication center which is
17 dispatch; civil process; court security; training, hiring;
18 equipment; records.

19 Q Can you tell me, what are some of your duties as head over
20 dispatch.

21 A Yes. I have a lieutenant that's below me that runs the
22 day-to-day duties of our sergeants. We have four shifts in
23 dispatch. And the lieutenant handles the day-to-day concerns and
24 issues. And then I oversee the lieutenant in the division as a
25 whole.

1 I keep up with the equipment. If there's equipment issues,
2 I get that taken care of. The recorder that records our calls
3 that come in for emergency and nonemergency calls, our CAD
4 system, making sure it's running correctly and not having any
5 issues.

6 Q And you mentioned recorder of calls, you keep up with all
7 that. Is every 911 call that comes into Colleton County Dispatch
8 recorded?

9 A Yes, sir.

10 Q And those recordings are made at the same time that someone
11 calls in; correct?

12 A That is correct. As the call is coming in, the system is
13 recording live. It records as the call is initiated.

14 Q And are you familiar with the call that was made on
15 July 15th, 2018, around 3:40 p.m?

16 A Yes, sir, I am.

17 (WHEREUPON, State's Exhibit 1 is marked for identification.)

18 ATTORNEY UTSEY: Your Honor, may I approach the witness?

19 THE COURT: Yes, sir.

20 Q Do you recognize that, Ms. Stallings?

21 A Yes, sir.

22 Q Can you tell me what it is.

23 A It is a disk with a 911 call on it, and it has my initials
24 and date.

25 Q And at my request did you listen to that disk?

1 A I did.

2 Q And is that recording on that disk from July 15th, 2018,
3 around 3:40 p.m?

4 A Yes, sir.

5 Q And is it a fair and accurate reflection of the phone call
6 that was made that day to Colleton County Dispatch?

7 A It is.

8 ATTORNEY UTSEY: Your Honor, at this time I would like to
9 offer this as State's Exhibit No. 1.

10 THE COURT: Mr. Mathews?

11 ATTORNEY MATHEWS: No objection, Your Honor.

12 THE COURT: Thank you. State's 1 is admitted without ---
13 (WHEREUPON, State's Exhibit 1 is admitted into the record.)

14 ATTORNEY UTSEY: Thank you, Your Honor. May I approach?

15 THE COURT: Yes.

16 ATTORNEY UTSEY: May I publish to the jury, Your Honor?

17 THE COURT: Yes, sir.

18 (WHEREUPON, State's Exhibit 1 is published to the jury.)

19 ATTORNEY UTSEY: I have no further questions, Your Honor.

20 THE COURT: Thank you.

21 ATTORNEY MATHEWS: One moment, Your Honor, as I might review
22 this.

23 THE COURT: Okay.

24

25

CROSS-EXAMINATION

BY ATTORNEY MATHEWS:

Q Officer Stallings, you got several different 911 calls; is that correct?

A Yes, sir.

Q And when they said they were on their way, it meant there were calls that preceded that?

A That's correct.

Q Have you had a chance to review those calls? Obviously you weren't the one taking the calls, you were two steps over that, at least. But have you listened, in preparation for this trial, have you listened to the recordings?

A I would have pulled those calls when the original incident took place in 2018. But listening to them here recently, I have not listened to them.

Q Okay. Did you get an idea from listening to those how long it was between the incident and the time that the call, the first call, came in?

A I can look at the CAD report.

Q Okay. That's fine.

A We entered the call at 15:40:33, so at 3:00 p.m., 40 minutes and 33 seconds. And I'd have to listen back at the very beginning, but at the very beginning of this call we actually have the timestamp. The system automatically timestamps it. And I believe it was 15:40 and some seconds, but I'd have to listen

1 to it again.

2 Q Okay. So the first call was about two minutes before the
3 call that we just have heard?

4 A I'd have to listen to the time again to be certain on that.

5 Q Okay.

6 A But in dispatch we have a minimum, at this time of day we
7 would have a minimum, of four dispatchers in the room at one
8 time. So all four of us could be on a call at the same time
9 simultaneously. So even though you've got one person on the
10 call, five seconds later or even one second later 911 can be
11 ringing again, another dispatcher in the room would be picking
12 that call up. So everyone in the room takes the calls until
13 we're all on phones and there's no one else to answer.

14 Q And you are aware that in one of the calls the caller was
15 actually talking to the victim?

16 A Reading the notes, they were getting information on the
17 patient from somewhere, so I would say that it was a caller.

18 Q Okay. And would that perhaps be the one that started at
19 3:40 instead of 3:42?

20 A Yes. If we entered the call at 3:40, we were talking to
21 someone at that time and we were putting information into the
22 call.

23 Q And at one point the 911 operator asked, Do you know who
24 shot you, and the response was, I don't know?

25 ATTORNEY UTSEY: Objection, Your Honor.

1 THE COURT: The nature of the objection?

2 ATTORNEY UTSEY: Your Honor, the witness has previously
3 testified that she hasn't listened to every recording recently so
4 she wouldn't know, she wouldn't know the answer to that.

5 THE COURT: If she doesn't know the answer, then that's the
6 answer.

7 ATTORNEY UTSEY: Yes, sir.

8 A So the first section of notes, that would be information
9 that is put in the call from the callers calling in, which shows
10 15:46. And then at 15:48 that's where chain of command is being
11 notified, dispatch is notifying the administration and making
12 them aware of what's going on. And then you have medic
13 information.

14 Q Let me stop you right there.

15 A But I don't specifically see where the caller says that she
16 does not know who shot. I don't see that.

17 Q It didn't say at some point, Yeah, he's conscious, he's
18 sitting up, Did you ask him who shot him? And the response was,
19 I don't know. Or are your notes not that specific?

20 A And that's in the CAD report?

21 Q It's not in the CAD report. It's in the recording.

22 A Okay. All I have is the CAD report.

23 Q So how long, can your CAD report tell you, how long was the
24 first time -- I know that Ballard got out there pretty quick, but
25 how far was it from the time you first got notified of this to

1 the time the officers were on the scene?

2 A Looking at the Walterboro Police Department CAD report, it
3 shows one their officers getting on scene at 15:42 and 27
4 seconds. So that's less than three minutes.

5 Q Okay.

6 A That's less than two minutes.

7 Q Pretty quick, he got out there pretty quick.

8 A Yes, sir.

9 Q So it's not very far, I guess, from the police department to
10 Williams?

11 A It is not, no, sir.

12 Q Have you ever heard or are you familiar with the Ghetto BP?

13 A I am.

14 Q Is it a place that comes up frequently in your job?

15 A Yes, sir.

16 Q Okay. Have you ever heard the area behind Williams Seafood
17 referred to as the hole?

18 A As the what? I'm sorry.

19 Q The hole. I guess not if I ---

20 A No, sir.

21 Q Okay, but you're familiar with the area?

22 A I am. It had a different nickname when I was working
23 Walterboro Police Department numerous years ago.

24 Q So what did they call it then?

25 A It used to be the slab.

1 Q The slap?

2 A The slab.

3 Q The slab, okay. All right.

4 A But that was '98-99. So it's been a while.

5 Q So this has been a long -- but this place has long been a
6 gathering place and a place where sometimes you're going to find
7 drugs exchanged and all that?

8 A Yes.

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

10 THE COURT: Thank you. Redirect, Mr. Utsey?

11 ATTORNEY UTSEY: No, Your Honor.

12 THE COURT: Thank you. You can step down, Ms. Stallings.

13 THE WITNESS: Thank you.

14 THE COURT: Gentlemen.

15 ATTORNEY EVANS: Billy Ballard.

16 WILLIAM BALLARD,

17 having first been duly sworn, was examined and testified as
18 follows:

19 CLERK OF COURT: Please state your name for the record.

20 THE WITNESS: William Ballard.

21 **DIRECT EXAMINATION**

22 BY ATTORNEY EVANS:

23 Q Would you mind spelling your last name for the court
24 reporter, sir.

25 A B-a-l-l-a-r-d.

- 1 Q Thank you. And where do you work, Mr. Ballard?
- 2 A I currently work for the Colleton County Sheriff's Office.
- 3 Q How long have you been there?
- 4 A Approximately two years.
- 5 Q Do you have any prior law enforcement experience?
- 6 A Previously I was employed by Walterboro Police Department.
- 7 Q And for how long?
- 8 A Almost nine years.
- 9 Q Almost nine years?
- 10 A Yes, sir.
- 11 Q We're all going to have to speak up, I think, more than
- 12 usual with these masks. So I apologize if I have to ask you to
- 13 repeat a few things. What is your rank now?
- 14 A I'm a sergeant with the investigative unit.
- 15 Q And back in 2018 you were with Walterboro PD back then?
- 16 A Yes, sir.
- 17 Q What was your rank at that time?
- 18 A I've held positions all the way up to sergeant. I'm not
- 19 sure of the dates.
- 20 Q What were you doing on July 15th, 2018?
- 21 A I was assigned to road patrol.
- 22 Q And what does that mean?
- 23 A I was a patrol officer. I worked every dayshifts, responded
- 24 to calls and things of that nature.
- 25 Q Do you recall what led to this trial here today?

1 A Yes.

2 Q Would you tell us about how you got involved.

3 A On the date in question I was on shift, and I was contacted
4 by dispatch in reference to a possible shooting at the 100 block
5 of Francis Street. I responded to the area where I found the
6 victim, Mr. Poland, sitting in a chair, vomiting.

7 Q Okay. Did you know him, had you met him before?

8 A Yes, I knew Mr. Poland.

9 Q So you knew him on site?

10 A Yes.

11 Q Is this area in Colleton County?

12 A Yes.

13 Q What's that area known for?

14 A Excuse me?

15 Q What is that area known for? Have you been out there?

16 A The area where he was is just a, I guess a, normal hangout
17 spot for individuals where he was sitting.

18 Q Any drug use out there?

19 A Yes, sir.

20 Q Did you see any signs of drug use on this day?

21 A Not at that time. No, sir.

22 Q Not at that time, all right. You said you saw him throwing
23 up, Mr. Poland?

24 A Yes.

25 Q Can you tell us about that.

1 A Like I said, I responded to the area and found him in the
2 chair, where he was vomiting. Upon a little bit more inspection,
3 I did see that he sustained a gunshot wound behind his right ear,
4 approximately two inches.

5 Q How could you tell us it was a gunshot wound?

6 A You could see the entry point. And then he also had a large
7 mass of what I believe to be fluid and build-up that was on the
8 side of his neck.

9 Q Have you seen gunshot wounds in your days with Waltherboro
10 PD?

11 A Yes, sir.

12 Q Have you ever seen somebody shot in the head and still alive
13 when you got there?

14 A No, sir, this was a first.

15 Q This was a first?

16 A Yes.

17 Q Was he still able to communicate with you?

18 A Yes, he was.

19 Q We'll get to that in a bit, but what did you do when you got
20 there? You told us what you saw. But what's sort of your
21 priority when you get to a scene like this?

22 A Priority, when I first arrive, it was securing what crime
23 scene I had and relaying any other information to the other
24 responding units that were coming.

25 Q What other units? What does that mean?

1 A My other officers that were assigned ---

2 Q Other officers?

3 A Yes.

4 Q Who else would be coming?

5 A Excuse me?

6 Q Who else would be coming when you have a report of a gunshot
7 wound?

8 A The paramedics, fire rescue, even the county units to aide
9 with the area.

10 Q And part of securing the scene is making it safe for ---

11 A For the medics that are arriving. Yes.

12 Q Why do you do that? Why not just go right into
13 investigating the crime?

14 A Making sure that everything's safe for everyone, including
15 medical staff, to where there's no further threat of anyone in
16 the area, to where everybody can do their job safely.

17 Q Did you think there was a chance he might make it through
18 this?

19 A It didn't look good for him, but he was able to speak with
20 me at the time. He did voice -- or, he asked for help and that
21 he was worried about dying.

22 Q What else did he tell you?

23 A He also told me -- he gave the name of White as I was
24 speaking with him as the individual that committed the offense.
25 So I asked him if it was Jermaine White, where he repeated it was

1 White again.

2 Q Okay. So he gave you additional ---

3 A Yes.

4 Q --- confirmation back and forth?

5 A Correct. Yes.

6 Q Did you know Jermaine White?

7 A I did.

8 Q From dealing with him before?

9 A Yes, sir.

10 Q Do you recognize him in the courtroom today?

11 A I do.

12 Q Could you indicate where he's sitting and what he's wearing

13 for the court reporter.

14 A He's wearing a black shirt, sitting next to Mr. Mathews.

15 Q Next to Mr. Mathews?

16 A Yes.

17 Q All right. What did you do next while you were talking with

18 Mr. Poland?

19 A While I was speaking with Mr. Poland I also was given

20 information that Mr. White left in a brown vehicle. And at that

21 point I started relaying to dispatch and to additional units

22 responding that the suspect was Jermaine White and that he left

23 in a brown vehicle, basically back towards Hampton Street from

24 where we were.

25 Q Did EMS arrive?

1 A Yes.

2 Q What happened with them?

3 A Once they were on scene, they secured Mr. Poland to their
4 best abilities and transported him, I believe, to Trident for
5 additional medical help.

6 Q Did you give them some information about what you observed?

7 A Right.

8 Q Did you find any evidence in this case?

9 A I did. On the Francis Street side, the roadside of
10 Mr. Poland, there was a single shell casing which I had to stand
11 over to secure due to the foot traffic from the medics and
12 everybody to make sure that it wasn't disturbed.

13 Q And was that eventually collected?

14 A Was it collected?

15 Q Yes, sir.

16 A Yes, sir.

17 Q By you or someone else?

18 A No. By someone else, by an investigator that arrived later.

19 Q Who was that investigator?

20 A I believe it was Sergeant Kinard at the time.

21 Q Kevin?

22 A Just not sure of his rank at the time.

23 Q As you can tell, I'm pretty unsure of all y'all's ranks at
24 all times, so I appreciate the clarification. When Mr. Poland
25 was attended to by EMS what, if anything, happened after that?

1 A Excuse me?

2 Q Pick up with what you were doing.

3 A Oh. Once the battalion chief and the medics arrived on
4 scene, they began to secure him for the transport. While they're
5 relaying to them everything that I found and I saw with him
6 vomiting and, of course, what they can see, as well, where the
7 gunshot wound was and the mass on his neck, also relayed to them
8 as far as the individual was no longer on scene, or he had left
9 prior to our arrival, you know, so they are able to do their job
10 without having to look over their shoulder.

11 And then also relaying to the other units that were on scene
12 as far as securing the incident location for the pending
13 investigation.

14 Q Was that more or less the end of your involvement in this
15 case?

16 A Pretty much once fire and rescue loaded Mr. Poland, at that
17 point I just made sure everything was secure for the additional
18 personnel that was coming. And that was my involvement at that
19 point.

20 (WHEREUPON, State's Exhibit 2 is marked for identification.)

21 ATTORNEY EVANS: May I approach the witness, Your Honor?

22 THE COURT: Yes, sir.

23 Q Sergeant?

24 A Yes.

25 Q Okay. I'm going to hand you something and ask if you can

1 identify that, please.

2 A Disk of the video from my in-car and bodycam.

3 Q It's been previously marked as State's Exhibit 2. How can
4 you tell that it is your bodycam?

5 A My signature and date on the disk.

6 Q Okay. And did we review that?

7 A Yes.

8 Q Prior to trial?

9 A Yes, sir.

10 Q And that's when you signed it, because you know what it is?

11 A Yes, sir.

12 ATTORNEY EVANS: Your Honor, the State would move the disk
13 into evidence as State's Exhibit No. 2.

14 THE COURT: Over objection of defense counsel, State's 2 in
15 evidence.

16 (WHEREUPON, States Exhibit 2 is admitted into the record.)

17 ATTORNEY EVANS: Thank you. May I publish to the jurors?

18 THE COURT: Yes, sir.

19 Q And, Sergeant, we're going to play these videos. And I'll
20 ask you -- basically I'll stay by the pause button. If you see
21 anything that you think needs a little extra clarification, you
22 let me know and then I'll pause at that point and we'll talk
23 about it. Okay.

24 A Yes, sir.

25 (WHEREUPON, State's Exhibit 2 is published to the jury.)

1 Q The car was obviously still during those first few seconds.
2 What was happening?

3 A At that time we were either doing training or catching up on
4 reports.

5 Q And that's when you got the call in?

6 A Yes, sir. And then I now receive the call and I'm headed to
7 the Francis Street area.

8 Q Okay.

9 (WHEREUPON, State's Exhibit 2 is published to the jury.)

10 Q So is that the sound of you getting out of the car? Is that
11 right?

12 A Yes, sir. Basically parked in the roadway next to where he
13 was sitting. And I'm exiting my car to make contact.

14 Q And at this point your body camera is on?

15 A Correct.

16 (WHEREUPON, State's Exhibit 2 is published to the jury.)

17 Q Sergeant, I think I've heard -- that was Mr. Poland in the
18 lower left throwing up; is that right?

19 A Correct.

20 Q It sounded like he was talking there. Is that your
21 understanding?

22 A Yes, sir. He makes an original statement of White. And
23 that's when I give the name of Jermaine White. Then while
24 speaking with dispatch to confirm the information of the car and
25 the suspect information, Mr. Poland actually reassures that the

1 information -- he agrees to what I'm telling dispatch again.

2 Q To the best of your memory, -- well, let's pause and talk
3 about the bodycam. Where is that positioned on your person?

4 A It was either center mass or right, you know, around my
5 chest area.

6 Q Generally on your torso?

7 A Yes.

8 Q Are there any other places you could place it?

9 A At that time the actual attachment that I had, it could only
10 attach to my chest or to my vest.

11 Q So it shows what it shows, but were there other things that
12 you can see that may not necessarily show up on the bodycam?

13 A Yes, sir.

14 Q What about right now, is there anything that you remember
15 seeing that goes along with this timeframe that we might not be
16 able to see on this video?

17 A Other than the interaction with Mr. Poland at this time ---

18 Q Right.

19 A --- you know, his actual interaction with me because of me
20 looking up the roadway, no, sir.

21 Q Okay.

22 (WHEREUPON, State's Exhibit 2 is published to the jury.)

23 Q Is that what you were testifying about earlier, sir?

24 A Yes, about the casing located. Yes, sir.

25 Q Where you discovered the shell casing?

1 A Yes, sir.

2 Q What is a shell casing?

3 A The actual casing that holds the primer and the powder for
4 the projectile of a firearm.

5 Q So part of a bullet ---

6 A Right.

7 Q --- after it's been used?

8 A Yes.

9 (WHEREUPON, State's Exhibit 2 is published to the jury.)

10 Q Sir, anything to add other than what we could actually see
11 on the bodycam to help explain or understand what you saw?

12 A Just other than when I was interacting with Mr. Poland while
13 waiting for the medics, a few times he had asked for help, and he
14 didn't, he didn't want to die, which that's where I would respond
15 to him that the medics were coming.

16 Q A couple of times there were sirens and you could tell he
17 was talking. Is that maybe one of those times?

18 A Right. Yes, sir.

19 ATTORNEY EVANS: May I approach, Your Honor, the witness?

20 THE COURT: Yes, sir.

21 (WHEREUPON, State's Exhibits 3 through 12 were marked for
22 identification.)

23 Q Sergeant, I'm going to hand you a number of pieces of paper.
24 They've all been premarked at State's Exhibits 3 through 12. I
25 wonder if you could identify those, give a brief description, and

1 say the number every time.

2 A No. 3 is as I'm turning onto Franklin Street, Williams
3 Seafoods on the right, there's an open lot on the left. And that
4 that's me driving up to the incident location.

5 Q Actually, these are all photographs; correct?

6 A Photographs, yes.

7 Q Is that one, is that the screen grab from your video?

8 A This is from my in-car camera. Yes.

9 Q And that's No. 3?

10 A Yes. No. 4 looks like a digital photo taken of the actual
11 incident location on Francis Street.

12 Q Is that the overall picture?

13 A This is the overall where it kind of looks like it's from
14 across the street, opposite of it, showing the incident location.
15 And that's No. 4.

16 And No. 5 would be a close-up of more so just where the
17 actual incident took place, the marked placards of evidence of
18 the incident location.

19 No. 6 is also an enhanced picture of the, or a closer
20 photograph of the, incident location where Mr. Poland was
21 sitting.

22 No. 7 looks like a close-up picture of where Mr. Poland was
23 sitting, but it's a more-so overall of placard A and B, marking
24 evidence.

25 Q Okay. Tell us -- well, I'll let you finish ID'ing first. I

1 don't want to interrupt that flow.

2 A No. 8 is another enhanced photograph of the incident
3 location where Mr. Poland was sitting, more so on placard B
4 and C.

5 No. 9 is a close-up of placard A, which is the shell casing
6 that was located.

7 No. 10 is a close-up of placard B, which looks like, at the
8 base of the chair Mr. Poland was sitting in, it being a pool, or
9 a spot, of blood.

10 No. 11 is a photograph mainly of a close-up of placard C,
11 which was the chair, the blue lawn chair, that Mr. Poland was
12 sitting in.

13 And then No. 12 is a more-enhanced photograph of placard A,
14 which is the shell casing which was located.

15 Q Do these photos fairly and accurately depict the scene as it
16 was on July 15th?

17 A Yes, sir.

18 Q Did you take these photos?

19 A I did not.

20 Q But you can tell that they fairly and accurately depict it?

21 A Yes, sir.

22 ATTORNEY EVANS: Your Honor, the state would move these
23 photographs into evidence as State's 3 through 12.

24 THE COURT: Mr. Mathews?

25 ATTORNEY MATHEWS: Without objection.

1 THE COURT: Without objection, thank you.

2 (WHEREUPON, State's Exhibits 3 through 12 are admitted into
3 the record.)

4 ATTORNEY EVANS: May we publish, Your Honor?

5 THE COURT: Yes, sir.

6 ATTORNEY EVANS: I'm going to try to use the Elmode to speed
7 it up.

8 Q Sergeant, I am going to put each one, we'll just go back
9 over what we just did. Give the jury a little description of
10 what each one is and anything else you want to add.

11 A This is the ---

12 Q State's No. 3, what do we see here?

13 A This is a photograph from my in-car camera of my issued
14 vehicle of me pulling onto Francis Street from Hampton Street,
15 where Williams Seafood is there on the right, and the bush on the
16 right, you'll see a dumpster. And the incident location is
17 directly behind that dumpster.

18 Q Here it is behind there?

19 A Correct. That stop sign, or that speed limit sign,
20 actually. It's right behind it.

21 Q Anything else significant in this photo?

22 A The brown vehicle to the left, the left side of the
23 picture ---

24 Q This one here?

25 A Yes.

1 Q Okay. Did you know that that was significant at the time
2 you were pulling in?

3 A Not at the time; no, sir.

4 Q Did you learn later that it might be?

5 A Yes.

6 Q State's No. 4?

7 A That is the overall picture of the incident location taken
8 from across the street of where it happened.

9 Q No. 5?

10 A The closer photograph of the actual incident location where
11 Mr. Poland was.

12 Q And you were talking a moment ago when I rudely interrupted
13 you as we were trying to get the photographs in, about placards.
14 What are placards?

15 A The placards are the yellow triangle items.

16 Q These here?

17 A Yes. And they mark, they're lettered A through Z, and they
18 mark the evidence on scene that would be needed.

19 Q And why do you do that?

20 A For photographs, to distinguish between each photograph of
21 what the evidence is.

22 Q Make sure it's not disturbed?

23 A Correct.

24 Q State's No. 6?

25 A That's the close-up of where Mr. Poland was sitting,

1 containing the actual evidence at the time.

2 Q And placard A, what is that one marking?

3 A That is of the shell casing.

4 Q And placard B?

5 A At the foot of the chair, there's a blood spot on the

6 ground. And then, of course, the placard, and the chair, is

7 where Mr. Poland was sitting.

8 Q No. 7?

9 A The close-up of placard A and B at the crime scene.

10 Q Just another angle?

11 A Yes, sir.

12 Q And now we have C, it looks like, for the chair itself?

13 A Correct.

14 Q And again here in No. 8?

15 A Right. And that's a close-up of B and C, more so.

16 Q Is this the blood spot you were talking about?

17 A Yes, sir.

18 Q How about No. 9? That's an even closer view of placard A?

19 A Correct. That's one of the close-ups of placard A where you

20 could see the shell casing just above ---

21 Q Where my pen is indicating?

22 A Yes, sir, just above the placard.

23 Q And No. 10?

24 A Close-up of placard B to where the blood spot is at the base

25 of the chair.

1 Q Right there?

2 A Yes, sir.

3 Q No. 11?

4 A Placard C, Mr. Poland's chair.

5 Q And finally, No. 12?

6 A The close-up of the actual shell casing next to placard A.

7 Q Right here, the shell right there?

8 A Yes.

9 Q And I know you talked on the video you don't know how you
10 didn't step on it.

11 A Correct.

12 Q Nobody stepped on it. Is that right?

13 A No, sir. The shell casing was actually still on top of the
14 dirt. Like I said, with all the walking I was doing around it,
15 I'm not sure how I didn't step on it. But when we -- when it was
16 pointed out and I looked down and seen it, you could tell that it
17 wasn't disturbed.

18 ATTORNEY EVANS: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 Q Sergeant, you could hear at the time, and then again on the
21 video today, some of the comments that Mr. Poland was making.

22 A Uh-huh (yes).

23 Q Did he say at one point, he says, I'm telling? Did you hear
24 that?

25 A I don't recall if he says, I'm telling. I do know, like I

1 said, he made the comment more than twice about the individual
2 that committed the crime was -- or, that shot him, I should say,
3 was -- Mr. White, or he said White, which was Jermaine White.

4 Q Anything else significant that he said at that time?

5 A Not that I recall.

6 ATTORNEY EVANS: Those are all the questions I have, sir.
7 Please answer any questions that Mr. Mathews has.

8 THE COURT: Mr. Mathews, cross-examine.

9 ATTORNEY MATHEWS: Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 BY ATTORNEY MATHEWS:

12 Q How do you like it at the sheriff's department?

13 A I enjoy it.

14 Q Better, worse or about the same as the Waltherboro Police
15 Department?

16 A I enjoy what I do.

17 Q Very good answer. All right. When you arrived -- are you
18 familiar with that area?

19 A Yes, sir.

20 Q About how many times do you suppose you had to go out there?

21 A I probably rode through that area daily when I was on shift.
22 How many times I actually responded to there, I'm not sure.

23 Q Okay. But daily you stopped by there. Is that a place
24 where people used and sold drugs?

25 A Yes, sir. And I knew quite a few individuals that I could,

1 you know, say hi to more so, and I would drive through and just
2 speak.

3 Q Who are some of the people that used to hang out there?

4 A As far as?

5 Q Or do hang out there, for that matter. I mean, you said you
6 drove out to talk to some of the folks out there. Who are some
7 of the regulars?

8 A Some of the regulars. I mean, Mr. Poland, Mark McQune. I
9 don't really know a whole bunch of names ---

10 Q D.L?

11 A I just knew them by face.

12 Q D.L?

13 A Possibly, yes.

14 Q D.L. was one of them. Who all ---

15 A Considering the proximity of where everybody lived, I mean,
16 it was a high foot-traffic area. So you say somebody actually
17 hung out there, I would see different people all the time.

18 Q Okay. All right.

19 ATTORNEY MATHEWS: Your Honor, may I approach?

20 THE COURT: Yes, sir.

21 (WHEREUPON, Defendant's Exhibit 1 is marked for
22 identification.)

23 Q Officer Ballard, I've handed you what's been marked as
24 Defense Exhibit No. 1. And does that represent the area where
25 you responded?

1 A I'd say the opposite angle. Yes.

2 Q But it shows Williams Seafood; you can see the Ghetto BP;
3 and you can see the woods behind the slab, or the hole, or
4 whatever that area is called. Right?

5 A Yes.

6 Q And that's the area where you responded?

7 A Yes.

8 Q And as you look at that, I guess I can use --

9 ATTORNEY MATHEWS: May I use that Elmode thing, too? I
10 don't know if I know how. I'll try. Your Honor, may I approach
11 to pick this up?

12 THE COURT: Yes, sir.

13 ATTORNEY MATHEWS: How do you do this? Sorry, these kids,
14 you know, they know these things.

15 Q So you were coming in -- I guess this is Hampton Street, and
16 you were coming in ---

17 A Correct.

18 Q --- this way, and you turned. I guess Williams Seafood is
19 right there; is that right?

20 A No. Back up.

21 Q Right here?

22 A Yes, that's Williams Seafood.

23 Q And so you turned onto this road here, that's Francis
24 Street?

25 A Correct.

1 Q And you saw a car, the brown car you saw, was coming from
2 right here?

3 A No, sir. Move forward.

4 Q Here?

5 A Up more to your right where that patch of trees ---

6 Q Right here?

7 A Roughly where your pen is.

8 Q Okay, around in there somewhere.

9 A It's up a little bit more, but ...

10 Q And it's coming, from this direction, that way?

11 A It's coming -- no, sir. It's actually parallelling Francis
12 Street towards ---

13 Q Right here?

14 A --- towards Hampton Street.

15 Q Like that?

16 A No, sir. Parallel Francis Street towards Hampton.

17 Q Francis Street is here?

18 A Yeah. And it's going from top to bottom.

19 Q Okay, going that way?

20 A One more time?

21 Q That way?

22 A No.

23 ATTORNEY MATHEWS: Your Honor, may I ask him to come down
24 and see if he can show me?

25 THE COURT: He can do that. And keep your voice up, Officer

1 Ballard, you're away from the microphone. And face in the
2 general direction of the jury so they'll be able to hear what
3 you're saying.

4 ATTORNEY MATHEWS: Thank you, Your Honor.

5 A It would have been, where Francis Street is here, it was
6 coming from this area down towards Hampton this way.

7 Q Okay. Can you point where the -- okay, you've got a ---

8 A Here.

9 Q All right.

10 A (inaudible) black pen.

11 THE REPORTER: I'm sorry?

12 Q But you can see, when you're turning in from Hampton Street,
13 this is your left?

14 A Yes.

15 Q The car, the brown car's, to your left?

16 A Yes, sir.

17 ATTORNEY MATHEWS: I'll ask to introduce this into evidence
18 at this time, Your Honor.

19 ATTORNEY EVANS: No objection.

20 THE COURT: Defense 1, without objection. Thank you.

21 (WHEREUPON, Defendant's Exhibit 1 is admitted into the
22 record.)

23 Q All right. Do you know, are some of your frequent flyers
24 out there -- are among your frequent flyers Desi White?

25 A I'm familiar with him.

1 ATTORNEY MATHEWS: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 (WHEREUPON, Defendant's Exhibit 2 is marked for
4 identification.)

5 Q I hand you what's been marked as Defense Exhibit No. 2, and
6 ask if you can identify that.

7 A That would be Desi.

8 Q That's Desi, okay. And that is Jermaine's brother; is that
9 correct?

10 A Uh-huh. I believe so. I think they're related.

11 MR. MATHEWS: Your Honor, I'd seek to admit Defense Exhibit
12 No. 2 into evidence at this time.

13 ATTORNEY EVANS: No objection.

14 THE COURT: Without objection, Defense 2.

15 (WHEREUPON, Defendant's Exhibit 2 is admitted into the
16 record.)

17 His first name again, please, of the person that's depicted
18 ---

19 MR. MATHEWS: Desi White, D-e-s-i. Desi White.

20 THE COURT: Okay, thank you.

21 (WHEREUPON, Defendant's Exhibit 3 is marked for
22 identification.)

23 Q Officer Ballard, I'm handing you what's been marked as
24 Defendant's Exhibit No. 3, and ask if you can identify that.

25 A That appears to be a still image from my body camera of

1 Mr. Poland.

2 ATTORNEY MATHEWS: All right. I have no further questions
3 of this witness, Your Honor. I would seek to introduce that into
4 evidence, as well.

5 THE COURT: Any objection?

6 ATTORNEY EVANS: No objection.

7 THE COURT: Defendant's 3 into evidence. Thank you.

8 (WHEREUPON, Defendant's Exhibit 3 is admitted into the
9 record.)

10 ATTORNEY MATHEWS: Thank you, Your Honor.

11 THE COURT: Redirect, Mr. Evans?

12 ATTORNEY EVANS: Thank you.

13 **REDIRECT EXAMINATION**

14 BY ATTORNEY EVANS:

15 Q Anybody give you any indication that Desi White was on scene
16 that day?

17 A No, sir.

18 Q And Mr. Poland confirmed when you were speaking and using
19 the word Jermaine --

20 ATTORNEY MATHEWS: Objection ---

21 A Yes, sir.

22 ATTORNEY MATHEWS: Leading, Your Honor.

23 ATTORNEY EVANS: I'll rephrase.

24 THE COURT: Okay, go ahead.

25 Q What, if anything, did Mr. Poland say when you used the name

1 Jermaine White?

2 A When I gave the name of Jermaine Silas White, he confirmed
3 and said, Yeah.

4 Q Did he actually nod?

5 A Right, he nodded, and then he actually says, Yeah, when I'm
6 relaying information to dispatch, as well.

7 Q Could you hear that on the video today?

8 A Yes.

9 ATTORNEY EVANS: Thank you.

10 THE COURT: All right. Sergeant, you can step down. Thank
11 you.

12 ATTORNEY EVANS: Your Honor, may we approach briefly?

13 THE COURT: Yes, sir.

14 (WHEREUPON, an off-the-record discussion was held at
15 sidebar.)

16 THE COURT: Ladies and gentlemen, I'm going to send you to
17 your jury room now for the morning recess. In preparation for
18 the next witness, we've got some things we need to put in place
19 in that regard, as well, so this is a good time to take the
20 morning recess. We'll get you out here. It will be at least
21 probably 20 minutes or so until we get all the pieces in place.

22 I remind you, as always, please do not discuss this case
23 among yourselves while you're in the jury room. We'll get you
24 out shortly to continue the morning's work. Thank you.

25 (WHEREUPON, the jury is escorted out of the courtroom at

1 11:32 a.m.)

2 MATTERS OF LAW

3 THE COURT: All right. In order to lay the groundwork for
4 the testimony of Mr. McCord next, we can go forward with that
5 matter out of the presence of the jury.

6 ATTORNEY EVANS: Yes, sir.

7 THE COURT: You may call Mr. McCord.

8 ATTORNEY EVANS: The state calls Edwin McCord. Edwin
9 McCord.

10 THE COURT: Mr. McCord, if you'll come forward, please, and
11 be sworn.

12 THE WITNESS: Ain't gonna put my hand on the Bible, either.

13 CLERK OF COURT: Raise your right hand. You've got to raise
14 our right hand.

15 THE WITNESS: I'm not giving no testimony, either.

16 ATTORNEY EVANS: Sir, you've got to go through this first.

17 EDWIN McCORD,

18 having first been duly sworn, was examined and testified in
19 open court, outside of the jury's presence, as follows:

20 CLERK OF COURT: Take a seat on the witness stand. State
21 your name again.

22 THE WITNESS: My name is Edwin McCord.

23 THE COURT: All right. Mr. Evans.

24 ATTORNEY EVANS: Thank you, Your Honor.

DIRECT EXAMINATION

BY ATTORNEY EVANS:

Q And that's M-c-C-o-r-d?

A Yes.

Q First name Edwin, E-d-w-i-n?

A Yes, sir.

Q Mr. McCord, do you know why you're here?

A Yeah. Y'all want me to testify, and I'm not gonna do it.

Q Yes, sir. And we met last week, or the week before last,
and that's when you ---

A Yeah. And I told you then and I told you once before, I'm
not going testifying. And I'm not going to do it.

Q Did you speak to Detective Kinard two-and-a-half years ago,
July of 2018?

A Now you want me to testify, right? I don't ---

(Simultaneous talking.)

Q I am asking you questions.

A I'm not answering any more questions.

THE COURT: The question that he asked you, is have you
spoken to the detective at some point?

THE WITNESS: Yes, I did.

THE COURT: Okay.

Q Do you remember that conversation?

A No, I don't remember that conversation.

Q Do you remember the events of July 15th, 2018?

1 A No, I don't remember that, either.

2 Q You don't remember?

3 A No.

4 Q Would it refresh your recollection ---

5 A No, it wouldn't even refresh my memory none, because I done
6 told you I'm not testifying.

7 THE COURT: Mr. McCord, you can't be made to testify, we all
8 understand that.

9 THE WITNESS: Okay. Well, why do you have me here?

10 THE COURT: Well, we have our reason for that. We're trying
11 to establish a record in this case.

12 And if you'll just wait until Mr. Evans finishes the
13 question and then answer to it to the best of your ability -- I'm
14 not telling you how to answer it, I'm just telling you to wait
15 until you hear the question before you attempt to make an answer,
16 okay.

17 All right. Go ahead.

18 ATTORNEY EVANS: Thank you.

19 Q Would it refresh your recollection to see a video of the
20 conversation that you and Mr. Kinard had in July of 2018?

21 A No, I don't want to see the video.

22 Q That's not the question I asked, Mr. McCord. I asked if it
23 would refresh your recollection.

24 A No, it wouldn't refresh it none.

25 Q It would not?

1 A No.

2 ATTORNEY EVANS: Your Honor, I would seek at this time -- of
3 course it's not in evidence yet, but play the video to attempt to
4 refresh his recollection.

5 THE COURT: All right.

6 ATTORNEY MATHEWS: Your Honor, he said it would not refresh
7 his recollection, so I would object to it.

8 THE COURT: All right. Well, I'm not sure how he knows
9 whether it's going to refresh his recollection if he hasn't seen
10 it. I'm going to let him look at it. After he's seen it, if
11 that's his answer then that will be his answer.

12 ATTORNEY EVANS: Yes, sir.

13 THE COURT: Mr. McCord, they're going to play a videotape.
14 They want you to look at it. Then they're going to ask you if
15 that refreshes your recollection about what's on it. Okay.

16 (WHEREUPON, a videotape was played.)

17 Q Mr. McCord, can you see the screen okay from where you're
18 sitting?

19 THE COURT: Can you see it?

20 A I can see it.

21 Q Mr. McCord, is that you wearing the cougar soccer T-shirt?

22 A Yeah, that's me.

23 Q That's you. Does that refresh your recollection,
24 Mr. McCord?

25 A Yeah, it does. But I'm still not testifying.

1 Q You're still not testifying?

2 A Nope.

3 Q Do you remember talking to Mr. Kinard?

4 A I see it on the tape.

5 Q You see it on the tape. Do you remember the day that you
6 were talking to Mr. Kinard about, July 15th?

7 A Now you going to -- see, I told you I'm not testifying. You
8 trying to get me to testify anyway.

9 ATTORNEY EVANS: Your Honor, I suppose Mr. Mathews has the
10 right to cross, but ---

11 THE COURT: I'm sorry?

12 ATTORNEY EVANS: I suppose Mr. Mathews has the opportunity
13 to cross him, but obviously I'm going to ask that you declare
14 him ---

15 A Y'all just going to have to use the tape, because I'm not
16 doing no more talking, okay. You understand that?

17 THE COURT: All right. I think we get the idea.
18 Mr. McCord, the question is ---

19 A Why is it that y'all trying to get me to do something that I
20 don't wanna do?

21 THE COURT: I'll tell you exactly what we're trying to do.
22 We're not trying to get you to do anything you don't want to do.

23 A No, I'm not going through it any other time. Y'all just
24 gonna have to use your authority. Y'all gotta got that tape,
25 then use that tape then. Leave me alone. Because I've got a bad

1 heart and going to have a heart attack. My heart is pounding,
2 okay. I'm happy to give you my heart rate now, so I ain't got
3 time to be bothered with y'all people.

4 THE COURT: Wait a second. I don't want to get you upset,
5 but you asked a question, I want to answer your question, okay.
6 You asked me why we're trying to get you to do something today
7 that you don't want to do. We're not trying to get you, we can't
8 make you do today what you don't want to do.

9 A Y'all come in and you gonna make me (inaudible) ---

10 THE COURT: If you keep on talking over me, Mr. McCord, I'm
11 going to keep you here longer than I want to keep you. I am
12 trying to get you out of here as quick as you want to get out of
13 here. But now, I'm not going to let you run rugshot (phonetic
14 sp) all over this Court. I'm trying to explain the rules as best
15 I can because you asked. And you said if they want to use that
16 tape, then use the tape. Well, that's exactly what they're
17 trying to do. They're trying -- if you're not going to testify
18 today, they want to be able to use this tape.

19 A That's what I'm trying to tell you, go ahead and use the
20 tape because I'm not gonna to do nothing.

21 THE COURT: Well, okay. If it was just me and you, we can
22 probably decide that, but some of these other folks have a say in
23 all this.

24 Now, Mr. Mathews, the lawyer, he represents Mr. White. He's
25 got a right to try to ask you some questions. If you don't want

1 to answer them, you don't have to answer them.

2 A Go ahead and ask me, but I ain't gonna -- I don't feel like
3 answering more questions.

4 THE COURT: All right. Mr. Mathews, I'll turn him over to
5 you for whatever purpose it will serve.

6 ATTORNEY MATHEWS: Your Honor, I will certainly object to
7 using the video without the ability to cross-examine Mr. McCord.

8 THE COURT: Right.

9 ATTORNEY MATHEWS: You know, if he doesn't want to
10 testify -- I mean, it's not my court, Your Honor; it's your
11 court. But certainly I would object to the video coming in
12 without the ability to cross-examine Mr. McCord. And that's all
13 I've got to say about that. There are questions I would ask on
14 cross if the jury saw that. I would object to its admission
15 without Mr. McCord, of course. And that's all.

16 Nothing further. I would just, you know, if he's not going
17 to testify, I'd ask that the video be suppressed. And that would
18 be my motion, Your Honor.

19 THE COURT: All right. Thank you.

20 ATTORNEY EVANS: And just, Your Honor, I believe we're
21 entitled to impeach with a prior inconsistent statement. That's
22 what we're attempting to do.

23 THE COURT: Can you point me to some law in that regard,
24 Mr. Evans?

25 ATTORNEY EVANS: I don't have any handy at the moment,

1 Judge, but I'll certainly get into it during lunch and perhaps
2 play it -- I plan to play it immediately, you know, following his
3 testimony in front of the jury. Call Detective Kinard to enter
4 that video, and leave it at that. But we can take it up with his
5 main testimony, which would give us an opportunity to dig in a
6 bit.

7 THE COURT: All right.

8 ATTORNEY EVANS: Your Honor, I mean, at first, today he said
9 he didn't remember, and then says he does.

10 THE COURT: Oh, he remembers.

11 ATTORNEY EVANS: Yes, sir, I heard it. He is refusing.

12 THE COURT: He's seen it. He says he remembers, but he says
13 he's not going to answer any questions about it.

14 ATTORNEY EVANS: Yes, sir.

15 THE COURT: I can find him in contempt, lock him up, all
16 that sort of stuff. It's not going to change all those things.
17 And then there's some question, quite frankly, as to whether I
18 can even have the power to do that.

19 Mr. McCord, we've kept you here as long as we're going to
20 keep you. I'm going to let you go. You can step down and you
21 can be excused. Do you understand that?

22 THE WITNESS: Yes, sir.

23 ATTORNEY EVANS: Judge, do I need to do that in front of the
24 jury, or have him repeat as he's testified?

25 THE COURT: You're going to have to deal with it right now,

1 because the jury's not going to know anything about this.

2 ATTORNEY EVANS: Yes, sir.

3 THE COURT: Okay. If they do, the record is made in that
4 regard, you can publish that.

5 The cases that I have read in my very brief research, which
6 started about eight minutes ago, on this issue all seem to attach
7 the ability of prior statements, or inconsistent statements, or
8 statements at all, to the defendant's right to cross-examine the
9 witness.

10 We've got one issue. If the defendant (sic) says, as he did
11 initially, that he can't remember, then he has a right to
12 cross-examine him on that issue.

13 Now he admits that he remembers but he refuses to answer any
14 questions on cross-examination. And so I'm looking for some
15 direction that you all can give me on the admissibility of those,
16 of the statement itself, when he refuses to testify and when the
17 defendant is thereby gotten denied the right to cross-examine.

18 So *State v. Caulder*, C-a-u-l-d-e-r, it's a Court of Appeals
19 decision of 1986, 287 South Carolina 507 is the cite. The
20 defendant was convicted of a crime. He appealed. The Court of
21 Appeals, Justice Cureton, said that the inconsistent statement of
22 a witness who testified at trial is admissible as substantive
23 evidence. It goes on to say that the inconsistent statement was
24 admissible as evidence. He was in custody when he was questioned
25 about how he got a mark on him and so forth. And the prior

1 inconsistent statement is admissible as substantive evidence when
2 the declarant testifies at trial and is subject to
3 cross-examination.

4 I'm looking for a case that's more clearly on point. The
5 one that I'm -- and, of course, the *Crawford* case, we're all
6 familiar with *Crawford*, out-of-court statements made by witnesses
7 that are testimonial are barred under the confrontation clause
8 unless the witness is unavailable and the defendant had prior
9 opportunity to cross-examine, regardless of whether the
10 statements are reliable or not, are deemed reliable by the Court.

11 If it's testimonial, then that's the question. If it's a
12 testimonial statement, then the only indicium of reliability
13 sufficient to satisfy the constitutional demands that it's
14 confrontational is the right to cross-examine. So obviously
15 we're going to have to -- I'm going to give y'all the lunch hour
16 to flush that matter out.

17 ATTORNEY EVANS: Yes, sir.

18 THE COURT: But there it is. And so I stand to be educated
19 on that. And I don't think you've got another -- if you've got a
20 short witness, we'll try to work it in. But rather than start
21 something else that's is going to go well past the lunch hour, I
22 would suggest we take our lunch our now. What do you all have to
23 say?

24 ATTORNEY EVANS: That would suit me, Judge. We have do have
25 two additional witnesses here, but I don't know how short they'd

1 be. I can't say -- I don't think they would be an hour.

2 THE COURT: Right.

3 ATTORNEY EVANS: The one I would propose to call is Tonya
4 Gibson, who is in the building.

5 THE COURT: Right.

6 ATTORNEY EVANS: And I don't think there would be a great
7 length of cross-examination or direct examination. It could
8 potentially be short.

9 THE COURT: If you've got somebody like that, I'm good to
10 try to work it in if we can do it if we can finish around 1:00 or
11 even a few minutes after.

12 ATTORNEY EVANS: I think she's, you know, she's a bit
13 nervous about being here, and I did tell her I'd get her home by
14 1:00, or get her out. I think I would call her. And I'm sure we
15 can finish by 1:00.

16 THE COURT: Let's go ahead and get her out of the way.
17 Really, that's not a real efficient way of saying that, but
18 anyway, get her testimony in the record, and then break for lunch
19 and give us all time to deal with Mr. McCord's issues a little
20 bit more in depth. Is this Ms. Benton?

21 ATTORNEY EVANS: No, sir, this is Tonya Gibson.

22 THE COURT: I'm sorry. Ms. Gibson, okay. Why don't you go
23 ahead and get her in the courtroom now so we don't have to wait.

24 ATTORNEY EVANS: Tonya Gibson.

25 THE COURT: Folks, we need a bathroom break. I think we all

1 do.

2 ATTORNEY EVANS: Yes, sir.

3 THE COURT: And let's take about no more than 10 minutes and
4 start back.

5 (WHEREUPON, court recessed at 12:02 p.m. and reconvened at
6 12:10 p.m.)

7 THE COURT: All right. Are we ready for the jury?

8 ATTORNEY EVANS: Yes, sir.

9 THE COURT: Is the next witness in the courtroom?

10 ATTORNEY EVANS: She is.

11 THE COURT: All right. Bring in the jury.

12 (WHEREUPON, the jury is seated in the courtroom at
13 12:12 p.m.)

14 THE COURT: Thank you, folks. We're ready now to continue
15 with the presentation of the state's case in this regard.
16 Mr. Evans, you may call your next witness.

17 ATTORNEY EVANS: Thank you, Your Honor. The state calls
18 Tonya Gibson.

19 THE COURT: Ms. Gibson, come forward, please, and be sworn.

20 TONYA GIBSON,
21 having first been duly sworn, was examined and testified as
22 follows:

23 CLERK OF COURT: Have a seat on the witness stand. State
24 your name for the record. Spell your last name, please.

25 THE WITNESS: Tonya Gibson, G-i-b-s-o-n.

DIRECT EXAMINATION

BY ATTORNEY EVANS:

Q And what do you do for a living, Ms. Gibson?

A I work with special needs and disabled people.

Q How long have you been doing that?

A Almost five years now.

Q I beg your pardon?

A Almost five years.

Q Almost five years. What did you do before that?

A I was a cashier. I did time in the military.

Q What branch did you serve in?

A Army.

Q And how long were you in the Army for?

A Ten years.

Q Okay. Do you know Jermaine White?

A Yes.

Q How do you know him?

A I dated him.

Q You dated him?

A Yes.

Q When and for about how long?

A We started dating in 2016, until around the beginning
of '19.

Q Is he in the courtroom today?

A Yes.

1 Q Could you tell us how you can tell he's in the courtroom, or
2 tell us something he's wearing and where he's sitting.

3 A He's sitting at the table to my left in the black shirt.

4 Q Okay. At this other table I'm pointing at?

5 A Yes.

6 Q Do you remember the events of July 15th, 2018?

7 A Yes.

8 Q What do you remember about that day?

9 A I was at the house.

10 Q When you say the house, what house do you mean?

11 A At Jermaine's house.

12 Q Where was that?

13 A On Cleveland Street.

14 Q Okay.

15 A And I was getting tattooed that day. And I'm pretty much
16 hanging out all day long.

17 Q You stayed at Mr. White, the defendant's, house all day
18 long?

19 A Correct.

20 Q And someone came over to put tattoos on you?

21 A Yes.

22 Q Do you have a lot of tattoos?

23 A Do I have a lot?

24 Q Yeah.

25 A I do.

- 1 Q Going back to the Army days?
- 2 A Yeah.
- 3 Q And you said you didn't leave the house?
- 4 A No, not until later that evening.
- 5 Q When about did you leave the house?
- 6 A At about maybe 5:30, 6:00.
- 7 Q 5:30 or 6:00. How about Mr. White, was he in his house?
- 8 A Yes. We were hanging out all day.
- 9 Q Was anybody living at his house?
- 10 A Everybody was there hanging out all day.
- 11 Q But you said he lived there.
- 12 A Say it again.
- 13 Q That was the house he lived at at that time?
- 14 A Correct.
- 15 Q Okay. When you say everybody else was in and out, what does
- 16 that mean?
- 17 A His dad, brothers.
- 18 Q Who is his brother?
- 19 A He has a couple brothers. Bam and his younger brother,
- 20 Brandon.
- 21 Q Bam, is that his legal name, or does he have a ---
- 22 A I don't know.
- 23 Q You don't know.
- 24 A (Nods.)
- 25 Q And you said Jermaine. What was he doing that day?

1 A He was in the room with me and, you know, in and out as he
2 always would do.

3 Q Okay. So he left and came back for those periods?

4 A Correct.

5 Q About how long would he go out for that day?

6 A A few minutes at a time, and come back. Then he'd leave and
7 come back.

8 Q Did he tell you where he was going?

9 A No.

10 Q How was he getting around?

11 A In my car.

12 Q In your car?

13 A Right. It was my friend's car, but it's in my name.

14 Q You had the title, and the registration is in your name?

15 A Yes.

16 (WHEREUPON, State's Exhibits 15 and 16 are marked for
17 identification.)

18 ATTORNEY EVANS: May I approach the witness, Your Honor?

19 THE COURT: Yes, sir.

20 Q I'm going to pass you two items, Ms. Gibson. They have been
21 previously marked as State's Exhibit 15 and 16. Would you please
22 describe what those are.

23 A Photos of my car.

24 Q Pictures of your car?

25 A Uh-huh.

1 Q Can you describe the difference between 15 versus 16 for the
2 record?

3 A It has that yellow -- the paint that's on the driver's side
4 door.

5 Q Is one picture of the front?

6 A It looks like it, yeah.

7 Q And another picture's of the side?

8 A Uh-huh.

9 Q Were you there when these photos were taken?

10 A Correct.

11 Q You were?

12 A Uh-huh.

13 Q When about was that?

14 A I don't know the exact day.

15 Q Approximate is okay.

16 A Maybe like, maybe two days later, three days later.

17 Q Two or three days after the 15th?

18 A Right.

19 ATTORNEY EVANS: Your Honor, the state would seek to --

20 Q Oh, I forgot. Do these fairly and accurately depict the way
21 your car appeared on the date that they were taken?

22 A Say it again.

23 Q Do these photos that you've identified as being of your car,
24 do they fairly and accurately depict the way your car appeared on
25 that day?

1 A As of now, yes.

2 ATTORNEY EVANS: Your Honor, the state would seek to admit
3 these photos into evidence as State's Exhibit 15 and 16.

4 ATTORNEY MATHEWS: Without objection, Your Honor.

5 THE COURT: Thank you. Without objection.

6 (WHEREUPON, State's Exhibits 15 and 16 are admitted into the
7 record.)

8 ATTORNEY EVANS: And may we publish to the jury?

9 THE COURT: Yes, sir.

10 Q Ms. Gibson, this is State's Exhibit 15 that you've just
11 looked at. That is your car?

12 A Yes.

13 Q And State's Exhibit No. 16 ---

14 A Yes.

15 Q --- that is also your car?

16 A Correct.

17 Q You were talking a moment ago when you were describing the
18 pictures about this paint damage.

19 A That's right.

20 Q How long have you had that for?

21 A Oh, a long time.

22 Q Didn't have the opportunity to fix it?

23 A No.

24 Q And was that the condition that the car was in when
25 Mr. White was using it?

1 A Correct.

2 Q I'm going to hand up something that's already been moved
3 into evidence as State's Exhibit 3. Do you recognize anything in
4 that photograph?

5 A Oldsmobile 88.

6 Q An Oldsmobile 88?

7 A Correct.

8 Q Is that the make and model of your car?

9 A Correct.

10 Q What year was that?

11 A What year is my car?

12 Q Yes, ma'am.

13 A My car is -- is it 2000, I want to say.

14 Q Okay.

15 A A '99 or 2000.

16 Q Ninety-nine?

17 A I'm not sure exactly.

18 Q An old car?

19 A Yeah.

20 Q And you recognize one in that picture?

21 A It's an 88.

22 Q Put that on the ELmode, as well. Ask you to guide me to it
23 while I point with my pen. Where do you see the 88 Oldsmobile in
24 this picture?

25 A Right there by the tree.

1 Q Down here?

2 A Yes.

3 Q Was anybody else using your car that day?

4 A Not to my knowledge, no.

5 Q Not to your knowledge.

6 ATTORNEY EVANS: Beg the Court's indulgence.

7 THE COURT: Okay.

8 ATTORNEY EVANS: May I approach the witness, Your Honor?

9 THE COURT: Yes, sir.

10 Q I'm going to hand you some other photographs. These have

11 been previously marked into -- it's not been previously entered,

12 but it has been premarked as State's Exhibit No. ---

13 A Excuse me, Your Honor. I have to say something. I

14 recognize somebody on the jury.

15 THE COURT: Ma'am?

16 A There's somebody on the jury I recognize.

17 THE COURT: That's fine. Who do you recognize on the jury?

18 A My cousin.

19 THE COURT: Your cousin?

20 A Yes.

21 THE COURT: Okay.

22 ATTORNEY EVANS: Shall we stand down, Your Honor?

23 THE COURT: All right. Let me get my list here. And can

24 you tell us his name?

25 A Tarvis Harrison.

1 THE COURT: I'm sorry?

2 A Tarvis Harrison.

3 THE COURT: All right, thank you. All right. Ladies and
4 gentlemen, if you'll step to your jury room for just a few
5 moments, please. Let me deal with issue outside of your
6 presence. And we will get you back out here shortly to continue
7 the work.

8 (WHEREUPON, the jury is escorted out of the courtroom at
9 12:22 p.m.)

10 MATTERS OF LAW

11 THE COURT: Tarvis Harrison is Juror No. 102. Did I hear
12 you right that that's your cousin, Tarvis Harrison?

13 THE WITNESS: Right.

14 THE COURT: Your first cousin, second cousin or what?

15 THE WITNESS: First. He's my first cousin.

16 THE COURT: He's your first cousin?

17 THE WITNESS: Yes. My mother's nephew.

18 THE COURT: I'm sorry?

19 THE WITNESS: My mother's nephew.

20 THE COURT: Okay. Obviously you didn't have any way of
21 knowing he was on the jury until you were sitting here and looked
22 over and saw him.

23 THE WITNESS: Right.

24 THE COURT: Is that right? Have you talked with him about
25 this case?

1 THE WITNESS: No.

2 THE COURT: He hasn't talked to you about it, either?

3 THE WITNESS: I don't talk to him much.

4 THE COURT: All right.

5 THE WITNESS: I just happened to look over, and ...

6 THE COURT: And there he was.

7 THE WITNESS: Yeah.

8 THE COURT: Do y'all live close to each other?

9 THE WITNESS: No.

10 THE COURT: Do you have any contact with each other
11 normally?

12 THE WITNESS: Not -- if I see him or, you know, we are at
13 the same place, of course.

14 THE COURT: All right. Now, Ms. Gibson, I'm going to ask
15 you to stand down for a minute. And you can go back to the room
16 where you were a few minutes ago. And we'll get you back out
17 here shortly to continue your testimony. Okay.

18 THE WITNESS: Okay.

19 THE COURT: Thank you.

20 (WHEREUPON, the witness is excused from the courtroom.)

21 THE COURT: All right, folks, here we are. When she said
22 cousin I thought it could have been third, fourth or fifth
23 cousin, but this is a first cousin. Kind of hard to overlook a
24 first cousin.

25 ATTORNEY MATHEWS: Your Honor, for what it's worth, I asked

1 Mr. White and he says he doesn't care. I think of the juror's
2 voir dire. My problem is obviously if he gives undue weight to
3 his cousin's testimony, that's a problem. She was on the witness
4 list and he did not identify her, did not say he was related or
5 knew her. Maybe he just didn't make that connection. You know,
6 the juror that would replace him, I don't know that he would
7 necessarily be any better.

8 But I think if the Court would voir dire him and ask him
9 whether he could be fair, perhaps that would be enough. I don't
10 know.

11 THE COURT: All right, we'll try that. We're all aware of
12 the issues that are raised. There's been a fair amount of recent
13 case law which has come down from our Supreme Court on this very
14 issue that deals with it.

15 But I agree. Mr. Mathews, one of the options is to excuse
16 him and replace him with the alternate. At this juncture I don't
17 think we have reached the point of a mistrial, so I'm not that
18 concerned.

19 But let's get Mr. Harrison out here and let me inquire of
20 him in that regard, and then we'll see what happens next.

21 Okay. If you will ask Mr. Harrison to step out, please.
22 What's his number?

23 CLERK OF COURT: 102.

24 THE COURT: No. 102, Mr. Harrison. If you'll ask him to
25 come back out to the courtroom, please. Thank you.

1 (WHEREUPON, Juror No. 102 enters the courtroom at
2 12:28 p.m.)

3 THE COURT: Mr. Harrison, you can have a seat back up in one
4 of those chairs over there. Mr. Harrison, when we were
5 qualifying jurors yesterday I went over the list of the state's
6 witnesses who were likely to testify in this case, and your
7 cousin, Ms. Gibson, was a witness, as a matter of matter, on that
8 list.

9 Is there any reason why you didn't tell us at that point in
10 time that you were kin to one of the potential witnesses in the
11 trial?

12 JUROR NO. 102: I hadn't talked to my cousin in over five
13 years. And I didn't know -- I knew her last name was Gibson but
14 I didn't know if it was that Tonya Gibson, because there's more
15 than one Tonya Gibson. So my assumption was it wasn't her. I
16 honestly didn't know.

17 THE COURT: Knowing what you do know now, Mr. Harrison,
18 that, in fact, she is your cousin and she is testifying, I need
19 to know if the fact that your cousin is testifying in the trial
20 of this case on behalf of the state, if that would make it
21 difficult for you to continue to be fair and impartial as a juror
22 in this trial.

23 JUROR NO. 102: No, sir, it wouldn't.

24 THE COURT: Do you think you can set aside the fact that
25 this witness is related to you and decide this case on the basis

1 of the evidence without regard to that kinship?

2 JUROR NO. 102: Yes, sir.

3 THE COURT: And would you do that, sir?

4 JUROR NO. 102: Yes, sir.

5 THE COURT: All right. Thank you, sir. You can go back in
6 the jury room.

7 JUROR NO. 102: Okay.

8 (WHEREUPON, Juror No. 102 is escorted out of the courtroom
9 at 12:29 p.m.)

10 THE COURT: Mr. Evans, what says the state?

11 ATTORNEY EVANS: Your Honor, if we hadn't lost an alternate
12 already I would be asking to excuse him. He does say that he can
13 be fair and impartial. I mean, I'm always concerned whenever
14 anything like this comes up.

15 THE COURT: Right.

16 ATTORNEY EVANS: He's offered his explanation. You know.
17 And although a lot of folks don't know all their cousins, even
18 first cousins, and that certainly is plausible that there are
19 multiple Tonya Gibsons, but it is troubling that he didn't raise
20 that at the time.

21 I'm not sure what to do, Judge. Those are my concerns,
22 obviously. You're going to make the ruling.

23 THE COURT: All right. Mr. Mathews, what says the defense?

24 ATTORNEY MATHEWS: You know what? I was -- I listened to
25 his answers, and he sounded credible to me. And, I mean, if he

1 hadn't seen her in five -- of course, she recognized him right
2 away. I don't know. You know, some of this is a feel thing, and
3 I don't feel like he would be bad. I could be wrong. But I
4 don't -- he seems -- I thought he was telling the truth when he
5 said he that he could be fair. I hope I'm not wrong. I know
6 that, you know, just from the makeup of the jury type thing, I
7 hate to get rid of an African American juror when he will be
8 replaced with a white juror.

9 THE COURT: Right.

10 ATTORNEY MATHEWS: And so, you know, if it's somebody -- I
11 leave it in your discretion. We don't have any objection to him
12 remaining on the jury, but whatever the Court desires.

13 THE COURT: All right, thank you. I have a concern, of
14 course, about shifting the racial makeup, for myself that's a
15 concern for obvious reasons, which limits my choice, quite
16 frankly, to either allowing him to remain on the jury or to
17 declare a mistrial.

18 For that reason I am fine, from my perspective, given those
19 choices, quite frankly, as I see them, to continue with him
20 sitting on the jury. Mr. Evans ---

21 ATTORNEY EVANS: I am concerned. I'm always very confident
22 in Mr. Mathews' ability to defend his clients, obviously, but I
23 am concerned that a future PCR court can see this ---

24 THE COURT: I'm sorry?

25 ATTORNEY EVANS: I am somewhat concerned that a future PCR

(Tonya Gibson - Direct by Attorney Evans)

1 court should reach that stage, that they see his position
2 differently. For what it's worth, not that this is the way it
3 works, but if I were offered a choice between a mistrial and a
4 PCR I'd rather retry it next month than three years from now.

5 THE COURT: Right.

6 ATTORNEY EVANS: But he did say he can be fair and
7 impartial. So if that's your ruling, then we'll move forward.

8 THE COURT: Obviously my options are not limited. I can
9 excuse him and seat the alternate. If I excuse him, however, I'm
10 excusing him in face of what he has said about being fair and
11 impartial and about Mr. Mathews' willingness to continue to keep
12 him. So to do otherwise would be -- that is, to do otherwise and
13 excuse him and seat the alternate would shift the whole dynamics
14 of things, I think, and bring it into question, frankly.

15 So given all that, I will allow him to continue to serve.
16 And we will get Ms. Gibson back in to continue her testimony.
17 Let's get Ms. Gibson back in, first of all, and we'll put her
18 back on the stand. And then we will get the jury back in. Okay.

19 ATTORNEY EVANS: Yes, sir.

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

22 THE COURT: Ms. Gibson, you can resume the stand, ma'am.

23 (WHEREUPON, the witness resumes the witness stand.)

24 THE COURT: We inquired of the juror, Mr. Harrison, and he
25 said, of course, he knew that Tonya Gibson was a cousin, he had a

1 cousin named Tonya Gibson. He said it's been five years since he
2 has seen you and he knows of another Tonya Gibson, so he didn't
3 put anything together.

4 He has indicated he can be fair and impartial in spite of
5 that relationship and decide the case on the basis of the fact of
6 what you hear rather than the fact that you're testifying in this
7 matter.

8 And I thank you for bringing that to my attention. I
9 appreciate that.

10 All right. Bring in the jury, please.

11 (WHEREUPON, the jury is seated in the courtroom at
12 12:37 p.m.)

13 THE COURT: Folks, thank you for your patience. We have
14 dealt with that issue are satisfied that the fact that the juror
15 didn't disclose this kinship was accidental, was inadvertent, was
16 not intentional, and certainly he can be fair and impartial in
17 spite of the fact that they are kin to each other.

18 So we're satisfied that the jury process has not been
19 tainted by that and, as I said, there was no intent to try to
20 deceive or anything of that nature, it was simply an inadvertent
21 fact because of the testimony that we heard out here earlier when
22 you were not here and out of your presence.

23 So we will continue now where we left off with continued
24 direct examination of Ms. Gibson by Mr. Evans.

25 ATTORNEY EVANS: Thank you, Your Honor. May I approach the

1 witness?

2 THE COURT: Yes, sir.

3 (WHEREUPON, State's Exhibits 27, 32 and 33 are marked for
4 identification.)

5 Q Ms. Gibson, I'm going to hand you some more photographs.
6 They have been premarked at State's Exhibits 27, 32 and 33, but
7 they're not yet evidence so I'll ask you not to show the jury.
8 But can you describe what that photograph appears to be.

9 A It looks like my car.

10 Q It's a photograph of your car?

11 A Correct.

12 Q How can you tell?

13 A Because of the paint missing on the side.

14 Q The paint damage. And that's No. 27. Thank you. How
15 about 32?

16 A This is -- I see an 88.

17 Q You see a car that appears to be the same make and model as
18 yours?

19 A Correct.

20 Q And State's No. 32. Can you tell us what State's No. 33 is?

21 A It looks like an 88.

22 Q Looks like the same make and model as your car?

23 A Correct.

24 Q Anything else distinctive in that picture?

25 A I can tell like the paint is missing.

1 Q Looks like the similar paint damage to your vehicle?

2 A Correct.

3 Q Thank you.

4 ATTORNEY EVANS: Judge, I think, in all candor, I need a bit
5 more foundation for those to come in. But we'll move on at this
6 point.

7 THE COURT: All right. Without objection to 27, 32 and 33?

8 ATTORNEY MATHEWS: Without objection, Your Honor.

9 (WHEREUPON, State's Exhibits 27, 32 and 33 are admitted into
10 the record.)

11 ATTORNEY EVANS: In that case, if there's no objection, I'll
12 just go ahead and publish now.

13 THE COURT: Okay.

14 Q Ms. Gibson, is this one of the photos you just reviewed?

15 A Correct.

16 Q And is this the paint damage that you referred to?

17 A Yes.

18 Q The same as which appears in State's No. 16?

19 A Yes.

20 Q Okay, and that is 27. This is No. 32. I'm going to ask,
21 can you guide me to -- you said you thought you saw another
22 Oldsmobile 88.

23 A Correct.

24 Q Is that an 88? That's the model number; right?

25 A Eighty-eight.

1 Q They named it a number pretty close to a year. But will you
2 tell me where that is in this photo?

3 A It's more, like, on the side over there at the treeline.
4 Correct.

5 Q Here, okay. And that's No. 32. And this is State's 33.
6 Review this, as well.

7 A Correct.

8 Q I think you said that you saw, thought you saw, some paint
9 damage.

10 A On the -- the driver's side door.

11 Q Is that right, did I point to the right side?

12 A Correct.

13 Q Thank you.

14 ATTORNEY EVANS: Beg the Court's indulgence.

15 THE COURT: Okay.

16 Q You said that you left home, or you left your Jermaine's
17 home, on Cleveland Street at 5:30 or 6:00.

18 A Approximately.

19 Q And that was with him?

20 A Yeah. We went to ---

21 Q Do you recall how long he had been home at that point?

22 A I don't.

23 Q Do you recall who, if anybody, was there around 3:40?

24 A I really don't. Like I said, he'd been in -- all day, a
25 normal day, in and out.

1 Q Do you recall the following day, July 16th?

2 A Okay.

3 Q Do you remember getting a call from Jermaine?

4 A I was at work.

5 Q You were at work?

6 A Uh-huh.

7 Q And again, it's been a while, so where did you work at the
8 time?

9 A I was working at the Colleton County Board of Disability.

10 Q So you do disability work now, and you did back then, as
11 well?

12 A Right.

13 Q You were working and you got a call from him?

14 A Right.

15 Q What did he tell you on that call?

16 A I don't recall the exact conversation.

17 Q Uh-huh.

18 A I do know he called me and he was like -- I was pretty much,
19 I was on a break break, but I was still at work. And he was
20 wanting me to meet with him to go get rid of a gun or something.
21 And I'm like, for what, I asked, why. That's all I remember.

22 Q He asked you to help him get rid of a gun?

23 A Well, not really. Like, he wanted to use the car, but I was
24 at work.

25 Q Okay. But that would still be -- you mean he wanted some

1 kind of assistance in getting rid of a gun?

2 A Right. I said, Jermaine, I'll let you use my car, or why
3 don't you just take the car.

4 Q Did you know him to be a gun owner?

5 A No.

6 Q No. Have you seen any guns at his house?

7 A I mean, I seen not just him, I seen them around.

8 Q Seen guns around?

9 A Uh-huh.

10 Q But that was the big point that you remember --

11 A Yes.

12 Q -- from that call?

13 A Yes, sir.

14 Q Ms. Gibson, those all the questions I have. I'd like you to
15 please answer any questions Mr. Mathews has.

16 A Okay.

17 THE COURT: Mr. Mathews, you may cross-examine.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY MATHEWS:

20 Q Ms. Gibson, how are you today?

21 A I'm good.

22 Q How many -- Bam, is that Desi?

23 A Yes.

24 Q Okay. Did you and Desi use to date?

25 A It wasn't, I wouldn't say, dating, but ...

1 Q Okay. But certainly knew him, and you also hung out
2 together?

3 A Yeah.

4 Q Did Desi have tattoos on his forearms?

5 A To my knowledge, he had some; yes.

6 Q And Jermaine does not have tattoos on his forearms?

7 A No.

8 ATTORNEY MATHEWS: I don't have anything further.

9 THE COURT: Any redirect, Mr. Evans?

10 ATTORNEY EVANS: No redirect, Your Honor.

11 THE COURT: Thank you. Mrs. Gibson, you may step down.

12 Ladies and gentlemen, this is a good time for us to take a lunch
13 break. I want you back in the jury room, please, at
14 2:00 o'clock. That's an hour and 15 minutes. I think that
15 should give you enough time to get something to eat. I'm sorry
16 about these interruptions.

17 We try to work as smoothly as we can because we realize it
18 impacts your ability to keep up with things and the flow of
19 things, but sometimes it's necessary for us to declare these
20 breaks. And I appreciate your patience with us and your
21 understanding of it as we work through this process.

22 As always, I remind you not to talk about this case among
23 yourselves or with anybody else, and don't discuss it. When you
24 get back in the jury room at 2:00, we'll start work again at 2:00
25 this afternoon. Enjoy your lunch. Thank you.

1 (WHEREUPON, the jury is escorted out of the courtroom at
2 12:46 p.m.)

3 THE COURT: Folks, we'll be in recess until 2:00 o'clock. I
4 would like for us to maybe put our heads together in an hour,
5 like a quarter of two, to deal with the issue regarding
6 Mr. McCord's video and tape.

7 ATTORNEY EVANS: Yes, sir, Your Honor.

8 THE COURT: All right.

9 (WHEREUPON, court recessed at 12:47 p.m. and reconvened at
10 1:46 p.m.)

11 MATTERS OF LAW

12 ATTORNEY MATHEWS: Your Honor, may I approach? These are
13 just rules of evidence and annotations. That's all it is. I
14 mean, the hearsay rule. So nothing particularly complex.

15 ATTORNEY EVANS: May I approach, Your Honor?

16 THE COURT: Yes. All right, folks. I think the issue, it's
17 pretty clearly framed insofar as the record is concerned
18 regarding Mr. McCord's refusal to testify and whether or not that
19 allows his videotaped interview to be admitted into evidence.

20 I see the *Stokes* case. I just read it quickly. And in that
21 particular case the witness denied the written statement while on
22 the stand, and the defendant maintained he was denied effective
23 cross-examination because the defendant denied having made the
24 statement.

25 The Court in that particular case held that the statement

1 was admissible because the witness was available at trial and was
2 subject to cross-examination. Defense counsel in that case
3 declined to cross-examine the witness. Trial court tried to take
4 some other steps, to allow him to be recalled and so forth. But
5 the Court upheld the admissibility of that because the witness
6 was present and subject to cross-examination.

7 And then, of course, Mr. Mathews has handed up the hearsay
8 rules and the annotations that are under that, as well.

9 Mr. Mathews, what do you say to the point raised by
10 Mr. Evans in the *Stokes* case?

11 ATTORNEY MATHEWS: Your Honor, I think there is an
12 additional rule of evidence, that if Your Honor had ordered him
13 to testify, then maybe that could come in. That's a harsh, a
14 harsh remedy, and I'm glad that Your Honor decided not to do
15 that.

16 But I don't have -- I would love to cross-examine him if
17 he's going to testify. If the video was shown, the most
18 important thing. I've got plenty that I can use to
19 cross-examine, and obviously -- I say obviously -- I looked over,
20 very thoroughly, his tape/his interview, and I made notes and I
21 put where I was going to ask things. I've got a host of things
22 to ask.

23 I mean, you know, one of the things that Detective Kinard
24 mentioned is, Well, if he's parked over there at the Dollar
25 General, how does he get to the woods? He came waking. He

1 didn't mention anything about a brown car. He says he came
2 walking, which is not what the other people, if they were
3 testifying, would have said. It all centers around a brown car.
4 He testified there was no brown car.

5 So I had plenty and have plenty to cross-examine him on if
6 he testified.

7 One of the things, he testified a bit on the tape, and I'm
8 giving the substance. He's already with the police. One of the
9 things, he said he took his left arm and put it around his neck
10 and with his right arm used the gun.

11 The pathologist, Nick Batalis/Dr. Batalis is going to
12 testify that there was no soot or stippling on that. He doesn't
13 need to now. If he doesn't testify, there's no evidence of how
14 it happened, but that was going to be one of the points. It is
15 extremely unlikely that, you know, the soot might have
16 disappeared over the course of nine days; the stippling would
17 probably not have.

18 And so the absence of that is some indication that it could
19 not have happened the way that McCord said it happened. These
20 are questions I would ask on cross if he were allowed to testify.
21 Since he's not, I don't need to worry about it.

22 If he were here, show the video. If he were here. And if
23 he wants to, if the state wants to, impeach him with that on
24 particular points, the way to do that would not be to run the
25 whole tape but to say, Did you see this happen? No, I did not.

1 Run the tape. Did you see it happen? Yes, I did. You know,
2 point by point as far that goes.

3 But just showing the video, and obviously I had no
4 opportunity to cross-examine him then. And the only pieces of
5 evidence put in there was a picture showing where the stool was,
6 he said he was sitting on the stool. Well, if he was really
7 sitting there when this happened, then whoever killed the guy had
8 to walk right past him to do this. Right? Also very unlikely.

9 But these are things that I would have cross-examined him on
10 if he testified. I presented that to show that if you're sitting
11 right there, the guy's sitting out there, and somebody walks
12 right past and does this, that is unlikely to have happened.

13 And, you know, people talk and stuff happens, and everybody
14 heard somebody else say it, and somebody's going to step up. And
15 the people that step up are people that -- heck, I've got McQuine
16 in another one of my murder cases. He failed, I think, a
17 polygraph in the Mel Davis's case. So he is just one of the
18 people you go to to get background stuff.

19 And I don't know whether McCord saw anything or whether he
20 didn't, but I've got a host of questions that I would ask him if
21 he testified and contradict, or things that could not be true,
22 according to his testimony, purported testimony.

23 So I would just stick, Your Honor, with the basic rule that,
24 you know, he is either available, in which case he should be
25 questioned, or if he is not available and ordered to, and if he's

1 ordered to, you know, then maybe puts it in a different light.

2 But I would certainly object to the showing of the video
3 without being able to cross-examine him.

4 THE COURT: What makes you believe that if I had ordered him
5 to testify that he was going to testify on the basis of what he
6 had said?

7 ATTORNEY MATHEWS: Because you could put him in jail.

8 THE COURT: Of course I could.

9 ATTORNEY MATHEWS: I know. And you did tell him you could
10 put him in jail, I understand that. But, you know, I mean, I'm
11 trying to think. Was it the Kayline Akin (phonetic sp) case, a
12 couple of witnesses were afraid of Kayline. And who tried -- who
13 was the judge in that case? You don't remember? Anyway, it's --
14 I don't remember, it might have been Judge Buckner, but I'm not
15 sure. But whoever it was ordered them both in jail. And you can
16 stay overnight, and tomorrow we'll ask you if you feel like
17 testifying. And they did feel like testifying the next day. It
18 doesn't matter, he still got acquitted. But the person, being
19 sitting in jail for a few hours, or actually overnight in that
20 case, was enough to convince them that they should testify.

21 I'm not sure how kind that was and in that particular case
22 it did not affect the outcome, but, you know, that's the hammer.
23 You have a mallet, Your Honor, and a hammer, as well. And, you
24 know, the ordering of the testimony might be enough to turn the
25 tide. You know, obviously I would prefer him not testify. But

1 if he did, I was ready for it based on being able to ask him
2 questions.

3 THE COURT: The ordering of the testimony, of course,
4 certainly I was aware of. I didn't know how effective it would
5 be. Because we all heard what he said, and we all heard the
6 extent of his denial and refusal and things of that nature. But,
7 you know, he's still within the reach of the Court. You get him
8 back up here, if y'all think that will avail anything, I don't
9 mind locking him up. I'm sorry I didn't lock him up from way he
10 was acting, anyway. But I chose not to do it at the time. But,
11 we'll see.

12 ATTORNEY EVANS: Yes, sir.

13 THE COURT: Mr. Evans, go ahead.

14 ATTORNEY EVANS: Thank you. And again, it's obviously your
15 courtroom. You know, we solicitors sometimes like to say it's
16 our courtroom but it's your courtroom, of course, and you have
17 the power to hold him in contempt. And I think you would have
18 been, even without the jury present, I think you would have been
19 well within your right to do so.

20 I would have, of course, preferred that you order him to
21 testify. I think that he's a relevant witness in this case.
22 Clearly, as you've seen both pretrial and now in camera in the
23 trial, you've seen his video statement and his testimony would
24 clearly be relevant. That's not -- you know, we're well past
25 that hurdle.

1 And I subpoenaed him properly. I've asked him to be here
2 and to cooperate. And I believe that the state has a right to
3 ask him these questions.

4 THE COURT: Right.

5 ATTORNEY EVANS: I was attempting to try to get him to go
6 along by asking him, Is the problem that you don't remember?
7 Because he hadn't been clear in our pretrial meeting whether it
8 was a memory issue or a refusal issue. He sort of wavered. You
9 know. And so we went down the memory train, trying to do it as
10 612, refreshing his recollection.

11 But what, instead, I think, the technical way we would do it
12 in front of the jury is 613, ask him, did you, you know, ask that
13 Your Honor instruct him to answer my questions, as taxing as that
14 would be on you and on the jury. And I'm well aware of those
15 concerns. I don't -- I have never asked a judge -- yeah.
16 They're indicating the defendant's here, so I'll stand aside and
17 let him come in.

18 (WHEREUPON, the defendant enters the courtroom.)

19 ATTORNEY EVANS: I have never asked a judge to order
20 testimony before, but that is what I would be doing in this case
21 because I do think he's a critical witness, Judge.

22 THE COURT: Right.

23 ATTORNEY EVANS: And I do think that we have a right to ask
24 him these questions. And, again, I don't make that request
25 lightly but, under 613, if he says he didn't say -- if I ask him

1 the questions and he says that he didn't say those things, then I
2 can impeach him with an extrinsic 613B. Extrinsic evidence of
3 prior inconsistent statement is not admissible unless the witness
4 is advised of the statement at the time and place it was
5 allegedly made, the person to whom it was made, and given an
6 opportunity to deny or explain. I got those backwards, but
7 explain or deny the statement. If he does not admit that he's
8 made the prior inconsistent statement, extrinsic evidence is
9 admissible. But if he does, it is not admissible.

10 THE COURT: Right.

11 ATTORNEY EVANS: So if he cooperates -- and I don't mean
12 cooperate in terms of giving me the answers that I want.

13 THE COURT: Right.

14 ATTORNEY EVANS: I mean, obviously that's what I hope. But
15 I just want him to answer the questions.

16 THE COURT: Right.

17 ATTORNEY EVANS: And if he cooperates and he says, I didn't
18 say that, the video is not in ---

19 THE COURT: Right.

20 ATTORNEY EVANS: Under any theory of law or this rule I
21 wouldn't dare to try to do that to you, Judge, or to Mr. Mathews,
22 or Mr. White.

23 THE COURT: Right.

24 ATTORNEY EVANS: But that is what the rule says. And I was,
25 again because we were outside the presence of the jury, I wasn't

1 sticking to that script, if you will.

2 But if, Your Honor -- one clarification, I suppose, is I'm
3 not sure if you released him from his subpoena or just told him
4 to go for the day or just told him even to go for the morning.

5 THE COURT: Right.

6 ATTORNEY EVANS: And I know that we were doing things
7 friendly and casually. But if he is still under subpoena I would
8 ask -- I think it would be difficult today, but I would seek to
9 bring him back in the morning and go through this again, again,
10 as taxing and as strenuous as that would be, that would then give
11 Mr. Mathews the opportunity to cross-examine.

12 He had the opportunity to cross-examine. Not that that
13 matters for purposes of confrontation clause because, of course,
14 the jury was out.

15 THE COURT: Right.

16 ATTORNEY EVANS: But he didn't elect to ask Mr. McCord any
17 questions. And I think we probably all know how that would have
18 gone, probably about as well as me asking him questions or you
19 asking him questions. But that opportunity was there this
20 morning. That's the -- because, you know, the case law,
21 including *Stokes*, and I think other cases, make it clear that
22 it's not -- effective cross-examination is not a right, it's the
23 opportunity.

24 THE COURT: That's right. And you're right. And the
25 question, of course, is available for cross-examination, and

1 that's the linchpin. And so what do you do if -- of course, it's
2 one thing to say, he equivocates and says, dances around, things
3 like that. The other says if he does what he did in this
4 particular case, and then threatens to have a heart attack, of
5 course, on top of that.

6 I don't mind. If you can get him back, we'll put him back
7 up there tomorrow and I'll revisit those issues with him and give
8 him a chance to do the right thing.

9 ATTORNEY EVANS: And if he does go down that road again,
10 Judge, I will -- something else I've never done, I've never asked
11 you to order him to testify because generally y'all know the
12 black robes know better than the dark suits, you know what to do.
13 But I would ask you to order him to answer the questions.

14 And I've never asked anyone to be held in contempt, but if
15 he behaves the same way I would ask for that.

16 THE COURT: Well, if he outright refuses in the face of all
17 that then contempt would be a necessary response to that action.
18 The *Crawford* case which, of course, is the case that we all are
19 acquainted with, to use that word, involves the fact that the
20 wife of a defendant was asked to testify about statements that
21 her husband had made, but the spousal privilege kept her from
22 being forced to testify in those circumstances. So she became,
23 in effect, unavailable. And she had not been subject to
24 cross-examination in that case, and so the statements that she
25 made were deemed inadmissible and *Crawford* handed us that law

1 after the fact.

2 But nonetheless, the spousal privilege, that's a legal
3 protection. What he did, of course, is not a legal protection.
4 They're two different things.

5 ATTORNEY EVANS: Yes.

6 THE COURT: And I never had dealt with that before. I've
7 only been doing this 29 years. And so I never have had a witness
8 who says, I'm not going to testify, by God, I don't care what.
9 And I didn't know how critical the testimony was. I watched,
10 what I had seen about him, wasn't a whole lot of help to me
11 because, frankly, I couldn't understand a thing he said ---

12 ATTORNEY EVANS: Yes, sir.

13 THE COURT: --- on the tape, and very little in here, except
14 he was not going to testify. And so I suppose what I did was
15 kick that can down the road. But I did not in as much as release
16 him from subpoena, I said get him out of here and I'm not going
17 to make him testify. I did tell him that today. But if you can
18 get him back in, I'll issue another subpoena, get him in here,
19 I'll do what you want.

20 ATTORNEY EVANS: Yes, sir. I think that will be our plan.
21 Like I said, it's probably going to be for today, because
22 Detective Kinard will be our third witness this afternoon. The
23 first two should be fairly quickly, but his testimony, I expect,
24 will take a while. We've got a lot of exhibits to enter.

25 But I think that will be our plan going forward. And I can

1 hand up a copy of his subpoena as a Court's exhibit, if you'd
2 like. It does have the full week on there. Would you like to
3 see it, Judge?

4 THE COURT: Yeah, you can do that. Make it a Court's
5 exhibit.

6 ATTORNEY EVANS: Yes, sir.

7 (WHEREUPON, an off-the-record discussion was held at
8 sidebar.)

9 (WHEREUPON, Defendant and Defense counsel talk among
10 themselves.)

11 ATTORNEY EVANS: May I approach, Your Honor?

12 THE COURT: So I've got a witness who doesn't want to
13 testify and a defendant who does, it seems like.

14 THE DEFENDANT: Yeah, I'll testify.

15 THE COURT: You'll get a chance. You'll get a chance. All
16 right.

17 ATTORNEY EVANS: And, Judge, just by way of explanation, I
18 always make a third -- you know, usually the subpoena has two
19 pages. I always make a third. And that that top one would be,
20 it says copy on there. He obviously has the front page. The
21 reason I do that is because the chicken scratch on the back page
22 where I show that they served it, although sometimes they don't
23 tell me who they served it on.

24 THE COURT: That's fine. You can just make that the Court's
25 Exhibit next, madam reporter. Thank you.

1 (WHEREUPON, Court's Exhibit 4 is marked for identification
2 and admitted into the record.)

3 ATTORNEY EVANS: But, Your Honor, I think you brought up the
4 *Crawford* case and the privilege. That was another point I was
5 supposed to make to you, is that he didn't claim any privilege.
6 And even though you told him we can't make him testify and, you
7 know, of course, in ordinary conversation you can't make anybody
8 say anything, of course. But I do believe that you can, and
9 tomorrow I plan to ask you to do that.

10 THE COURT: And I thought I already did make it clear that
11 we couldn't tell him what to say.

12 ATTORNEY EVANS: Your Honor, would we be out of bounds in
13 seeking a bench warrant if the subpoena is still effective and
14 they can't find him tomorrow?

15 THE COURT: Yes, if he doesn't show up.

16 ATTORNEY EVANS: Yes, sir.

17 ATTORNEY MATHEWS: Your Honor, he's not my client, of
18 course, but if he were I would say that he could have reasonably
19 believed that, whether it was the Court's intention to let him go
20 for the day or to let him go for the term, I can't imagine any of
21 my clients listening to that and not wiping their head across
22 their forehead, or their hand across their forehead, saying, Wow,
23 I dodged that, and going about their business.

24 THE COURT: That's right.

25 ATTORNEY MATHEWS: And so I certainly would object -- I

1 don't represent him, but I certainly think that it would be
2 unreasonable to think that he would believe that he was still
3 under subpoena.

4 THE COURT: Until he is served again and is told to show
5 back up, you're right.

6 ATTORNEY EVANS: We should prepare a new subpoena for
7 tomorrow's date, Judge?

8 THE COURT: Yes.

9 ATTORNEY EVANS: We will do that as soon as -- but I think
10 that, as you said, you kicked the can down the road, I think
11 we've kicked it again. But we appreciate the opportunity to
12 argue. It's certainly an unusual and regrettable circumstance
13 but, you know, if we were to just let everyone behave the way he
14 did, I don't know how we would try a case, Judge.

15 THE COURT: And that is a concern. Obviously to put him in
16 control of deciding how this case evolves, and certainly more
17 I've run into the ability to get the tape in without the
18 cross-examination, it had occurred to me that I was going to try
19 to find some way obviously to see if I could get him under
20 control of developing the course of the presentation of evidence
21 in this regard.

22 And it became obvious during the lunch hour that in the
23 absence of cross-examination, of course, or the opportunity for
24 cross-examine, there's really no way to get that in. The best
25 material evidence in this particular case, even though there

1 might be holes in it that Mr. Mathews can find such, fine.

2 But at least not to have it presented in some way because he
3 just refuses, that was a concern that I choose to address by
4 getting him back here again under a valid subpoena, which would
5 get him into court under the rules, subject to the rules
6 governing any other witness. And we'll do that tomorrow.

7 ATTORNEY EVANS: Yes, sir. And with that, I know we have a
8 jury waiting, but may I take a two-minute bathroom break? I had
9 a liquid lunch.

10 (WHEREUPON, an off-the-record discussion was held at
11 sidebar.)

12 THE COURT: All right. Are we now ready for the jury?

13 ATTORNEY EVANS: Yes. Thank you, Your Honor.

14 THE COURT: Bring jurors in.

15 (WHEREUPON, the jury is seated in the courtroom at
16 2:13 p.m.)

17 THE COURT: Folks, thank you for prompt return from lunch.
18 We're ready to continue now as the state continues to offer
19 testimony and evidence in this case.

20 ATTORNEY EVANS: Thank you, Your Honor. Theron Grant.

21 CLERK OF COURT: Raise your right hand, left hand on the
22 Bible.

23 THERON GRANT,

24 having first been duly sworn, was examined and testified as
25 follows:

1 CLERK OF COURT: State your name for the record. Spell your
2 last name, please.

3 THE WITNESS: It's Theron, T-h-e-r-o-n, last name Grant,
4 G-r-a-n-t.

5 **DIRECT EXAMINATION**

6 BY ATTORNEY EVANS:

7 Q Officer Grant, where do you work?

8 A Walterboro Police Department.

9 Q And what's your rank there?

10 A Captain.

11 Q Captain. How long have you been with Walterboro PD?

12 A Seven years.

13 Q Seven years. Any prior law enforcement experience before
14 that?

15 A Sheriff's office for quite a few. Fourteen, 15.

16 Q Here in Colleton County?

17 A Yes, sir.

18 Q So you've worked somewhere over 20 years total law
19 enforcement?

20 A Yes, sir.

21 Q Were you working and on duty with WPD on July 16th, 2018?

22 A I was.

23 Q Can you describe what you were doing that day?

24 A There was a call involving a dispute in which we knew that
25 we had warrants on the defendant. And we responded over there

1 with the Sheriff's Office.

2 Q When you say the defendant, do you mean Jermaine White?

3 A Yes.

4 Q Do you know him?

5 A I met him while I was a detention officer back in the
6 late '90s.

7 Q Is he in the courtroom today?

8 A Yes, sir.

9 Q Could you point him out and identify something he's wearing
10 and where he's sitting?

11 A He's sitting right there wearing black, with a white mask,
12 baldheaded.

13 Q And I think he is sitting next to Mr. Mathews?

14 A Yes.

15 Q I think, did you call him the suspect?

16 A The defendant.

17 Q The defendant. So on the 16th were you aware that he was
18 involved in something the day before?

19 A Yes, sir.

20 Q Did you work on the day before? That was a Sunday.

21 A Yes, sir. I was not.

22 Q So you were back to work on Monday morning as usual and
23 found out that there was something going on with him?

24 A Yes, sir.

25 Q Was there a warrant out for him at that time?

1 A Yes, sir.

2 Q And you said you went over there. Where's there?

3 A I don't remember the exact address on Cleveland Street, but
4 it was on Cleveland Street.

5 Q That was his home?

6 A That's where I had known him to be living. Yes, sir.

7 Q And you were expecting him to be there based on information
8 you had?

9 A Yes, sir.

10 Q Was it your plan to serve his arrest warrant at that time?

11 A With the assistance of the Sheriff's Office, yes, sir.

12 Q Were you able to do that?

13 A Not right at that moment.

14 Q But eventually on that day?

15 A Yes.

16 Q About what time of day was that?

17 A Late afternoon.

18 Q Did you take him into custody or serve the arrest warrant on
19 him, or both?

20 A Both.

21 Q Both. Did you have any other involvement the following day?
22 Did you assist Detective Kinard in any parts of his
23 investigation?

24 A No, sir. We did try to conduct an interview at the police
25 department, but nothing came of it.

1 Q Not a successful interview?

2 A No, sir.

3 Q But you were sitting in there?

4 A I'm sorry?

5 Q You were sitting in with Detective Kinard during that?

6 A Detective Stivender. I never assisted Kinard.

7 ATTORNEY EVANS: Beg the Court's indulgence.

8 THE COURT: Okay.

9 ATTORNEY EVANS: May I approach? Beg the Court's
10 indulgence. I apologize, Your Honor. May I approach the
11 witness, Your Honor?

12 THE COURT: Yes, sir.

13 Q Captain, I'm showing you a video that's on a disk that has
14 not yet been previously marked. Do you recognize yourself in
15 that video?

16 A I do.

17 Q Recognize anybody else?

18 A Mr. Jermaine White.

19 Q Jermaine White, the defendant?

20 A Yes.

21 Q And how about this person in the foreground?

22 A Lieutenant Kinard.

23 Q Lieutenant Kinard. So you were involved in an interview
24 that was conducted by Lieutenant -- I always call him detective,
25 but Lieutenant -- Kinard?

1 A Yes, sir.

2 Q Do you remember that now?

3 A Yes.

4 Q Why were you helping Lieutenant Kinard interview Mr. White?

5 A Captain over the investigative unit, and I also was familiar
6 with Mr. White.

7 Q You had a good relationship with him to that point?

8 A Yes, sir.

9 Q Did you think that that could be useful?

10 A Yes, sir.

11 Q Did it prove to be useful?

12 A It did not.

13 Q Did not, all right.

14 ATTORNEY EVANS: Beg the Court's indulgence.

15 THE COURT: All right.

16 Q Captain, those are all the questions I would for you.

17 Please answer any questions that Mr. Mathews may have.

18 A Yes, sir.

19 THE COURT: Mr. Mathews, cross-examine.

20 ATTORNEY MATHEWS: I have no questions for him.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you.

23 ATTORNEY UTSEY: Your Honor, the state calls Captain Shane
24 Roberts.

25 SHANE ROBERTS,

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

3 CLERK OF COURT: Be seated at the witness stand. State your
4 name for the record, please. Spell the last name.

5 THE WITNESS: Captain Shane Roberts. R-o-b-e-r-t-s, last
6 name.

7 **DIRECT EXAMINATION**

8 BY ATTORNEY UTSEY:

9 Q Captain Roberts, can you tell me, who do you work for?

10 A Colleton County Sheriff's Office.

11 Q And how long have you worked for the Colleton County
12 Sheriff's Office?

13 A Since 2013.

14 Q And what is your position with the Colleton County Sheriff's
15 Office?

16 A I'm a captain and also the jail administrator of the
17 Colleton County Detention Center.

18 Q Tell me some of the duties of the jail administrator at over
19 Colleton County Detention Center.

20 A As administrator and captain I, of course, supervise the
21 officers there. I'm responsible for the inmate affairs. Also
22 just the day-to-day operations of it. As the jail administrator,
23 pretty much everything that goes on there, I'm in charge of, and
24 then I answer to the chief deputy and the sheriff.

25 Q Do you also have custody of the records there?

1 A I do.

2 Q And you maintain those records; correct?

3 A I do.

4 Q And in particular to this case, were you asked to pull any
5 recordings from the jail?

6 A I was. I was asked to pull some phone recordings for
7 Jermaine White.

8 Q Okay. And is every phone call that an inmate makes out at
9 the jail, is that recorded?

10 A They are all recorded. Correct.

11 Q Okay. What date did you pull your recordings?

12 A It would be on July 23rd, 2018.

13 Q Who asked you to pull these recordings?

14 A I was asked by Officer Kevin Kinard of the Waltherboro Police
15 Department to pull the recordings.

16 Q And how many calls did you pull from the inmate?

17 A I pulled a total of nine calls.

18 Q Okay.

19 ATTORNEY UTSEY: Your Honor, may I approach the witness?

20 THE COURT: Yes, sir.

21 (WHEREUPON, State's Exhibit 17 is marked for
22 identification.)

23 ATTORNEY UTSEY: I'm handing what has been marked as State's
24 Exhibit No. 17, Your Honor.

25 Q Captain Roberts, can you tell me what that is?

1 A This is a disk containing a phone call for Mr. Jermaine
2 White.

3 Q And how do you know that is a disk containing a phone call
4 made by Mr. White?

5 A It has my initials on it, my writing, and the date.

6 Q And did I ask you to review that disk?

7 A You did.

8 Q After you reviewed it you signed it; is that correct?

9 A That is correct.

10 Q Did you determine after listening to it that it is an
11 accurate copy of the phone calls made by Jermaine White?

12 A It is.

13 Q Okay. And how many calls are on that disk?

14 A There's only one call on this disk.

15 Q Okay. And is it broken up into segments or is the full
16 phone ---

17 A It's broken up into segments.

18 ATTORNEY UTSEY: Your Honor, at this time the state would
19 move to admit State's Exhibit No. 17 into evidence.

20 THE COURT: Mr. Mathews.

21 ATTORNEY MATHEWS: If I can just ask a couple of questions
22 on that so I can figure out which call it is.

23 How long? May I cross-examine the witness, Your Honor, on
24 that issue?

25 THE COURT: Yes.

CROSS-EXAMINATION

BY ATTORNEY MATHEWS:

Q Chief Roberts, how many -- the calls themselves, are they -- I categorize them by length of the call. How long was that call that you say that was nine?

A The original call was just shy of 15 minutes.

Q Just shy of 15 minutes?

A That's correct.

Q Are they timestamped? That's how I characterized ---

A That is correct. They are.

Q And these are calls, I guess, these are -- you initially have a warning that things could be recorded; correct?

A That is correct.

Q And as far as the calls, I mean, you're not listening in realtime, I guess, because you've got other stuff to do? Is that correct?

A Yes. I can listen in realtime. However, for this particular case, I was not.

Q Is there somebody that you delegate to go find all of Jermaine's calls, the sheriff's office or the solicitor's office wants to know, or whatever? Is there somebody you delegate that to?

A I can do that. In this particular case, I'm the one who reviewed these.

ATTORNEY MATHEWS: No further questions, Your Honor.

1 THE COURT: Very thank you. Mr. Utsey, you may proceed.

2 ATTORNEY UTSEY: Your Honor, I would just ask that State's
3 Exhibit No. 17 be admitted into evidence now.

4 THE COURT: Mr. Mathews?

5 ATTORNEY MATHEWS: No objection.

6 THE COURT: Without objection, State's 17 is in evidence.

7 (WHEREUPON, State's Exhibit 17 is admitted into the record.)

8 ATTORNEY UTSEY: Thank you, Your Honor. May I approach the
9 witness?

10 THE COURT: Yes, sir.

11 ATTORNEY UTSEY: May I publish to the jury, Your Honor?

12 THE COURT: Yes, sir.

13 (WHEREUPON, State's Exhibit 17 is published to the jury).

14 ATTORNEY UTSEY: I have no further questions, Your Honor.

15 THE COURT: Thank you. Mr. Mathews?

16 ATTORNEY MATHEWS: No questions, Your Honor.

17 THE COURT: Thank you. Captain Roberts, you may step down.

18 THE WITNESS: Thank you, sir.

19 THE COURT: Mr. Evans.

20 ATTORNEY EVANS: State calls Kevin Kinard.

21 KEVIN KINARD,

22 having first been duly sworn, was examined and testified as
23 follows:

24 CLERK OF COURT: State your name for the record, please.
25 Spell your last name.

1 THE WITNESS: Kevin Kinard, K-i-n-a-r-d.

2 **DIRECT EXAMINATION**

3 BY ATTORNEY EVANS:

4 Q Mr. Kinard, where do you work?

5 A Walterboro Police Department.

6 Q And your rank is lieutenant?

7 A Yes, sir.

8 Q Because I'm butchering enough ranks today. Was that your
9 rank two years ago, two-and-a-half years ago, when you were
10 working on this case?

11 A It was not. I believe I was a sergeant then. I was in the
12 detective unit.

13 Q So I can call you detective?

14 A Sure.

15 Q How did you become involved in this case?

16 A I was dispatched to the scene. I was the on-call
17 investigator for that week of the 15th.

18 Q And is that sort of like a doctor being on call? If it's a
19 Sunday, somebody's gotta ...

20 A Sure. We do it like a week at a time, so that was my week
21 that I pulled.

22 Q What did you find when you got to the scene?

23 A So I got to the scene, I met with officers that were on
24 scene. That included Officer Ballard. I believe Officer McQuinn
25 (phonetic sp) was on the scene. I observed the blue chair.

1 Officer Ballard advised me that the victim was sitting in this
2 chair. Directly in front of the chair was a puddle of vomit,
3 that they advised me that the victim was vomiting at the time of
4 their arrival.

5 Q Let me pause you. I'm going to go pass you all the photos.

6 A Sure.

7 Q And I'm going to leave it up to you which ones you want to
8 refer to in your testimony. These are all in evidence. If you
9 see any that you think would help the jury as you explain the
10 scene, just go ahead and hold those up as you go.

11 A This is -- we're referring to the crime scene; correct?

12 Q Yes, sir, we're at the crime scene.

13 A Okay. That's probably the best one here, sir.

14 Q Just refer to it when you testify.

15 A Sure.

16 Q Hold it up.

17 A Sure. You know, when I arrived on scene this is pretty much
18 how it was. They had already had some markers out, I think the
19 placards, marking some evidence.

20 Directly in front of the chair, like I said, was a puddle of
21 vomit. Closer to the chair, kind of closer to the leg of the
22 chair, was a puddle of blood that was told to me was from the
23 victim. A short distance from that was a single .25 caliber
24 shell casing located on the ground. And, you know, of course,
25 the blue chair. There were some other items. There was a blue

1 bicycle nearby. Also like a stool, like what is it, like an old
2 school desk, and a blue bucket.

3 Q What did you do when you found all this physical evidence?
4 Or not found, but the officers already there showed you where it
5 was. What did you do with it?

6 A Sure. I collected what I could on scene. The shell casing
7 was placed into evidence. I also took some swabs from the --
8 some DNA swabs from the -- chair and bucket, and some other items
9 on scene.

10 (WHEREUPON, State's Exhibit 18 is marked for
11 identification.)

12 ATTORNEY EVANS: May I approach for some scissors? May
13 approach the witness, Your Honor?

14 THE COURT: Yes, sir.

15 Q Detective, I'm going to hand you something. Do you know
16 what that is?

17 A Sure. This is the sealed envelope that contains the, I
18 believe it's the, projectile and the casing involved in this
19 case.

20 Q Okay. The projectile, that was not found at the scene;
21 correct?

22 A The projectile was not found at the scene.

23 Q But the shell casing was?

24 A The shell casing was. Correct.

25 Q And that's visible in some of those photos that are already

1 in evidence?

2 A Sure, the shell casing.

3 Q How can you tell that all that is in there?

4 A From previous knowledge, and I know that they're labeled
5 here on the front, the shell casing, that was the only casing
6 involved in this case. And then the way our computer system is
7 run, you've only got so many categories you can choose from, so
8 that the projectile is labeled as a firearm casing on here, also.

9 Q It's got labels from your office?

10 A Sure, yes.

11 Q Does it have any other labels on it?

12 A It's got, I believe, the yellow label comes from SLED. This
13 envelope is actually sealed by SLED from their lab.

14 Q Do they have a number or something that corresponds with
15 this case?

16 A Sure. They have a lab number. And our case -- well, our
17 case number's down here, but their lab number is up at the top.

18 Q Would you please unseal the envelope and remove the shell
19 casing that is inside.

20 A Sure. As I said, I don't know how this is packaged on the
21 inside from SLED, so I don't know if I need a pair of --

22 Q Let's get ---

23 (Simultaneous talking.)

24 A So in the envelope, we have two bags. These are my original
25 bags that I would have sealed them in. So they went to SLED like

1 this sealed. SLED would have removed the seal and placed their
2 own seal on it. That's what's in that bag. But in the bag, I do
3 see the projectile.

4 Q Let's just let that in the envelope for now and ---

5 A I'm sorry. The projectile and the shell casing.

6 Q You've got the shell casing?

7 A Sure. Put the projectile back in?

8 Q Let's put the projectile back in.

9 A Sure.

10 Q And let's talk about the shell casing. Is that the same
11 that you collected on scene and that is depicted in those photos?

12 A Yes, sir.

13 Q How can you tell that?

14 A It's a .25 caliber shell casing. And like I said, it's in
15 my bag, sealed inside of the SLED bag. So I know the chain was
16 proper. Yes, this is it.

17 Q When you say sealed, what does that mean?

18 A These are tamper-proof bags here, so you can't, there's no
19 way to get inside of this without, you know, leaving some kind of
20 evidence. But it looks like it was already opened with -- from
21 myself, sealed it, and SLED likely opened it.

22 Q So you've got an indicator of the fact that you closed it on
23 the bag?

24 A Sure.

25 Q What happened to it after that?

1 A It was sealed, placed into evidence, which goes to our
2 evidence locker. It remained there for a period of time. I'm
3 not sure of the date that it was sent, it was pre-logged with
4 SLED, and then it was sent up to SLED lab.

5 Q How does it get sent? Does it go through the mail?

6 A No. Our evidence custodian takes it up there personally.

7 Q Who was the evidence custodian at that time?

8 A I believe it was Rusty Davis.

9 Q Were those procedures followed with regards to the shell
10 casing?

11 A Yes, sir.

12 Q And then eventually it was sent back by SLED?

13 A Yes, sir. When they say it's ready, we go retrieve it and
14 bring it back.

15 Q Right. They're not going to drive it down to you?

16 A No, sir. They have a lot of state.

17 ATTORNEY EVANS: Your Honor, the state would move the shell
18 casing into evidence. I'm not sure what exhibit number I have
19 available. I know it's not premarked since it was in the
20 envelope. Let's move it in as No. 18.

21 THE COURT: State's 18, is that the casing?

22 ATTORNEY EVANS: Yes, sir, the shell casing.

23 THE COURT: Any objection?

24 ATTORNEY MATHEWS: No objection, Your Honor.

25 THE COURT: Thank you. Eighteen without objection.

1 (WHEREUPON, State's Exhibit 18 is admitted into the record.)

2 Q Detective, could you remove that. Since you're wearing
3 gloves, if you could unseal the bag and publish that to the jury
4 in your hand.

5 A (Responds.)

6 Q Thank you. Let's put it back in the bag. And then it will
7 be in evidence. Was there any other physical evidence on the
8 scene?

9 A I took some DNA swabs from a couple of items around the
10 scene, but it never turned up anything.

11 Q Yes. So tell us about that. What is a DNA swab?

12 A A DNA swab, I think it was explained earlier, it's actually,
13 for lack of a better term, it's a big Q-tip. You put sterilizing
14 water on the end of it and you can swab. If you take blood
15 samples, of course, that's pretty obvious. But things like, you
16 know, skin cells, spit, that kind of thing, you can take.
17 Everything that you've touched pretty much leaves, in theory,
18 some trace of DNA.

19 Q And that's what you were looking for in this case ---

20 A Yes.

21 Q --- something that would help you identify who had done
22 this?

23 A Yes.

24 ATTORNEY EVANS: May I approach the witness, Your Honor?

25 THE COURT: Yes, sir.

1 Q I'm showing you what's been previously entered as State's
2 Exhibit No. 8. That's a photo of the crime scene; correct?

3 A Yes, sir.

4 Q Can you walk us through what you took DNA samples from in
5 that photo.

6 A Yeah. I believe I took one of the blood splot, the marker B
7 that I said earlier was in front of chair. And I took one from
8 the back of the chair area, like, I guess, the back headrest
9 type, you know, area. And that's all I can recall at this time.

10 Q And you said nothing came back. What does that mean?

11 A It was sent to SLED also. Later on I think a sample of DNA
12 from ...

13 Q From Mr. White?

14 A Jermaine White, yes, from Jermaine White, was sent up there,
15 also. And it didn't come back with any match. It's a pretty
16 heavily traffic area, fifty people probably sitting in that seat
17 every day, you know, everybody's kind of touched everything. So
18 we weren't very high hopeful from the beginning.

19 Q Do they throw it into the system and see, you know, what
20 pops out, or do they compare it one to one?

21 A They compare it one on one. At least from my understanding
22 from anytime we submitted anything recently, you've got to send
23 it up there with a suspect or something to compare it to.

24 Q And so there was not DNA on the chair from Mr. White?

25 A There was not; no.

1 Q What about the blood?

2 A The what?

3 Q What about the blood spot? You took a spot from there;
4 right?

5 A I don't think we took it from there because we were pretty
6 sure that that came from the victim, because it was obvious
7 that's where he was bleeding at. I don't know if it was ever
8 sent up to SLED to compare.

9 Q And you reviewed the bodycam footage from Mr. Ballard?

10 A I did. Yes.

11 Q That was part of your investigation?

12 A Yes.

13 Q Did it appear that that blood was coming from ---

14 A Yes, sir, it was pretty evident. Yes.

15 Q Did you see Mr. Poland when you got to the scene?

16 A I did not. He had already been transported by EMS.

17 Q Did you consult with Mr. Ballard and any other officers on
18 the scene on that day?

19 A I did. I probably talked to everybody on scene, but the one
20 I really remember is Officer Ballard. You know, well, whenever
21 we spoke he stated that there was a witness on scene, that he had
22 spoke to several people on scene, or some people on the scene.
23 And he had ---

24 ATTORNEY MATHEWS: Your Honor, I object to hearsay, what
25 Mr. Ballard says.

1 THE COURT: I'll sustain the objection as to what somebody
2 else may have said.

3 Q Did you learn what Mr. Poland had said?

4 A I did.

5 Q And what did you do with that information?

6 A With that information, it was determined that Jermaine White
7 was a prime suspect in the shooting.

8 Q And did you seek a warrant?

9 A I did. That next morning I sought a warrant for attempted
10 murder.

11 Q And you had that ready to serve on him once you found him?

12 A Yes.

13 Q What else happened on July the 16th, the next day?

14 A The next day I responded with other officers to 368
15 Cleveland -- is that correct -- I'm bad with numbers, but 368
16 Cleveland Street. We had information that Mr. White was in that
17 home.

18 Q You are not bad with numbers; I'm bad with numbers, because
19 I had it as 638. But thank you, you are correct, 368 Cleveland
20 Street. And you had it -- you were expecting to find him there?

21 A We did. We had information from a call that the Sheriff's
22 Office had received that he was inside the residence.

23 Q And you heard Captain Grant testify a moment ago.

24 A Yes.

25 Q And Captain Grant took Mr. White into custody at that time;

1 is that correct?

2 A Correct.

3 Q All right. And he was served with his arrest warrant?

4 A He was.

5 Q What was that warrant for?

6 A That was for attempted murder.

7 Q But this is a murder case?

8 A Correct. At that time Mr. Poland actually, he was
9 transported to Trident where he, I believe it was, this incident
10 happened on the 15th, he survived and fought up until the 24th.

11 Q Were you able to ever talk to him?

12 A No, sir.

13 Q Why is that?

14 A He lost consciousness soon after he left the scene there on
15 Francis Street on the 15th.

16 Q But he was still alive on the 16th, and that's why it was
17 attempted murder?

18 A Yes. He was still alive on the 16th. Yes, sir.

19 Q When did it become murder?

20 A On the 24th.

21 Q And charges were revised at that point?

22 A Charges were revised, and he was served. At this time
23 Jermaine White was in custody, he was already at the Colleton
24 County Detention Center. So we served the new warrants on him
25 there for the murder.

1 Q Getting back to the 16th at Cleveland Street, did you notice
2 anything unusual while you were there?

3 A While we were there I noticed that smoke was coming from the
4 house, that somebody -- it's the middle of July nobody starts a
5 fire. There was smoke, so it was apparent someone was using a
6 fireplace with a chimney and everything. I noticed that.

7 Prior -- I mean, after the fact when Jermaine, after
8 Jermaine was taken into custody, is what we're asking?

9 Q Sure. Maybe you answered my question. You noticed that
10 there was a fire going?

11 A Sure. Yes, sir.

12 Q You saw it. Did you smell it?

13 A Oh, yeah, definitely smelled it.

14 Q After he was taken into custody what was WPD's next step?

15 A Next step was to secure a search warrant for the house.
16 During the process of taking Mr. White into custody we observed,
17 on the kitchen table, which is, you kinda have to pass to get to
18 the room that he was in, we observed a, there was a, plastic bag
19 with a firearm in it.

20 This was also, this was also where Mr. White, the defendant,
21 laid his head most of the time, so we were seeking a search
22 warrant to look for evidence in relation to the attempted murder.

23 (WHEREUPON, State's Exhibits 19, 20 and 21 are marked for
24 identification.)

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

1 as State's Exhibits 19, 20 ask 21. Could you identify those,
2 please, sir.

3 A Yes, sir. They appear to be photos from inside the house at
4 368 Cleveland Street.

5 Q Would you describe each one and give the number.

6 A Sure. Exhibit 19 is a picture of the kitchen table.

7 Q The one you just referred to a moment ago?

8 A Yes. At the kitchen table there's a white, plastic Family
9 Dollar bag on the table. That's where we found the firearm.

10 Q And No. 20?

11 A No. 20 is a close-up picture of that bag that shows the
12 firearm inside of the bag, along with a box of ammunition and a
13 magazine.

14 Q And No. 21?

15 A No. 21 is the fireplace with some items that we had kind of
16 retrieved from the fireplace. Was a destroyed cellphone that was
17 burnt, and also looked like clothing that was pretty much burnt
18 beyond recognition.

19 ATTORNEY EVANS: All right. Your Honor, the state would
20 move these photographs into evidence as State's 19, 20 and 21.

21 ATTORNEY MATHEWS: No objection, Your Honor.

22 THE COURT: Admitted without objection.

23 (WHEREUPON, State's Exhibits 19, 20 and 21 are admitted into
24 the record.)

25 ATTORNEY EVANS: May I approach, Your Honor?

1 THE COURT: Yes.

2 Q And this is State's No. 19. Could you describe again for
3 the jury what we see here.

4 A Yes, sir. As you are coming in the door, coming into the
5 kitchen which would be about where this picture was taken, there
6 was a, there's a, I guess, kitchen table right next to the left
7 with the glass top.

8 Q (Indicating.)

9 A Yes, sir. So you had to make a right to where
10 Mr. Jermaine's White's room was. And it would be at the end of
11 that room right there, the end of the kitchen, would be the
12 entrance to it.

13 Q Okay.

14 A And the white, plastic bag that says Family Dollar on it
15 would be the bag in question.

16 Q All right. And then No. 20?

17 A That is a close-up picture of the bag where we kind of
18 opened it before we took it. There was, as you can see, the
19 firearm in that white ---

20 Q Right there?

21 A Yeah. The white thing there at the bottom, it looks like a
22 box, was a box of ammunition.

23 Q And No. 21?

24 A Yes, sir. That's the fireplace that was located in that
25 room that Mr. Jermaine White was found in. You can see, what is

1 that, a white, some sort, just below it, that is, yep, there, it
2 would be the cellphone that was burnt that we found inside the
3 fireplace.

4 Q And this was in the room, not the kitchen but the room he
5 was in?

6 A The room he was in.

7 Q A different room from the kitchen?

8 A Yes, sir.

9 Q All right. And you collected those items?

10 A I collected the cellphone, sir. I'm sorry. The cellphone,
11 the firearm, the firearm magazine and the box of ammunition.

12 Q All right.

13 (WHEREUPON, State's Exhibits 22 and 23 are marked for
14 identification.)

15 ATTORNEY EVANS: May I approach, Your Honor?

16 THE COURT: Yes, sir.

17 Q I'm going to pass you something, and ask you if you can
18 identify this, sir. Can you tell us what that is?

19 A Yes, sir. This is a gun box that's commonly used by the
20 office to secure firearms when we place them into evidence.

21 Q And, to the best of your knowledge, is there anything inside
22 that box?

23 A Yes, sir. Inside the box would be the, it's a Titan .25
24 caliber handgun that we located on scene at 368 Cleveland Street
25 on the date the search warrant was executed.

1 Q And have you opened this box outside of court today?

2 A I have. I opened it twice before today since the crime

3 scene. Yes, sir.

4 Q And it's sealed today?

5 A Yes, sir, it's sealed today.

6 Q And could you tell us what's inside when you opened it up?

7 A Yes, sir. The firearm and the magazine that belongs to the

8 firearm.

9 Q Any other indicators that this box is associated with this

10 case, SLED numbers and ---

11 A Yeah. SLED has their tape on here. Actually broke the SLED

12 seal to whenever we went in for evidence in this case initially.

13 And I did it again last week for ---

14 Q Preparation for trial?

15 A --- for preparation for trial. Yes, sir.

16 Q Would you unseal it again today, sir.

17 A Yes, sir.

18 Q What's inside the box?

19 A The Titan .25 caliber handgun. Titan .25 caliber handgun

20 and a single magazine, which was malfunctioned.

21 Q And that's same handgun and magazine that you found on the

22 scene?

23 A Yes, sir.

24 Q All right. We need to make sure that's safe. Can you tell

25 if it is?

1 A I don't know if we have anything small enough to actually go
2 in the barrel of this gun. I can see that the gun is unloaded,
3 and also the magazine.

4 Q Is the magazine attached to the box?

5 A It is attached to the box with the tape.

6 Q Let's remove that, that we attached to the box, if possible.
7 If not ---

8 A No. It is.

9 Q All right.

10 ATTORNEY EVANS: Your Honor, the state would move the
11 magazine and the gun into evidence as State's Exhibits 22 and 23.
12 As we mentioned, it's a rather small gun. We would normally put
13 a gunlock on it, but I don't know if there's one small enough.
14 So I think the best course is just leave it attached to the box.

15 ATTORNEY MATHEWS: That's fine.

16 THE COURT: Without objection, 22.

17 (WHEREUPON, State's Exhibits 22 and 23 are admitted into the
18 record.)

19 ATTORNEY EVANS: May I publish, Your Honor?

20 THE COURT: Yes, sir.

21 Q As an officer, you're a firearm user.

22 A Yes, sir.

23 Q What did you notice about that magazine, if anything?

24 A The magazine was not functioning correctly. The spring was,
25 it's either missing or completely malfunctioned. I noticed it

1 would not feed a second round into the magazine.

2 Q You noticed that right away before you sent it to SLED?

3 A Yes. Well, in the process of collecting it you clear it to
4 make sure everything's safe. And when I inspected it on scene, I
5 made that determination.

6 ATTORNEY EVANS: Beg the Court's indulgence.

7 (WHEREUPON, State's Exhibits 24 and 25 are marked for
8 identification.)

9 Q Detective, I'm going to pass you something else and ask if
10 you can identify that.

11 A Yes, sir. This is the fire-damaged cellphone that we
12 recovered from 368 Cleveland Street.

13 Q The phone depicted in State's Exhibit 21, the photo?

14 A Yes, sir.

15 Q How can you tell it's the same?

16 A This was collected, placed in this bag. It matches the
17 description of what I can see through the bag here. But it's
18 been sealed and it looks like it's not been opened since I placed
19 it into evidence.

20 ATTORNEY EVANS: Your Honor, the state would move the
21 exhibit into evidence as State's No. 24.

22 THE COURT: Mr. Mathews?

23 ATTORNEY MATHEWS: Without objection.

24 THE COURT: Thank you.

25 (WHEREUPON, State's Exhibit 24 is admitted into the

1 record.)

2 Q And I will not unseal this one. And can you tell the jury
3 why we're not unsealing it.

4 A That would make a mess of the courtroom, I believe. It's
5 burned, got ashes ---

6 Q It's got crumbs and ashes.

7 A --- and different pieces in the bag.

8 Q Passing you another bag. Can you identify that?

9 A Sure. Sure. This is a box of Remington ammunition that we
10 collected from 368 Cleveland Street, .25 caliber.

11 Q During the same search warrant?

12 A Yes, sir, during the same search warrant.

13 Q Does that caliber correspond with this firearm?

14 A It does. Yes, sir.

15 Q Where was that found?

16 A It was found in the same bag as the firearm.

17 Q I can see it through the bag there are several rounds loose.
18 Were they in that condition when you found them?

19 A No. These probably fell out of the box during the course of
20 just being handled. The box is, of course, it's broken on one
21 end.

22 Q It's been subjected to testing?

23 A It's been subjected.

24 Q But they were, the rounds were, in the box when you sent it
25 up to SLED; is that right?

1 A You're talking about the box? No, no. This, I pulled the
2 prints off of this myself. Because this hasn't been -- this
3 hasn't been opened since I've done it.

4 Q So what about the rounds? How did they come out of the box,
5 I guess, to the best of your knowledge?

6 A How did the rounds come out of the box?

7 Q Yes.

8 A It looks like the box just came open while it was sealed in
9 this bag.

10 Q Because it's cardboard?

11 A Yeah, it's cardboard.

12 Q Wear and tear?

13 A Wear and tear.

14 Q And it's been two-and-a-half years?

15 A Sure.

16 ATTORNEY EVANS: Your Honor, the state would move the box
17 and the rounds -- we'll leave them in the box as well -- as
18 State's 25.

19 Q They're live rounds; correct?

20 A These are live rounds. Correct. Yes, sir.

21 THE COURT: Mr. Mathews?

22 ATTORNEY MATHEWS: No objection, Your Honor.

23 THE COURT: Thank you. Without objection, 25.

24 (WHEREUPON, State's Exhibit 25 is admitted into the record.)

25

1 Q Was that the end of your investigation on the 16th?

2 Obviously not the overall end, but ...

3 A The 16th. Yes, sir.

4 Q Anything else on that day?

5 A Not that I can recall.

6 Q What did you do, if anything, on the 17th?

7 A The 17th, I conducted an interview with Jermaine White.

8 Q Okay. And that was you and Captain Grant?

9 A Correct. Yes, sir.

10 Q Did you explain to Mr. White his rights at that time?

11 A I did. Yes, sir.

12 Q And did he indicate he understood?

13 A He did. He initialed -- we have a form that has Miranda
14 rights on it. He initialed and signed it, waiving his rights.
15 Correct.

16 Q And did he speak to you?

17 A He did. Yes, sir.

18 (WHEREUPON, State's Exhibit 26 is marked for
19 identification.)

20 Q I'm going to go pass you this, and ask if you can identify
21 that. What is that, sir?

22 A This is a disk of the defendant's interview that I observed
23 earlier and signed.

24 Q You reviewed that in preparation for trial?

25 A I did. Yes, sir.

1 Q And it contains the video of the interview you conducted on
2 him?

3 A Yes, sir.

4 ATTORNEY EVANS: Your Honor, the state would move this disk
5 and its contents into evidence as State's Exhibit No. 26, I think
6 I'm up to.

7 THE COURT: Mr. Mathews?

8 ATTORNEY MATHEWS: Without objection, Your Honor.

9 THE COURT: Without objection, 26 is in evidence.

10 (WHEREUPON, State's Exhibit 26 is admitted into the record.)

11 ATTORNEY EVANS: May I publish it?

12 THE COURT: You certainly can. Thank you.

13 (WHEREUPON, State's Exhibit 26 is published to the jury.)

14 Q That was on July 17th, lieutenant?

15 A Yes, sir.

16 Q Two days after the shooting?

17 A Yes, sir.

18 Q What, if anything, did you then do on July the 18th?

19 THE COURT: Mr. Evans, before we get started, the jury's
20 been here about an hour and a half.

21 ATTORNEY EVANS: Yes, sir.

22 THE COURT: Let's take a break right this minute, and we can
23 continue this after.

24 ATTORNEY EVANS: Yes, sir. I understand.

25 THE COURT: Ladies and gentlemen, I will send you to the

1 jury room for the afternoon. And we'll get you back out here
2 about 4:00. That's about 15 minutes. That will give you time to
3 stretch your legs and moved around. Do not discuss the case
4 along yourselves while in the jury room. Thank you.

5 (WHEREUPON, the jury is escorted out of the courtroom at
6 3:47 p.m.)

7 THE COURT: Detective Kinard, you can step down. You cannot
8 discuss your testimony with anybody while you're on the stand.

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. We'll be in recess until 4:00.
11 Okay.

12 (WHEREUPON, court recessed at 3:48 p.m. and reconvened at
13 4:09 p.m.)

14 MATTERS OF LAW

15 THE COURT: Gentlemen, I was given a note during the break
16 from the foreperson. Wants to know, Are we, as the jury, allowed
17 to take notes during the trial. If I get that note before we
18 begin then, of course, I normally allow it. Once we're into the
19 trial I won't allow it unless both sides agree. Since I'm not
20 sure, two witnesses from the end, how y'all feel about that. But
21 what says the state?

22 ATTORNEY EVANS: Judge, I've never really been bothered by
23 notes, Judge. This is a broken-record thing, Mr. Mathews and I
24 say, but we're so used to Judge Buckner's rules, and he has never
25 allowed notes. Am I right, Dave?

1 So I'm certainly used to no notes and I'm very comfortable
2 with no notes. I am sort of leaning the way you are where, if
3 they had asked beforehand and they had been taking notes
4 consistently all throughout the testimony, at least, I'd be more
5 comfortable.

6 I hate to -- I'm a little anxious about taking it up in the
7 middle. But just as a general matter, usually I'm not
8 uncomfortable, as a general.

9 ATTORNEY MATHEWS: I agree, Your Honor. I think if it was
10 from the very beginning, I would be okay either way. But at this
11 point, you know, at this point some people on there are going to
12 form some opinions and they're going to write down what they want
13 to write down. If they're going right from the beginning, maybe
14 not. But at this point I would have a problem, Your Honor.

15 THE COURT: Okay.

16 ATTORNEY EVANS: And perhaps, Judge, when you explain it to
17 them, we can't tell them ---

18 THE COURT: I'll deal with that.

19 ATTORNEY EVANS: Yes, sir.

20 THE COURT: Thank you, I understand. I didn't mean to cut
21 you off.

22 ATTORNEY EVANS: No, you're fine.

23 THE COURT: Because I heard what you both said, and I agree
24 with it. And so I think that I can instruct them in a way so
25 that they'll know it's not from you.

1 With that said, are we ready for the jury?

2 ATTORNEY EVANS: I'm ready. Yes, sir.

3 ATTORNEY MATHEWS: Yes, sir.

4 THE COURT: Bring in the jury.

5 (WHEREUPON, the jury is seated in the courtroom at
6 4:12 p.m.)

7 THE COURT: Mr. Foreman and ladies and gentlemen, I've
8 gotten your note. You want to know if you, as jurors, are you
9 allowed to take notes during the trial of a case. At this
10 juncture my answer is no.

11 If I'm asked that early on in the trial, before the trial
12 begins, then I traditionally allow jurors to take notes during
13 the trial of the case. But there's real specific instructions
14 that go along with that, what you can take notes of and what to
15 do with your notes and what you're not supposed to take notes of,
16 and things like that. It comes from me, this is not from the
17 lawyers, this is the way we do it as judges.

18 But since we are now a good way into the trial, if you start
19 taking notes at this juncture then the likelihood might be that
20 you give emphasis to something what you might hear from here on
21 out because you've got it written down, but what was earlier you
22 might not recall it and might not give it the emphasis that you
23 give later testimony you're writing about.

24 But let me tell you this. Your collective memory as a jury
25 will serve you well in trying to decide what was said here during

1 the trial of this case.

2 But if it does not, and if there's a critical point which
3 you all agree you need to know and you can't remember exactly
4 what it was -- now, the court reporter's going to get mad at me
5 for saying this -- but if you let us know what point it is and
6 where it came about, we'll do all we can to relocate from the
7 testimony if it is in the testimony and let you know the answer
8 to those questions. So we're not going to leave you flounder
9 about something that's really important that is in the record.
10 If it's not in the record, we can't. But if it is in the record
11 and it's real important to you, if you let us know about that
12 we'll be able to find that if you give us a good idea of what
13 you're talking about.

14 But now don't come back in and say, Now I want you to replay
15 witness's testimony of three or four, I want to hear a certain
16 witness played back, and so on. You can't do that. But on those
17 points that are significant to you and that you can't recall, we
18 can help with that.

19 Does that give you any relief at all? Okay. Thank you.
20 Madame court reporter, I'll give this to you as a Court exhibit.

21 (WHEREUPON, Court's Exhibit 5 is marked for identification
22 and admitted into the record.)

23 THE COURT: We're ready now to continue where we left off
24 before the break, on direct examination of Officer Kinard.

25 ATTORNEY EVANS: Thank you, Your Honor.

1 Q Lieutenant, I think we were finished with July the 17th and
2 we moved on to July the 18th before our break. What, if
3 anything, did you do on July the 18th?

4 A The 18th I conducted a series of interviews with some
5 various people.

6 Q Including Ms. Gibson who we heard from earlier?

7 A Yes.

8 Q I'm showing you what's already been entered in as State's
9 Exhibits 15 and 16. She identified those as pictures of her car.

10 A Sure.

11 Q Did you take those photo?

12 A I did. Yes, sir.

13 Q What, if anything, to you was significant about them?

14 A At this time I was kind of just taking pictures of the car
15 in general. I noticed the paint missing on the driver's side
16 door at the bottom, which I thought was unique.

17 Q And I'll collect those from you and pass you State's Exhibit
18 No. 3. Do you recognize that, sir?

19 A Yes, sir. This is a snapshot that I viewed at some point
20 identifying a vehicle that is the same make and model and year, I
21 think we even broke it down to, as the vehicle that Ms. Tonya
22 Gibson owned.

23 Q Did it appear similar to you? Did it appear significant?

24 A It's the same make, model, year, color. Everything.

25 Q Did you review that before you interviewed her --

1 Mr. Ballard's dash cam, did you review that before the interview
2 of Ms. Gibson or after?

3 A It was around the same time. I honestly, I don't remember.

4 Q Did you watch the video of him?

5 A I did.

6 Q Okay. What, if anything, did you learn from it?

7 A The video, his body camera video or the video we're looking
8 at here?

9 Q The video we're looking at here.

10 A Yeah. I looked at the video here, and we both agreed that
11 that was from the same car on scene that matched the area that
12 the brown car was leaving, brown or gold car was leaving, in that
13 Mr. White left in shortly after the shooting.

14 Q Because you had information at that point that he left
15 in a ---

16 A Brown car?

17 Q -- brown car?

18 A Yes, sir.

19 Q What is WatchGuard?

20 A WatchGuard is the camera company that we use for our, I
21 think, you know, you think they're expensive, so some of our cars
22 still have the L3 system, which is a video system for a vehicle.
23 Some of them have the new WatchGuard system. All of our body
24 cameras are made by WatchGuard.

25 Q I see. So this is a company that produces video equipment

1 for law enforcement?

2 A Correct.

3 Q And what did Ballard's car have at that time?

4 A He was equipped with a WatchGuard system. He was also --
5 along with that that you have there, he was equipped with a
6 panoramic view of the -- it's the same angle as that, that screen
7 shot that you just showed me, except that it's wider, a 360 view.
8 However, that view of video was not equipped to download at the
9 time of this incident.

10 Q What about now?

11 A Yeah, they since changed that. This was kind of a new thing
12 whenever we -- I think that Ballard's car was one of the newer
13 ones. I don't even think we were aware it wasn't downloading at
14 the time.

15 Q So it wasn't able to download this, you say, 360?

16 A Well, I think it's considered a wide-angle view. So you've
17 got two cameras. One's kind of a standard shot, as that one is,
18 that we were able to download. You've also got a wide angle,
19 almost like a fish island type thing, that is a wider angle.

20 Q The one you were able to download, is that the one that we
21 played earlier today?

22 A That was the one we played earlier. Yes, sir.

23 Q You reviewed that?

24 A Yes, sir.

25 Q Did you also review this wider angle?

1 A I did. We were able to review that, myself and Ballard,
2 inside of his vehicle. Even though we could not download it, we
3 could view it from his in-car screen that is attached to his car.

4 Q Okay.

5 A We called WatchGuard to see if we could download that wider
6 lens into the system so that we can actually make a video out of
7 it to have as evidence, but they said it was some kind of
8 proprietary system. Unless it was set up to download prior to
9 the event taking place, that you could not download it. Even if
10 we sent the whole system to them, they wouldn't be able to do it.

11 Q Again, now if this happened today, this would not be an
12 issue?

13 A Should not.

14 Q What, if anything, did you see when you did that?

15 A So with the wide-angle lens, as you're passing that vehicle
16 from the view that you just showed me, if you're passing the
17 vehicle that wide-angle lens would show, off to the car side, it
18 would probably show another, I don't know, 10 or 20 feet on that
19 side. So as it passed, you can actually see the damage on that
20 car, the car door, that you ---

21 Q The same damage that shows up in State's Exhibit 16?

22 A Yes, sir. Yes. But, unfortunately, we could not download
23 that video. But we both did view it.

24 Q Now, Mr. Mathews has mentioned several times a gas station
25 known as the Ghetto BP.

1 A Yes, sir.

2 Q What role does that station have to play in this case?

3 A So I'm going to call it Horizon. I never could follow it.

4 Q Now it's enmarket.

5 A It's enmarket no. 9, now, but back then it was Horizon
6 No. 9. The Horizon No. 9 is very close to where the crime scene
7 is. It sits at the intersection of Hampton Street and Robertson
8 Boulevard.

9 To leave the crime scene where the incident happened where
10 Mr. Poland got shot, you would take a left immediately off of
11 Francis Street. Horizon, there's a -- there's a car wash there,
12 which I believe was mentioned earlier, and the next building is
13 the Horizon station.

14 So as the crow flies, you know, it's maybe 100 feet from the
15 actual end of the property to that. At this intersection, if you
16 make a right, that is the quickest route to get back to 368
17 Cleveland Street, which is where Mr. White was in and out of all
18 day long.

19 Q And Mr. White referred to it in his interview.

20 A He did, yes, sir.

21 Q He said that he went there earlier in the day.

22 A Yes, sir.

23 Q What did you do? Did you go there?

24 A I did.

25 Q What did you find?

1 A I looked at an immense amount of video throughout the day, I
2 don't know, six or seven hours of video. I observed Mr. White
3 earlier in the day pull up in that vehicle and go inside and make
4 a purchase.

5 Q And were you able -- unlike the WatchGuard, were you able to
6 download the video?

7 A Yes. Yes, I was able to download that.

8 Q All right.

9 (WHEREUPON, State's Exhibit 13 is marked for
10 identification.)

11 ATTORNEY EVANS: May approach the witness, Your Honor?

12 THE COURT: Yes, sir.

13 Q I'm going to pass you what's been previously marked as
14 State's Exhibit No. 13. I wonder if you can tell me what that
15 is.

16 A Sure. This is marked as a Horizon video I observed
17 yesterday, and put my name on it.

18 Q You watched the videos on this disk and confirm they're the
19 ones we're talking about now?

20 A Yes, sir.

21 Q And memorialized that with your signature and date?

22 A Yes, sir.

23 Q These are the same videos that you downloaded after the
24 incident?

25 A Yeah.

1 ATTORNEY EVANS: Your Honor, the state would move State's
2 Exhibit 13 into evidence.

3 THE COURT: Mr. Mathews?

4 ATTORNEY MATHEWS: No objection, Your Honor.

5 THE COURT: Exhibit 13, without objection.

6 (WHEREUPON, State's Exhibit 13 is admitted into the record.)

7 ATTORNEY EVANS: May I publish, Your Honor?

8 THE COURT: Yes, sir.

9 (WHEREUPON, State's Exhibit 13 is published to the jury.)

10 Q Lieutenant, what do we have up here?

11 A That's the date and time.

12 Q Okay.

13 A That would be Sunday, 7/15/2018, at 11:34:25.

14 Q And the date of the incident?

15 A Yes, sir. It was earlier in the day.

16 Q That's not the time?

17 A That's not the time of the incident. That was a couple
18 hours before.

19 Q These cameras, they're not linked to the, you know, to the
20 world clock? Are there some variations there?

21 A Yeah, there will be some gray area there. But I actually
22 looked at that, and it's actually fairly, fairly close. It would
23 be closer than somebody's watch.

24 Q In your experience, the times would be ---

25 (Simultaneous talking.)

1 A Yes, sir. At this time, they were. Sometimes whenever time
2 changes they don't keep it on track.

3 Q But Daylight Savings Time can mess with it?

4 A Yes, sir.

5 Q I'll pause it. But if we can take it back, and tell us what
6 we see here.

7 A Yes, sir. At that time of day it shows on the screen 11:34.
8 You can see Tonya Gibson's vehicle pull up. You can ID that
9 without a doubt from the paint damage to some of the bottom half
10 of that door. Exiting the car now is Jermaine White.

11 Q All right. Now, is that him leaving?

12 A Yes, sir. He's leaving there, and I think he's heading back
13 towards the block, well, towards Williams Seafood. That's
14 Jermaine White coming out of the store.

15 Q Is that in the direction of his home?

16 A No. That is the direction of the incident location, back
17 towards that way.

18 Q And the rest of Walterboro?

19 A And the town of Walterboro, yes.

20 Q What is this second clip?

21 A That's an interior view of the Horizon No. 9.

22 Q Same date and time?

23 A Yes, same date and time. That's Mr. Jermaine White. Of
24 course, this is after he gets out of the vehicle that we saw on
25 the previous video. You see him coming into the store. He's

1 making a purchase, it looks like, some kind of alcohol.

2 Q And it would pick up there outside where he left?

3 A Yes. It picks up where he walks back outside ---

4 (Simultaneous talking.)

5 Q Was there any other video of him inside?

6 A I'm sorry?

7 Q Was there any other video of him inside?

8 A There was other camera angles, but that is the only that one
9 we downloaded.

10 Q I'm going to come back to that.

11 (WHEREUPON, State's Exhibits 28, 29, 30 and 31 are marked
12 for identification.)

13 ATTORNEY EVANS: May approach the witness, Your Honor?

14 THE COURT: Yes, sir.

15 Q I'm going to pass you what has been previously marked as
16 State's Exhibits 28, 29, 30 and 31, and ask if you can identify
17 those.

18 A Exhibit 28 looks like a field shot taken of the video that
19 we just watched from the exterior showing Mr. Jermaine exiting in
20 that Oldsmobile.

21 Q Okay.

22 A Exhibit 2 would be a still shot of the interior that we just
23 watched. Just a still shot where they're showing Jermaine
24 White's face in the shot.

25 Q Is it marked as 2?

1 A What did I say? Two-nine.

2 Q Twenty-nine, okay. And 30?

3 A The third is a still shot from the exterior, video again,
4 that looks like Jermaine returning to the vehicle.

5 Q And 31?

6 A And 31 would be the vehicle exiting the parking lot.

7 Q All from the screen shots from the clips that we just
8 watched?

9 A Yes, sir.

10 ATTORNEY EVANS: Your Honor, the state would move these into
11 evidence as State's 28, 29, 30 and 31.

12 ATTORNEY MATHEWS: Without objection.

13 THE COURT: Without objection, admitted.

14 (WHEREUPON, State's Exhibits 28, 29, 30 and 31 are admitted
15 into the record.)

16 Q They're all just still images of the videos that we've seen?

17 A Yes, sir. It's just a frame, basically a frame shot of
18 Jermaine White.

19 Q And 27 and 32 which came in through Ms. Gibson, those are
20 the same, those are also still images from the ---

21 A I forget. I'll have to look through them. I'm sorry. Yes,
22 sir. This is the -- yes, sir. That is one from that same time
23 that we just looked at.

24 Q And this is from the video we're about to watch?

25 A Is that what we're about to watch on the video? Okay.

1 Q What is the timestamp?

2 A 15:34. Yes, sir.

3 Q Okay. Thank you. This is one of the videos that you
4 reviewed?

5 A Yes, sir. That video would be the video of that same camera
6 which shows the intersection of Robertson Boulevard and Hampton
7 Street at the time of the incident.

8 Q Right. And this is military time; right?

9 A Right, 15:44.

10 Q Is that ---

11 A 3:44.

12 Q 3:44?

13 A 3:44, yes.

14 Q And the 911 call came at?

15 A Right around that time. Yes, sir.

16 Q Around that time. What, if anything, did you notice when
17 you reviewed this segment of the video?

18 A Specifically I was looking for, there's a vehicle that
19 looked exactly like an 88 Oldsmobile, the same vehicle I had been
20 looking at earlier in the videos, pass and make a right from
21 Hampton Street. It passes from right to left heading down
22 Hampton Street. It makes a right onto Robertson Boulevard, which
23 would be in the direction of Mr. Jermaine White's home.

24 Q And if I turn it over, would you listen ---

25 (Inaudible due to talking simultaneously.)

1 A Yes, sir.

2 Q And what part ---

3 A I'm sorry?

4 Q And what part of the screen ---

5 A Sure. We're going at the upper right-hand corner of the
6 screen where the road is that it's passing. Here's the vehicle
7 here. And it makes a right onto Robertson Boulevard.

8 Q Robertson. So I paused it at 3:44:19. Missed it by one
9 second versus State's 32. Correct?

10 A That's pretty good. Yes, sir.

11 Q But that's essentially the same?

12 A Yes, sir.

13 Q I'm passing State's Exhibit 33. This was entered
14 previously. What is that?

15 A That's a blown-up image, a zoomed-in image, of that same
16 vehicle we see in the photo and in that video there.

17 Q A zoom of State's 32?

18 A Right.

19 Q What, if anything, do you notice significant on that?

20 A I can see paint damage on that lower door of that vehicle.
21 The same matching, the same as Tonya Gibson's.

22 Q Thank you, lieutenant.

23 (WHEREUPON, State's Exhibit 14 is marked for
24 identification.)

25 ATTORNEY EVANS: May I approach the witness, Your Honor?

1 THE COURT: Yes, sir.

2 Q Kevin, I am going to show you what's previously been marked
3 State's Exhibit 14. Can you tell me what that is, sir.

4 A Sure. That's, at the far top left, looks like a picture
5 taken from Lieutenant Ballard -- Lieutenant Ballard -- Officer
6 Ballard's in-car video of the Oldsmobile. The center and right
7 are the ones that I took from the parking lot once I interviewed
8 Tonya Gibson. Bottom left is a still shot from the parking lot
9 of Horizon 9., and that is the zoomed-in shot of Hampton Street
10 directly after the incident.

11 ATTORNEY EVANS: Your Honor, the state would move this into
12 evidence as State's Exhibit 14.

13 THE COURT: Fourteen. Mr. Mathews, any objection to
14 State's 14?

15 ATTORNEY MATHEWS: For demonstrative evidence, Your Honor?

16 THE COURT: Okay.

17 ATTORNEY MATHEWS: For demonstrative evidence, no problem.

18 THE COURT: Okay.

19 (WHEREUPON, State's Exhibit 14 is admitted into the record.)

20 THE COURT: Are 32 and 33 in evidence?

21 ATTORNEY EVANS: Yes, I believe so. Thirty-two is and 33
22 is.

23 THE COURT: As long as the court reporter has them admitted.

24 THE REPORTER: Yes.

25 ATTORNEY EVANS: Can he step down and walk the jury through

1 this?

2 THE COURT: He can. Lieutenant Kinard, if you will face in
3 the general direction of the jury, and keep your voice up so we
4 can hear you.

5 THE WITNESS: Yes, sir.

6 THE COURT: And face the court reporter.

7 THE WITNESS: Yes, sir.

8 THE COURT: Stand on the other side, please, sir, if you
9 don't mind.

10 Q Just walk the jury through those five photos.

11 A Sure. This picture is ones that I took outside of the
12 police department as the interview of Tonya Gibson that we heard
13 from earlier.

14 THE COURT: And if you don't mind, would you please identify
15 for the record which one that is.

16 A Sure. The top right corner.

17 THE COURT: Thank you.

18 A The center top is also a photograph of that same day of that
19 vehicle of Tonya Gibson.

20 This is a still photo taken off of Officer Ballard's in-car
21 dash camera of him responding to the scene. This was the vehicle
22 in the left-hand side of that video, coming out of the dirt lot.

23 Of course, this is the vehicle at the Horizon pump when it
24 was -- that we watched a few minutes ago that was driven by
25 Jermaine White.

1 And this is a blown-up, zoomed-in picture of the vehicle as
2 it is leaving the incident location at the time of the incident.
3 As you can see, the paint missing on each one of the pictures,
4 this is, it kind of makes the vehicle, unique. In this picture
5 here you can see the discoloration at the bottom of the door, of
6 the yellow.

7 (WHEREUPON, State's Exhibit 34 is marked for
8 identification.)

9 Q Thank you. I show you another giant poster. It's been
10 previously marked as State's Exhibit 15 (sic). Can you tell me
11 what that is, sir.

12 A Yes, sir. That looks like a satellite shot of the area
13 between the incident location and the 368 Cleveland Street
14 address.

15 Q Is it pulled from a map of Walterboro?

16 A Like a Google map from the satellite.

17 Q Does it fairly and accurately depict a bird's-eye view, I
18 guess?

19 A Yes.

20 ATTORNEY EVANS: The state, Your Honor, would move this into
21 evidence as State's Exhibit 15 (sic).

22 THE COURT: This is demonstrative evidence?

23 ATTORNEY EVANS: Yes.

24 ATTORNEY MATHEWS: No objection to demonstrative evidence,
25 Your Honor.

1 (WHEREUPON, State's Exhibit 34 is admitted into the record.)

2 ATTORNEY EVANS: And again, may he step down and use this to
3 assist his testimony?

4 THE COURT: All right. We'll do the same thing.

5 Q Could you tell us why, using that Exhibit 15 (sic) as
6 demonstrative evidence, tell us why that last video was
7 significant.

8 A The last video, this road here is Hampton Street. The
9 Horizon No. 9 would be this location here. The camera view that
10 we saw is pointing towards this intersection. This is Robertson
11 Boulevard.

12 The incident, the incident happened in this, right here
13 behind the car wash. As you exit, Officer Ballard was pulling on
14 to here, responding to the call. The gold Oldsmobile can be seen
15 exiting the dirt lot in this general location here, coming out
16 onto the street as Officer Ballard entered where the crime scene
17 was.

18 If you make a left out of there and come through here, this
19 camera will pick up that vehicle at this intersection.

20 The quickest way to get back to Jermaine Silas's home is a
21 right on Robertson Boulevard, and in this general direction make
22 a left on Smith Street, and then a right on Cleveland.

23 Q And that corresponds with what you saw in that video
24 footage?

25 A Yes, sir.

1 ATTORNEY EVANS: Your Honor, I've made a mistake in my
2 sequence. So this exhibit as demonstrative evidence, I left in
3 as 15. I'll have to renumber that.

4 THE COURT: Okay.

5 ATTORNEY EVANS: So I apologize for the Court for that
6 oversight. We would change that number to 34.

7 THE COURT: Okay.

8 ATTORNEY EVANS: Being the map that was just testified to.

9 THE COURT: The satellite map?

10 ATTORNEY EVANS: Yes, sir. I apologize to the Court.

11 THE COURT: All right. Thank you, madam reporter.

12 ATTORNEY EVANS: Yes, thank you very much.

13 Q And I apologize, detective. I asked you what happened on
14 July 24th.

15 A On the 24th Lennon Poland died at Trident Medical Center.

16 Q And you never had an opportunity to speak to him?

17 A I did not. I went by the hospital once just to see the
18 family and to actually just see him, but he was not responsive.
19 I think he was on life support at that point.

20 Q And did you seek a different warrant? Mr. White had been
21 arrested, but did you seek a different warrant at that point?

22 A I did. After the death of Lennon, we went and sought a
23 warrant for the murder.

24 Q You reviewed -- as part of your investigation and certainly
25 earlier today at trial you saw and heard Mr. Ballard's body

1 camera video; correct?

2 A I did.

3 Q What, if anything, did you learn from that, you know, other
4 than his identification?

5 A Other than Jermaine White's identification?

6 Q What, if anything, did you learn from the video that
7 Mr. Poland said on that video?

8 A Right. At one point in the video Ballard asked him, like,
9 why he did it, or he keeps mumbling, Eating the cheese, like, He
10 thinks I'm telling, eating the cheese, some references to that.

11 Q And did that mean anything to you in your training and
12 experience?

13 A It does. I mean, telling and then eating the cheese is a
14 common term for, if you're a rat, or, like, a snitch or telling
15 on somebody, or, like, you know, you would be talking to the
16 police over some issues.

17 Q About ---

18 A Criminal.

19 Q About somebody committing some kind of crime?

20 A Correct.

21 Q Rat and snitch are street words for informant?

22 A Correct.

23 Q And did you listen to the jail phone calls?

24 A I did.

25 Q One of which we played earlier?

1 A I did.

2 Q What, if anything, did you hear in that jail phone call?

3 ATTORNEY MATHEWS: Objection, Your Honor. I think that
4 that's in evidence and we can all make our own conclusions on
5 that.

6 THE COURT: You can refer to what part of it he's talking
7 about, but it will speak for itself. It's already in evidence.
8 It was already played.

9 ATTORNEY EVANS: Yes, sir.

10 Q Did you hear Mr. White refer to Mr. Poland as FBI?

11 A I did.

12 Q What does that mean to you ---

13 ATTORNEY MATHEWS: Excuse me.

14 Q --- in your training?

15 ATTORNEY MATHEWS: Excuse me. Your Honor, I object to this.
16 He's referring to what -- there is no reference to Lennon Poland
17 in any of that jail talk. In all of this, there's not a single
18 reference to Lennon Poland. As far as who they're talking about,
19 this is pure speculation. And I'd ask the Court to instruct ---

20 ATTORNEY EVANS: I'll be happy to rephrase that.

21 THE COURT: I'll sustain the objection if it's not referred
22 to.

23 Q Did you hear the words FBI?

24 A I did.

25 Q What does that mean? I mean, we know what the FBI is. But

1 again, in your training and experience, you know some slang that
2 we don't; correct?

3 A Right. That would also be synonymous with a snitch or a
4 rat.

5 Q Thank you. Was Mr. Poland, to the best of your knowledge,
6 an informant with any agency around here?

7 A Not that I know of. Not with Waltherboro Police Department.

8 Q You looked into that?

9 A I did, yes. I would know.

10 ATTORNEY EVANS: Beg the Court's indulgence.

11 Q In the course of your investigation did you uncover any
12 evidence that was any alternative suspects, or was -- I don't
13 want to ask you a compound question. Just, did you learn any
14 alternative suspects?

15 A I did not. From the beginning till the end it pointed to
16 Jermaine White.

17 Q If you had learned of any of other individuals, you could
18 would have --

19 A I would have exhausted all resources.

20 Q Is that what you were trying to do with the DNA and the
21 fingerprints?

22 A Sure.

23 Q You didn't conduct a DNA test; did you?

24 A You mean actually put it in the machine? No, sir. I'm not
25 that smart.

1 Q So you're familiar with the terminology and what they do,
2 roughly?

3 A Roughly, yes.

4 Q Did you review the DNA report as part of your investigation?

5 A I did.

6 Q Okay.

7 ATTORNEY MATHEWS: No objection to the report or his
8 testimony on the report.

9 THE COURT: Thank you, Mr. Mathews.

10 Q So we've moved it into evidence at this point, but what is
11 that, just to be clear?

12 A This is the DNA report that we get back from SLED, that we
13 have on file.

14 Q That's the one in this case with all the swabs and samples
15 and everything that you sent up?

16 A Yes, sir.

17 Q What did you have sent up to be analyzed for DNA?

18 A Here we've got the, well, they call it a, comparison. We
19 sent up a blood spot from Lennon Poland, which is taken from the
20 autopsy. It's a sample of his blood. They use that for
21 comparison. And also what they call a buccal swab from Jermaine
22 White, which is a swab from him for his DNA.

23 Q And that's so they know what to compare with what?

24 A Correct.

25 Q What, if anything, did they find?

1 A The swab from the rim of the blue bucket that I mentioned
2 earlier, it had no DNA profile that was developed. That means
3 there was no DNA in that swab.

4 Q From the blue bucket, not the blue chair?

5 A Right. I'm just going down the list here.

6 Q Yes. Yes. Just wanted to clarify.

7 A Yes, sir. The swab from the back of the blue chair, it said
8 a DNA profile was suitable for development. It says that the DNA
9 profile was interpreted as a mixture originating from two
10 individuals, Lennon Poland and an unidentified, unrelated
11 individual contributed to the mixture, I believe.

12 Q I'm not going to ask you about the whole thing, but was
13 Mr. White's DNA on that chair?

14 A No, not that ---

15 Q He was excluded?

16 A Yes.

17 Q And that's from the scene of the crime; right?

18 A Correct.

19 Q What about the second sene, Cleveland Street, and that
20 firearm?

21 A Sure. The swab taken of the slide of the firearm, no DNA
22 profile was developed. And then there was a second swab taken
23 from the trigger of the firearm. A DNA profile was developed but
24 was insufficient for interpretation, which, like I said, I have a
25 rough understanding of that. That means that there wasn't enough

1 there to make a determination.

2 Q And from the first one they couldn't, they couldn't develop
3 a profile?

4 A Correct. And then a swab from the magazine was also taken.
5 No DNA profile was developed from that, either.

6 Q So Mr. White was not excluded, but they couldn't develop a
7 profile to compare?

8 A Correct.

9 Q I don't have a number on it. I didn't know was going to put
10 it in, but we are up to 35. Correct? I thought I did 35
11 already.

12 (WHEREUPON, State' Exhibit 35 is marked for identification.)

13 THE COURT: What's the number of the report?

14 ATTORNEY EVANS: That's going to be 35, and it will be a
15 four-page total report, Judge. But I suppose we can staple it.

16 THE COURT: Okay. Thank you.

17 (WHEREUPON, State's Exhibit 35 is admitted into the record.)

18 Q You asked SLED to look at fingerprints on the box, as well;
19 correct?

20 A I did.

21 Q What, if anything, came back from that?

22 A My fingerprints were located on the box. It happens
23 sometimes ---

24 Q Were any other fingerprints?

25 A --- when you're --

1 Q I apologize for interrupting. I want you to finish your
2 answer.

3 A My fingerprints were found on the box but, you know, that
4 happens sometimes whenever you're collectings things. In a
5 perfect environment it would never happen, but mine were located
6 on the ammunition box.

7 Q Were anybody else's?

8 A No, nothing else came back.

9 Q How about on the gun or on the magazine?

10 A No, nothing came back on those.

11 Q And what could have led to your fingerprint coming on that
12 box?

13 A Just regular handling. You know. You know, it was three
14 years ago now, so actually remembering what I did specifically --
15 but, it does happen. I handled that evidence from the time that
16 we collected it, and so it is possible that I touched it without
17 gloves on one time.

18 Q And you said earlier when I was entering that you didn't
19 send the box up to SLED, you sent a print itself?

20 A Yes. It just actually pulled the print from the box, I
21 believe.

22 Q Is it possible that your print got on it while you were
23 trying to ---

24 A Very possible. And putting it inside of a bag, it's
25 difficult, you know what I mean. There's no telling.

1 Q And you collected, in essence, your own print?

2 A Yes.

3 Q I guess you learned a lesson from that experience?

4 A I did. Yes, sir.

5 ATTORNEY EVANS: Beg the Court's indulgence.

6 Q Detective, those are all the questions I have. Please
7 answer any questions Mr. Mathews has.

8 A Thank you.

9 THE COURT: Cross-examine.

10 **CROSS-EXAMINATION**

11 BY ATTORNEY MATHEWS:

12 Q Clear one thing up Mr. Evans asked you, Officer Kinard,
13 about, Jermaine could not be excluded as somebody from the
14 trigger. In fact, neither could you, neither could anybody,
15 because no profile was developed at all?

16 A Correct. Right.

17 Q So it's really grossly misleading to say that somebody was
18 excluded when there was no sample at all?

19 A There was basically no sample, on how I understand that
20 report. Yes, sir.

21 Q But in fact, you did your best to find DNA, because it's
22 important; right?

23 A Sure.

24 Q And obviously at some point, I notice that you're looking at
25 the pair of gloves there, and at one point you and Mr. Evans

1 handled some things and put on those gloves. Right?

2 A Yes, sir.

3 Q One of the reasons you do that is so that you don't put your
4 print on things. Right?

5 A Yes, sir.

6 Q So things don't always work out the way you expect. One of
7 the things, there's been some testimony earlier about tattoos. I
8 think I noticed during your interview of Mr. White, Mr. Jermaine
9 White, that you have a pretty nice tattoo on your forearm. Is
10 that right?

11 A I do. Yes, sir.

12 Q How much did that cost you?

13 A I don't remember now.

14 Q Are you proud of it?

15 A Well, yes.

16 Q And you take note of it and you take note of it when other
17 people have tattoos?

18 A I don't know. Maybe.

19 Q All right. When you collected up the Dollar General bag
20 that had the pistol, the ammo box and the magazine in it, was the
21 door open when you got there?

22 A The door to the house?

23 Q The house.

24 A Yeah. There were officers already inside the house.

25 Q I understand. When they arrived, to your understanding, was

1 the door open all day?

2 A I don't have knowledge one way or the other.

3 Q Nobody had to break in or anything like that, to your
4 knowledge?

5 A I do not remember if it was forced entry or not inside the
6 house.

7 Q Okay. And you mentioned the people that had access to it.
8 This house belonged to Silas, Mr. Silas; right?

9 A Yes, Mr. Silas White.

10 Q And that would be Jermaine and Bam's father?

11 A You mean Desi? Yes, sir.

12 Q Okay. Bam, Desi, same person; right?

13 A Yes.

14 Q Jermaine, Desi, their dad. Who else lived in that house?

15 A I'm not really sure. I don't -- I know that there's an
16 older female that lives in the house, but I don't know if
17 that's -- I'm not sure of the relationship.

18 Q And people kind of come and go there?

19 A Honestly, I don't know. It's out in the city limits, so I
20 don't ---

21 Q I see, okay. All right. You say that you had asked about
22 other suspects and stuff like that. In fact, at one point you
23 always interview the surviving spouse or somebody; right? I
24 mean, you watch plenty of Dateline, that's something they
25 typically do. And you did the same thing. Didn't you?

1 A The ...

2 Q The victim's ex-girlfriend, who's the mother ---

3 A Oh, yeah.

4 Q And without getting into the details of that, there were

5 people that you interviewed. One of the reasons is they recently

6 had broken up and she moved in with another dude. Right?

7 A I don't recall the reason they broke up. I don't remember

8 any of that. No, sir.

9 Q Okay. All right. Did you interview the new boyfriend?

10 A I don't recall interviewing the new boyfriend.

11 Q Okay. Do you recall the ex-girlfriend indicating maybe

12 there might have been some motive for her to be angry with the

13 victim?

14 A I recall that the -- honestly, I don't recall. I believe

15 that maybe there was some issues between the ex-girlfriend and

16 the -- and Lennon's mother, and maybe Lennon's mother was making

17 some accusations.

18 Q Does the word, crack my jaw, mean anything to you?

19 A I don't remember that term. But ...

20 Q Punched in the face, do you remember that?

21 A As far as who goes? I don't remember that ---

22 Q As far as the ex-girlfriend.

23 A I don't recall that offhand.

24 Q Brittany Creek, you interviewed ---

25 A I interviewed Brittany Creek.

1 Q You interviewed Brittany Creek?

2 A Right. And I don't remember a whole lot of substance coming
3 out of that interview.

4 Q You don't recall her saying, That he punched me in the face?

5 A You're talking about Lennon?

6 Q Lennon punched me in the face.

7 A I do remember her saying something about some kind of
8 assault.

9 Q Okay.

10 A Yes.

11 Q All right.

12 ATTORNEY MATHEWS: I don't have anything further, Your
13 Honor.

14 THE COURT: Thank you. Redirect, Mr. Evans?

15 **REDIRECT EXAMINATION**

16 BY ATTORNEY EVANS:

17 Q Did any witness indicate that Mr. White's brother, Desi, was
18 a suspect in this, in this murder?

19 A His name was never brought up as far as I'm aware.

20 Q You never learned any of this?

21 A The only time we've ever had any dealings with his brother
22 was he was located far down Cleveland Street on the day that
23 Jermaine White was apprehended.

24 Q And Mr. Silas White, who lives in the home, as well?

25 A He did. The father?

1 Q Yes, sir.

2 A Yes.

3 Q How old is he?

4 A He's elderly. He's, Mr. Silas has got to be, in his 80s
5 now. I'm not sure, though.

6 ATTORNEY EVANS: That's all, Your Honor.

7 THE COURT: Mr. Mathews?

8 ATTORNEY MATHEWS: Nothing further.

9 THE COURT: Thank you. Detective, you can step down.
10 Lieutenant. I'm sorry.

11 THE WITNESS: Thank you.

12 ATTORNEY EVANS: And, Judge, I see we're right at 5:00.

13 THE COURT: Good time.

14 ATTORNEY EVANS: Thank you, sir. Yes, sir.

15 THE COURT: You need tomorrow at 9:00; right?

16 ATTORNEY EVANS: That's correct, Your Honor, because of the
17 witness's other obligation.

18 THE COURT: Ladies and gentlemen, thank you for your
19 patience throughout the day. They worked hard to get all this in
20 so that you didn't stay overtime today. I appreciate the efforts
21 in that regard. Both sides have done that.

22 We will start the morning at 9:00. So we let you off on
23 time today because we start early tomorrow. But there's some
24 witnesses, some expert witnesses, who have a schedule that
25 requires them to be several places tomorrow, so we have to start

1 at 9:00 tomorrow in order to get all that in. So I'm going to
2 ask you to be in the jury room tomorrow morning prior to 9:00.

3 And we've already placed your lunch order, I think, for
4 tomorrow, so we will be able to keep everybody together and work
5 through the day tomorrow, the best use of time.

6 And also, when you get your check for jury service at the
7 end of this time, you're going to be real glad you got a free
8 meal from the county. But it works well, really, to make good
9 use of everybody's time.

10 Remember, as always, not to talk about this case with
11 anybody outside of the courtroom. Don't try to find out anything
12 about it, and don't talk about it among yourselves when you get
13 back.

14 You must think, That fellow must think we're the dumbest
15 people in the world, he tells us that every time before we leave
16 this courtroom. And I do. And if I don't, it's because I forget
17 to do it. And the reason I do that is this. There are no 13
18 people on the face of this globe other than you all who are going
19 to be asked to make a decision about this case. And so that's
20 the reason that it's real important that you continue to abide by
21 those instructions that we gave you. So that when you check into
22 that jury room sometime tomorrow or the next day to start talking
23 about this case among yourselves, you will be making your
24 decision based on what you've heard in this courtroom right here
25 and not from something that you've learned from somewhere else or

1 something that came to your knowledge outside of this courtroom.

2 So I won't belabor that for you, but I'm going to tell you
3 every time before you leave. But I won't preach to you about it.
4 I'll see you in the morning at 9:00. Thank you.

5 (WHEREUPON, the jury is escorted out of the courtroom at
6 5:02 p.m.)

7 THE COURT: Mr. Evans, you still have two witnesses
8 tomorrow; is that right?

9 ATTORNEY EVANS: I'm sorry, Your Honor?

10 THE COURT: Two witnesses left for tomorrow; is that right?

11 ATTORNEY EVANS: Two, and potentially we'll see about Mr. --

12 THE COURT: I'm sorry, you're right.

13 ATTORNEY EVANS: Two was the original plan.

14 THE COURT: I didn't mean to skip over Mr. McCord.

15 ATTORNEY EVANS: I can't promise that he will testify, but
16 that's the goal.

17 THE COURT: Okay. Thank you.

18 ATTORNEY EVANS: Thank you.

19 THE COURT: All right. So we know what the schedule is
20 going to be. We'll start 9:00 in the morning, folks. We'll be
21 in recess until then. Thank you.

22 (WHEREUPON, court recessed for the day on Tuesday, April 20,
23 2021, at 5:03 p.m., and reconvened on Wednesday, April 21, 2021,
24 at 9:21 a.m.)

MATTERS OF LAW

1
2 THE COURT: Ladies and gentlemen, there's a preliminary
3 matter this morning. We have a juror issue. Sergeant Grant
4 advised me that one of the jurors, Juror No. 102, Mr. Harrison,
5 Juror 102, you'll recall yesterday he was identified as a cousin
6 of one of the witnesses who testified, Tonya Gibson.

7 He advised Sergeant Grant this morning that he had received
8 a text message from her sometime overnight or this morning. He
9 did not open it. She brought that to our attention, to the
10 attention of counsel. We had an in-chambers conference. Having
11 read the text message, there's nothing there on its face to be
12 viewed as improper other than the contact itself. And
13 Mr. Harrison brought it to our attention wisely and
14 appropriately.

15 And all are in agreement that, in view of this attempted
16 contact on the heels of his identification as a cousin, the
17 witness, the better part of the discretion is to stand him aside
18 as a juror in this case. And that would move Mr. Bowers into the
19 final slot on the jury.

20 Mr. Evans, Mr. Mathews, gentlemen, y'all want to add
21 anything to the record in that regard?

22 ATTORNEY EVANS: No, sir, Your Honor.

23 THE COURT: All right. Anything you want to add to that?

24 ATTORNEY MATHEWS: Your Honor, Mr. White, I explained this
25 to him and then he heard the Court's ruling, and I think that

1 he's not comfortable with that. I tried to explain that it
2 doesn't really matter whether he's comfortable with that or not,
3 but he did, I believe, want to be heard on this. I think he says
4 that I am inefficient. I think he meant ineffective. But, in
5 any event, I explained to him also the appeals process and also
6 the PCR process thereafter, and also explained to him he's got a
7 relatively good chance of getting an acquittal in a trial that's
8 not over. But anyhow, he does want to be heard, if not now, at
9 some point.

10 THE COURT: I'll hear him briefly right now. Mr. White,
11 you've heard my ruling, but I'll hear from you briefly. Is there
12 some reason why you think that I should allow juror to continue
13 to sit in face of this contact?

14 THE DEFENDANT: Because he contacted state police. When he
15 contacted the state police he ---

16 ATTORNEY MATHEWS: She contacted him.

17 THE DEFENDANT: That's what I'm saying, it's incredible. He
18 going to talk to the jurors, he going to collaborate with jurors.
19 You don't know what might happen. I ain't gonna have a fair
20 trial here.

21 THE COURT: Well, he's not going to be there. He's leaving.

22 THE DEFENDANT: Okay, but let's say we bring in another
23 juror. They ain't heard the whole time heard everything that's
24 going on in this case, the new juror.

25 THE COURT: Mr. White, I'm having trouble following you.

1 THE DEFENDANT: We've been having this case two days. Right
2 or wrong?

3 ATTORNEY MATHEWS: Your Honor, I think he thinks that the
4 alternate has not heard the evidence. I explained that the
5 alternate sits through the entire deliberations, just like any
6 other juror.

7 THE DEFENDANT: It ain't just that. You can't pull the
8 juror off the jury base and then put somebody else in in the
9 middle of the trial.

10 THE COURT: Mr. White, I've been doing this 30 years.
11 That's a little bit longer than you've been doing it. I know
12 what I am doing. It's proper, it's properly within the rules.
13 That's the reason we have alternate jurors, in case somebody gets
14 sick like this or has to be excused, so that we can replace them
15 with an alternate who's been sitting right there like everybody
16 else has.

17 That's all I'm going to hear from you about this. I've
18 ruled. Have a seat. Thank you.

19 THE DEFENDANT: May I have ---

20 THE COURT: No, sir. Thank you.

21 THE DEFENDANT: I can't file for inefficient counsel?

22 THE COURT: Oh, yeah. Well, first, will have to get
23 convicted, okay.

24 THE DEFENDANT: Convicted. I can't do it now? I can't -- I
25 don't have ---

1 THE COURT: Mr. White, if you want to stay in this courtroom
2 for the rest of this trial you're going to listen to your counsel
3 and you're going to speak through him. If you don't, I will have
4 you removed from the courtroom and you will follow this trial
5 from a television in another room, you won't be in here.

6 You're not allowed to stay in here and disrupt these
7 proceedings. That's the reason we have rules in court. They're
8 different from the rules on the street, okay. Thank you.

9 Bring Mr. Harrison in, please.

10 (Juror No. 102 enters the courtroom at 9:26 a.m.)

11 THE COURT: Mr. Harrison, thank you for bringing that to our
12 attention. Again, it looks like this relationship continues to
13 follow you throughout this service. There was nothing in the
14 text. And I read it.

15 JUROR: Okay.

16 THE COURT: There was nothing in the text that would be
17 improper insofar as this case is concerned, nothing trying to
18 reveal to you anything about this case that you should take into
19 account.

20 However, the fact that she made the contact in and of
21 itself -- not you, but she made the contact -- causes reason for
22 concern. Obviously, it's the fact that the relationship exists,
23 she's trying to get in touch with you. And the lawyers and I
24 have all agreed it would be best to stand you aside from any
25 further involvement in the trial. And you understand, this is

1 not on you, it's on her.

2 JUROR: Yes, sir.

3 THE COURT: But nonetheless, you're the one who's on the
4 jury, so you're the only one we can deal with in that regard. So
5 I'm going to let you go. I appreciate so much your service thus
6 far, and I'm sorry you can't get to finish this trial. But I'm
7 going to let you go.

8 That means he's going to miss his lunch. Well, you're going
9 to come back at 1:00 and pick up your lunch.

10 JUROR: Good deal.

11 THE COURT: Okay. All right. But we're going to excuse
12 you. And I take it you have not discussed this with any other
13 people in this room?

14 JUROR: No, sir, I haven't discussed anything at all.

15 THE COURT: Okay. Thank you so much. You're free to go.

16 JUROR: Thank you, Judge.

17 (WHEREUPON, Juror No. 102 is excused.)

18 THE COURT: Are both sides now ready for the jury?

19 ATTORNEY EVANS: I'm sorry. Yes, sir.

20 ATTORNEY MATHEWS: Defense is ready, Your Honor.

21 THE COURT: All right. Bring in the jury.

22 (WHEREUPON, the jury is seated in the courtroom at
23 9:29 a.m.)

24 THE COURT: Good morning, Mr. Foreman and ladies and
25 gentlemen. Thank you. You were here on time. And we were here

1 on time, as well, this morning. But there are always some
2 wrinkles that occur overnight that we have to deal with just to
3 smooth the ways to get the case presented to you in an orderly
4 fashion. And that was true this morning, as well. And we've
5 dealt with the matter.

6 Mr. Bowers, you are now a principal juror. We've had to
7 excuse another one of your number overnight. So now both of the
8 alternates are moved in the principal seats, and so you are the
9 last of the alternate. We don't have anymore so everybody, from
10 now on out, please try to stay well so we can conclude this
11 trial, which we anticipate doing today, or early tomorrow at the
12 latest.

13 We're still going through the presentation of evidence,
14 obviously, in this case, and the state is continuing to offer
15 evidence and testimony in this regard. Mr. Evans.

16 ATTORNEY EVANS: Thank you, Your Honor. The state calls
17 Nicholas Batalis.

18 THE COURT: Dr. Batalis, please come forward and be sworn.

19 NICHOLAS I. BATALIS,
20 having first been duly sworn, was examined and testified as
21 follows:

22 CLERK OF COURT: If you'll state your full name. And spell
23 your last name, please.

24 THE WITNESS: My name is Nicholas I. Batalis, B-a-t-a-l-i-s.
25

DIRECT EXAMINATION

BY ATTORNEY EVANS:

Q Dr. Batalis, where do you work, sir?

A I work at the Medical University of South Carolina down in Charleston.

Q And what do you do there?

A I'm employed there as a forensic pathologist.

Q So that's a doctor?

A Yes, it is.

Q Could you explain what kind of a doctor is a forensic pathologist.

A Sure. Can I take it one step back? Pathology is a subspecialty of medicine that deals with the study and diagnosis of disease. So a general pathologist would be the individual that, if a surgeon or a physician takes a biopsy or takes out a tumor, they would send it to the pathologist to examine it to determine whether it's cancer and that sort of thing.

A pathologist also oversees the clinical laboratory. So if you have any blood drawn, the pathologist would oversee the laboratory that performs that sort of work.

Forensic pathology is a subsection of pathology that deals with the legal aspects of medicine, specifically performing autopsies to determine a cause and manner of death.

Q And what kind of training do you have to go through to become a forensic pathologist?

1 A To become a forensic pathologist, I first completed college
2 at Butler University in Indianapolis, Indiana. I then went on to
3 medical school at the Indiana University School of Medicine,
4 completed my medical degree there. After completing medical
5 school I then went on to residency training, so training in
6 general pathology at the Medical University of South Carolina.
7 At the end of those four years, I took a test to become certified
8 nationally in the practice of general pathology. Following that
9 residency period, there was an extra one year of what we call
10 fellowship training, so that would be specialty training
11 specifically within forensic pathology. And I did that in
12 Dallas, Texas. And then at the end of that year of fellowship
13 training, then again passed another examination to become
14 nationally board certified.

15 So that was my route to forensic pathology.

16 Q And do you do continuing education like the lawyers do and
17 other doctors?

18 A Yes. So both the State and the American Board of Pathology
19 who certify us have different requirements. But anywhere, at
20 least, 20 to 40 hours per year of education that we have to
21 continue to get.

22 Q How long have you been practicing this medicine at MUSC?

23 A July 1st will be 15 years.

24 Q Have you ever testified in court before?

25 A I have.

1 Q How many times, approximately?

2 A I believe it was twice in Texas, twice in North Carolina,
3 and probably somewhere between 75 and 100 times here in South
4 Carolina.

5 Q And have you been qualified as an expert on those occasions?

6 A I believe every time I've been qualified as an expert in
7 forensic pathology. Yes.

8 ATTORNEY EVANS: Your Honor, the state would tender
9 Dr. Batalis as an expert in the field of forensic pathology.

10 THE COURT: Mr. Mathews, voir dire?

11 ATTORNEY MATHEWS: We consent.

12 THE COURT: All right. Dr. Batalis is qualified as an
13 expert in forensic pathology.

14 ATTORNEY EVANS: Thank you, Your Honor.

15 Q Doctor, how did you become involved in this case?

16 A I became involved in this case, as one of the pathologists
17 at MUSC, we perform autopsies for a number counties across the
18 state. And so with this one, the coroner's office here in
19 Colleton notified us that they had a decedent that they wanted us
20 to examine and perform an autopsy on.

21 Q And why would the coroner ask you that?

22 A So coroners in the state of South Carolina are an elected
23 position. And I don't believe there are any physicians. None of
24 them are forensic pathologists. So the coroner is in charge
25 investigating the deaths in the county, determining which bodies

1 need further examination. And when it's determined they do need
2 an examination, they send it to MUSC where we have the physicians
3 that can perform those services.

4 Q Who was the decedent that you examined?

5 A The decedent in this case was Lennon Poland.

6 Q When did he pass?

7 A He died on July 24th, 2018.

8 Q And what did you find when you encountered his remains?

9 A So the major finding of the autopsy of Mr. Poland was a
10 single gunshot wound to the back of the head.

11 Q What did that indicate to you when you kept examining him?

12 A I'm sorry, could you repeat that?

13 Q What did you find that you continued to examine? Let me
14 back up. Did you notice that immediately upon seeing him?

15 A Yes. So the first thing we do as part of our autopsy exam
16 is what we call the external examination. We bring them into our
17 autopsy suite, we photograph the body from head to toe, and then
18 examine it for basic stuff like height and weight and tattoos and
19 sort of thing, and then also evidence of natural disease and
20 trama.

21 So in the process of that, going over the body, we
22 identified a gunshot wound.

23 Q Doctor, do you memorialize your findings in any kind of
24 reports or evidence?

25 A I did.

1 Q What sort of things do you do when you're performing an
2 autopsy to keep a record?

3 A Sure. So during the performance of an autopsy we are taking
4 notes continuously as we are going through. Again, as I'm making
5 notes about the height, weight and hair color, any sort of
6 findings, I'll take notes on a diagram.

7 Then as we move into the next phase of the autopsy, we make
8 surgical type incisions in the body to expose the internal
9 organs. And we remove them, one by one, to examine them, again,
10 for natural disease or evidence of trauma. So again, we would
11 have another note sheet where we're taking down notes about the
12 internal examination.

13 Then at the conclusion, I'll sit down and go over those
14 notes and dictate a final autopsy report.

15 Q How about any photographs? Do you take those, generally?

16 A Yes. Photographs are taken throughout the autopsy,
17 particularly around the outside of the body.

18 Q Would it help you to testify for the jury and explain what
19 you did to have some of those photos with you?

20 A I believe it would.

21 Q Okay.

22 (WHEREUPON, State's Exhibits 36, 37, 38 and 39 are marked
23 for identification.)

24 ATTORNEY EVANS: May I approach the witness, Mr. Your Honor?

25 THE COURT: Yes, sir.

1 Q Doctor, I'm going to pass to you what has been previously
2 marked as State's Exhibits 36, 37, 38 and 39. And I wonder if
3 you could tell the jury what those are, sir.

4 A So State's Exhibit 36 is a photograph of the X-ray we
5 performed during the course of the autopsy. Once we identify
6 that there was a gunshot wound we perform X-rays to identify any
7 remaining bullets. So State's Exhibit 36 is a photograph of the
8 X-ray which shows a bullet that is retained in the right side of
9 the neck.

10 State's Exhibit 37 and 38 are both photographs of the single
11 gunshot wound to the back of the head, to the back right side of
12 the head. State's Exhibit 37 is a little bit further away to
13 show you better that orientation about exactly where the wound is
14 located. Thirty-eight is a more focused-in version that shows
15 more of the characteristics of the wound itself.

16 And then State's Exhibit 39 is a photograph of the bullet
17 after I had removed it from the decedent, cleaned it up and took
18 a photograph of the bullet itself.

19 Q And did you take these photographs?

20 A I did.

21 Q Do they fairly and accurately depict everything that they're
22 intended to?

23 A Yes, they do.

24 ATTORNEY EVANS: Your Honor, the state would move these
25 photographs into evidence as State's 36 through 39.

1 THE COURT: Mr. Mathews?

2 ATTORNEY MATHEWS: Without objection, Your Honor.

3 THE COURT: Thank you. Thirty-six through 39 are now
4 admitted.

5 (WHEREUPON, State's Exhibits 36, 37, 38 and 39 are admitted
6 into the record.)

7 ATTORNEY EVANS: May I publish to the jury?

8 THE COURT: Yes, sir.

9 Q Doctor, I'm going to put them up on the overhead. Would you
10 prefer to come down here and point to them yourself?

11 A Sure.

12 Q You'll just have to speak up a little extra, you know, with
13 the mask on. This is your first time testifying since COVID;
14 right?

15 A I had a couple of them in November and December when we
16 briefly re-started.

17 Q We'll start with 36. And I'd just like you to walk the jury
18 through what these photos show. And let me know when you are
19 done.

20 THE COURT: Doctor, as much as possible while you're
21 speaking, if you can speak facing the general direction of the
22 court reporter and the jury, it would be helpful.

23 A Yes, sir. This is State's Exhibit 36. This is a photograph
24 of the X-ray that we took the body before, in the beginning part
25 of the autopsy. So the decedent is on the table. You can see

1 the L, the marker saying that would be the left side of the head.
2 Obviously the other side would be the right side of the head.
3 And here you can see this bright, white object. That would be at
4 the right side of the neck here. That was the bullet that was
5 retained within the body.

6 Q That would be the same bullet that you eventually removed
7 that we'll see in a few photos?

8 A Correct.

9 Q No. 37?

10 A So State's Exhibit 37 again is a photograph of the back of
11 the head. Again, it's a little bit further away so we can see
12 exactly where the gunshot wound is. You can see here on the back
13 right side of the head, behind the right ear.

14 So another here is a case number, this is the case, and a
15 ruler to scale. And we can see the circular entrance wound here
16 that was, again, where the bullet entered. And again in this
17 photograph there's also a little bit of a bruise over here on the
18 right side of the neck. So the bullet was discovered somewhere
19 in that general area over there.

20 Q And now we've got it in a little better context. So quickly
21 describe for the jury what you see here.

22 A Sure. So we're looking at the back right side of the head.
23 This is the right ear here, and here's our ruler with the case
24 number. And again, this is the gunshot entrance wound right
25 here. And again, this little tattoo here, there's a bruise on

1 the neck. The bullet that we saw in the previous exhibit was
2 recovered deep in the surface of that general area.

3 Q No. 38?

4 A So No. 38 again is a more focused-in version of the picture
5 that we just saw that show the characteristics of the wound. So
6 again, this showing that this is, again, a circular defect which
7 again is just, as a pathologist, tells us that it's a gunshot
8 entrance wound.

9 Here you can see, a little bit towards this side of the
10 wound, there's a little bit, kind of, an abrasion to that side of
11 it. So that helps us determine kind of the pathway of the
12 bullet.

13 So if the bullet strikes the skin kind of going straight in
14 you will see a very, very thin abrasion around the side. The
15 fact that we see a little bit more off to this side tells us that
16 bullet was kind of coming from the decedent's left side a little
17 bit and traveling toward the right, which also makes sense with
18 where we saw the entrance wound and where we recovered the
19 bullet.

20 Q And No. 39?

21 A So this is the bullet that we recovered from the decedent.
22 So we had removed the bullet very carefully, cleaned it up and
23 took a picture, again with the scale and a label.

24 Q All right. Thank you. So, doctor, after you completed the
25 sort-of-outside analysis, what do you do generally in an autopsy,

1 and specifically in this autopsy?

2 A Sure. So after performing that external examination, again
3 we move to the internal exam where we make our surgical type
4 incisions to examine the organs one by one. So we basically make
5 two incisions, one on the chest and abdomen to expose those
6 organs, and then again one on the top of the head where we can
7 then deflect the scalp to examine the brain.

8 Q And did you do that in this case?

9 A We did.

10 Q Is that how you located the bullet and eventually removed
11 it?

12 A Correct.

13 Q What did you find as you, you know, as you traced the path
14 and eventually removed the bullet?

15 A So as we traced the pathway through, it became evident that
16 after passing through the skin on the back of the scalp where we
17 saw on the photograph, the bullet then struck the skull, so it
18 would be kind of, the very back part of the skull is, the
19 occipital bone.

20 The bullet, again, caused damaged to the skull. Pieces of
21 the skull fragmented inward towards the brain. And then the
22 bullet basically slightly deflected off of the skull and then
23 continued down into the neck where we recovered it.

24 Then when we removed the brain, there was significant
25 swelling and bleeding in the lower part of the brain right where

1 the bullet had fractured the skull and, of course, expelled
2 fragments into the brain tissue.

3 Q Specifically how does that cause someone's death? I think
4 we all know when you get shot it's not good, but what's the
5 actual medical nature of his death?

6 A Sure. So it can vary from person to person. And again,
7 depending what organ and even what, in this case, what part of
8 the brain. So in this case it hit the cerebellum, so the lower
9 part of the brain that's very important for breathing, for a lot
10 of coordination and that sort of thing.

11 This decedent actually was able to survive for, I believe,
12 about nine days after the case because, as I mentioned, it didn't
13 go through and through, straight through that cerebellum, which
14 could have caused instantaneous death.

15 In this case what happened, again as it fractured and caused
16 damage to the brain, the brain would have swollen up, causing it
17 to dysfunction. Again, as it starts to swell up, things kind of
18 get knocked aside, and then you can get bleeding from damaged
19 blood vessels and such, as well. So it's just basically swelling
20 and deterioration of the brain that was damaged during the
21 gunshot wound.

22 Q So it's possible that he could have died much sooner with
23 the same, the same bullet if it had just been fired in a slightly
24 different direction?

25 A Sure. In this case, as we talked about it, it kind of moved

1 slightly from his left to his right. If it would have gone more
2 kind of straightforward it could have gone straight through the
3 cerebellum and he could have died within seconds.

4 Q Would it have been possible for him to survive this if it
5 was yet another direction that the bullet traveled?

6 A Yes. If the bullet was, instead of going more midline, if
7 it went more to the side, it's possible that it could have,
8 again, just kind of deflected off the skull if it went a little
9 more to the right, it's possible it could have passed through the
10 muscle and caused some mobile bleeding but not cause death.

11 Q Did you examine him for any other health problems?

12 A Yep. So during the course of the autopsy, again we not only
13 identify the cause of death, but look at the other organs. In
14 this case he was an organ and tissue donor, so several of his
15 organs were not present at the autopsy, as they were placed into
16 other individuals, fortunately. But then we did examine the
17 remaining organs that he had.

18 Q Was there anything else that caused you concern that you
19 found?

20 A No. The lungs certainly appeared like he had pneumonia,
21 which is something that is not surprising because he had been on
22 ventilator support for nine days, so you're not getting the same
23 deep breaths and such that you need. So he had some pneumonia,
24 which would be directly attributable to the gunshot wound. But
25 otherwise, everything looked perfectly normal for a 24-year old.

1 Q So what caused his death? What's the conclusion?

2 A His cause of death was directly related to the gunshot wound
3 to the head. And specifically again, the damage to the brain
4 itself and then the complications from that, including the
5 pneumonia.

6 Q Is that your opinion to a reasonable degree of medical
7 certainty?

8 A It is.

9 Q Oh, I did forget something. When you were examining the
10 entrance wound, which is -- there was no exit; correct?

11 A Correct.

12 Q What did you notice, or notice was missing, if anything?
13 Did you see any soot or stippling?

14 A We did not see that.

15 Q Okay. And what does that mean when you do find it?

16 A Sure. So sometimes it's possible for, as I mentioned, when
17 we see a gunshot wound we can determine which way it's traveling
18 based on the characteristic of the wounds.

19 Sometimes we can also tell the range of fire, so how far the
20 barrel of the gun was from the body when it was fired. For that,
21 there's two features we can look at.

22 The first is soot. So soot is basically the burned-off
23 gunpowder that shoots out the gun along with the bullet when the
24 gun is fired, so it's basically a cloud of smoke or cloud of
25 dirt. That will travel anywhere from six inches to a foot,

1 depending on the weapon and type of ammunition. That can also be
2 wiped away, though. So again, it's just kind of a cloud of
3 smoke. But if you see that, you can definitely say the gun would
4 have been six to twelve inches when it was fired.

5 In this case we did not see that, which means it was either
6 more than six to twelve inches or that soot had been washed away.

7 The other thing that we look for its stippling. So
8 stippling is little scrapes or abrasions that we'll see on the
9 skin. And that's also when the gun is fired, you get that cloud
10 of soot or smoke, but you also have like the gunpowder that is
11 still burning or they don't burn, and so they'll fly through the
12 air, strike the skin and cause small little scrapes that we call
13 stippling. That will travel a little bit further, so that can go
14 out two to four feet, again depending on the weapon and
15 ammunition.

16 So, again, in this case we did not see that. So that would
17 tell us one of two things. Either the barrel of the gun was at
18 least two to four feet from the body when it was fired, or that
19 there could have been something in between. So if he would have
20 had a sweatshirt, if there was just some sort of object between
21 the gun that could absorb gunpowder so it would not have struck
22 the skin.

23 Q Okay. Is there anything that can -- is there is anything
24 that can cause -- you said soot can be wiped away.

25 A Correct.

1 Q And he had been there, he had been in some form, some
2 hospital or other, for nine days between the shot and his
3 passing. Is that right?

4 A Correct.

5 Q Could the soot have been wiped away during that nine days?

6 A It certainly could have.

7 Q What about stippling?

8 A Stippling, again, this is actual true injuries to the skin,
9 basically small abrasions. Those cannot be wiped away. They can
10 heal over time. Nine days, I'd probably still expect to see some
11 evidence of it, but it could be possible that there could have
12 been some stippling that, over the course of the nine days, he
13 was able to heal if it was fairly focal and fairly sparse.

14 Q You can't say either way. All you can say is you didn't see
15 any of them?

16 A Right. I can say at the time of the autopsy it wasn't
17 there. So it was either further than four feet, there was
18 something in the way, or he had healed in time.

19 Q I saw that in the picture you had to shave his head a little
20 bit to photograph the wound.

21 A Yes. We do that, again, so we can see the characteristics
22 of the wound itself and, again, looking at surrounding skin where
23 we would see the stippling and soot that would be deposited.

24 Q Could the hair have been something that got in the way of
25 the soot or prevented stippling?

1 A That's possible, as well.

2 Q Thank you. Those all the questions I have. Please answer
3 any questions Mr. Mathews has.

4 THE COURT: Mr. Mathews, cross-examine?

5 **CROSS-EXAMINATION**

6 BY ATTORNEY MATHEWS:

7 Q Morning, Dr. Batalis. How are you today?

8 A Good morning.

9 Q Are you well?

10 A I'm doing well, thank you.

11 Q I hope your trip wasn't too bad.

12 A No.

13 Q I asked you beforehand and I'm going to ask you again, what
14 is your favorite pathology show?

15 A Yeah. I don't have much time for TV nowadays, but back in
16 the back I would watch NCI shows.

17 Q Did you ever watch NCIS?

18 A I haven't watched that one.

19 Q Okay. Among the things, just to follow up on what Mr. Evans
20 was asking, whenever you have a gunshot wound to the head, unless
21 somebody has a shaved head you always have to shave their hair;
22 right?

23 A Correct.

24 Q And has that been a serious impediment to finding stippling
25 in the past?

1 A Generally not.

2 Q So having long hair like mine, my COVID hair, that is not
3 normally going to be an impediment to finding stippling if it's
4 there?

5 A No. But certainly the longer and thicker the hair would be,
6 would be more likely to be impediment than somebody who is thin
7 or bald.

8 Q Thing hair is less an impediment than thick hair?

9 A Correct.

10 Q One of the things that you look for, I guess, when you did
11 your external examination, was tattoos. Did you find any
12 tattoos?

13 A Yes, we did.

14 Q What were the tattoos that you saw on Mr. Poland?

15 A So he had a number of tattoos. So in those situations, in
16 the report -- I'll just detail a couple of them. One, bred
17 loyalty above his right eye. He also had the name Brittany on
18 the left side of the neck. And then I can consult my diagram and
19 see if I can ---

20 Q That's good enough. Okay. So loyalty and Brittany were the
21 two that you noted outright?

22 A Correct.

23 Q All right. You noted that the wound appeared, the bullet
24 appeared, to enter from midline, the middle part of the skull, a
25 little bit to the right of midline to the base, or the middle, of

1 the skull?

2 A Correct, yeah, at two inches right midline on the backside
3 there.

4 Q And it moved outwardly more right?

5 A Moved a little bit. For the most part, the bullet was
6 traveling from back to front. It moved, again, very slightly
7 from more right, and then also very slightly downward.

8 Q Okay. So based on the stippling, if that's all you're
9 looking at, unless there's something blocking it, there was
10 nothing to suggest that the gun was fired less than four feet
11 away?

12 A I had no soot or stippling on the body, which would be the
13 only way to say it was within that range. Right.

14 Q It could have been perhaps, but there was no evidence to
15 suggest that it was fired within four feet?

16 A Correct.

17 Q Okay. And it was moving what degree, how much was it moving
18 from left to right, and how extreme?

19 A You know, I don't really get into specific angles, but very,
20 very slightly. So, you know, if this was straightforward towards
21 you ---

22 Q Yes.

23 A --- it was just a little bit to the right and a little bit
24 downward. So, for the most part, pretty much the vast majority,
25 straight from back to front, just a little variation downward and

1 to the right.

2 Q So this would have been somebody standing pretty much
3 directly behind from somebody, probably from what you could tell,
4 probably not within four feet?

5 A There could be different positions, but the barrel of the
6 gun would have been behind the decedent's right side of the head
7 when it was fired. And again, without soot or stippling, I think
8 we've covered it, I can't say. It's possible it was within four
9 feet, but I don't have any evidence to say that it was.

10 Q But it was more or less, obviously at the time the bullet
11 was fired Mr. Poland would have been -- would not have been able
12 to see who shot him?

13 A Presumably not based on the location of the entrance wound
14 in the back right side of the head. That being said, I don't
15 know before or after if he could have seen anybody.

16 Q Sure. Sure. What's a contact wound?

17 A So A contact gunshot wound would be where the, as I
18 mentioned, the gun is actually pressed up against the skin itself
19 when it was fired.

20 Q And if that had happened you certainly would have had
21 evidence of that?

22 A Yes. When that happens typically we'll see what we call
23 muzzle prints where the gun is smashed up against the skin. It
24 will cause some bruising or scraping on the skin. Or that same
25 soot we talked about, instead of being on the skin, if it's

1 pressed up against it we see it within the wound track. So this
2 is not a contact wound.

3 Q And there's no indication, again, that it was -- since it
4 wasn't a great thing, based on what you saw, it's extremely
5 unlikely that the bullet would have been coming from the right to
6 the left?

7 A Correct.

8 ATTORNEY MATHEWS: Nothing further, Your Honor.

9 THE COURT: Thank you. Redirect, Mr. Evans?

10 ATTORNEY EVANS: Briefly, Your Honor.

11 **REDIRECT EXAMINATION**

12 BY ATTORNEY EVANS:

13 Q Doctor, you testified just now for Mr. Mathews that there
14 was nothing to suggest that the gun fired less than four feet
15 away?

16 A Correct.

17 Q But there's also no evidence to prove that it fired at least
18 four feet away?

19 A Correct.

20 Q And you also testified that presumably someone with a
21 gunshot wound to the back of the head would not have been able to
22 see. He doesn't have eyes in the back of his head.

23 A Correct.

24 Q But you also testified that you can't say where he was
25 looking before or after he was shot.

1 A Right. All I can say is the relationship of the gun to the
2 body when it was fired.

3 ATTORNEY EVANS: That's all I have, Your Honor.

4 THE COURT: Thank you, doctor. You can step down.

5 THE WITNESS: Thank you, Your Honor.

6 ATTORNEY EVANS: May he be excused to head on to Beaufort,
7 Judge?

8 THE COURT: Yes, sir.

9 Mr. Evans.

10 ATTORNEY EVANS: The state calls Edwin McCord.

11 THE COURT: Come forward, Mr. McCord, please, and be sworn.

12 THE WITNESS: I'm not touching the Bible.

13 EDWIN McCORD,

14 having first been duly sworn, was examined and testified as
15 follows:

16 THE WITNESS: (Nods head.) You're trying to make me
17 testify.

18 CLERK OF COURT: State your name for the record.

19 THE WITNESS: My name's Edwin McCord.

20 **DIRECT EXAMINATION**

21 BY ATTORNEY EVANS:

22 Q Mr. McCord, would you please spell your last name for the
23 court reporter.

24 A M-c-C-o-r-d.

25 Q Mr. McCord, where do you live?

1 A 195 Lafayette Lane.

2 Q Here in Walterboro?

3 A Walterboro.

4 Q Do you know Jermaine White?

5 A Yes, I do. That's my cousin.

6 Q Is he sitting in the courtroom today?

7 A Yes, he is.

8 Q Would you identify him by something he's wearing and where

9 he's sitting?

10 A I can identify him by his head. He's sitting over there.

11 Q The gentleman sitting next to Mr. Mathews, the defendant?

12 A Yeah.

13 Q Do you remember the events of July 15th, 2018?

14 A Now, why do y'all keep asking me these same questions? I

15 already told y'all I'm not testifying. You want me to help you

16 win your case.

17 Q I'm going to repeat my question, Mr. McCord. Do you

18 remember the events of July 15th, 2018?

19 A Yeah, I remember from yesterday.

20 Q Okay. What happened on July 15th, 2018?

21 A What you seen on the film.

22 Q I'm asking you, sir.

23 A Why do you want me to help you win your case? You ain't

24 even got a case, that's why y'all try to get me to testify. I'm

25 not going to do that. I warned you time and time again, I'm not

1 testifying.

2 THE COURT: Mr. McCord.

3 A Yes, sir.

4 THE COURT: We went through this yesterday.

5 A Yes, sir.

6 THE COURT: And we tried to figure out a way to keep you
7 from getting back here today, but under the rules we can't figure
8 out any way to do what we need to do.

9 A Well, I cannot help him win his case. I told him I'm not
10 testifying, and I'm sticking to that.

11 THE COURT: Well, I'm directing you to answer the questions
12 that he asks. I can't tell you what the answer's going to be
13 because you're under oath, you know what they're going to be.

14 All I can tell you is, under our law, if a witness has
15 knowledge about the facts of the case or anything else and that
16 might be helpful to one side or the other in the trial of a case,
17 that witness has to testify about those facts that he has direct
18 knowledge of unless his testimony would expose him to criminal
19 penalty. For example, you have to go to jail for something that
20 you said. You are not under any criminal jeopardy in this regard
21 for anything that you say.

22 However, if you refuse the Court's directive to testify,
23 that is answer the questions, whatever they are, then you can be
24 held in contempt and be incarcerated for failing to abide by the
25 Court's instructions. Now, I don't want to do that. I've got

1 all I can do trying this case without having to deal with putting
2 you in jail for failing to abide by the Court's instructions to
3 answer the questions.

4 So I'm asking you, if you know the answer to the question,
5 answer the question truthfully. That's all that I can tell you
6 in that regard, I'm directing you to do. Thank you.

7 Q Mr. McCord, do you remember the events of July 15th, 2018?

8 A Yes. I remember it from yesterday.

9 Q Where were you in the afternoon of July 15th, 2018?

10 A I was sitting there behind on the bucket.

11 Q Sitting on the bucket?

12 A I was sitting in the chair behind Williams Seafood.

13 Q Behind Williams Seafood, in Colleton County?

14 A Yes.

15 Q Was Lennon Poland there?

16 A Who?

17 Q Was a young man there?

18 A Yes.

19 Q What happened to him?

20 A What happened to him? He got shot.

21 Q He got shot?

22 A Yep.

23 Q Did you see him get shot?

24 A I was sitting next to him.

25 Q And who did you see shoot him?

1 A Jermaine.

2 Q Jermaine White?

3 A Yes.

4 Q Did you tell that to the police?

5 A Yes.

6 Q How did Jermaine White shoot him?

7 A With a gun.

8 Q With a gun. Where did he come from?

9 A Came out of the woods, I guess. I didn't know where he was

10 coming from. You the only thing I knew, I heard a shot.

11 Q You heard the shot?

12 A Yes.

13 Q Or did you see the shot?

14 A What?

15 Q Did you just hear it or did you see it and hear it?

16 A I seen a shot, I heard the shot. I don't know, I don't know

17 if he did it or not, but I heard the shot.

18 Q Well, A moment ago, sir, you testified that you saw Jermaine

19 White shoot him. So I'm afraid I need clarification.

20 A Yes, I seen him shoot him.

21 Q You saw Mr. White, your cousin, the defendant, shoot him?

22 A Yes.

23 Q Where'd you go after that?

24 A Where'd I go? I left.

25 Q And did you come back?

1 A No.

2 Q Why did you leave?

3 A I'm not going to be killed.

4 Q Were you afraid for your own safety?

5 A Yeah, I was afraid for my own safety.

6 Q Did you see Mr. White leave?

7 A I didn't see him stand around after the shooting.

8 Q Did you see him in a gold car?

9 A Yeah, earlier that day. Earlier that morning, yeah.

10 Q How about that afternoon?

11 A No. That afternoon I didn't see him because I wasn't out

12 there.

13 ATTORNEY EVANS: Beg the Court's indulgence.

14 THE COURT: All right.

15 Q Mr. White, do you recall what hand -- excuse me.

16 Mr. McCord, do you recall what hand Mr. White was holding his gun

17 in?

18 A No, I can't recall that.

19 Q Did you tell the Waltherboro Police Department that he was

20 holding it in his right hand?

21 A I can't remember anything.

22 Q You can't remember?

23 A No.

24 Q All right. But it was this man here, Jermaine White, who

25 shot the boy on Francis Street ---

1 A Uh-huh (yes).

2 Q --- your cousin?

3 A Yes.

4 Q Those are all the questions I have. Please answer any
5 questions Mr. Mathews may have for you.

6 A All right.

7 THE COURT: Mr. Mathews, you may cross-examine.

8 **CROSS-EXAMINATION**

9 BY ATTORNEY MATHEWS:

10 Q Mr. McCord clearly you do not want to be here; is that
11 right?

12 A Right.

13 Q I think you gave an interview with Detective Kinard some
14 time ago; is that right?

15 A Right.

16 Q And I think in that interview you said you saw somebody come
17 up and grab this guy with his left hand around his neck, and take
18 his gun and shoot him like that. Is that what you told him?

19 A Yes, sir.

20 Q Holding his neck with his left hand and using his right hand
21 to shoot him. Right?

22 A (Nods.)

23 Q And you were sitting in a stool behind this; right?

24 A Right.

25 Q So whoever did the shooting was between you and the fellow

- 1 that got shot?
- 2 A Right.
- 3 Q And whoever did this was not driving at that time; is that
- 4 right?
- 5 A No.
- 6 Q Not in a tan car, not in a gold car, not in a car at all; on
- 7 foot?
- 8 A No. He was on foot.
- 9 Q All right. Now, that's a place during that time and now
- 10 probably still where people drink and use drugs; right?
- 11 A Right.
- 12 Q And was pretty much everybody there drinking?
- 13 A Yep.
- 14 Q And using drugs?
- 15 A Yeah.
- 16 Q Including you, too?
- 17 A Yeah, including me.
- 18 Q How much had you been drinking at that time?
- 19 A I don't drink. I use crack. I don't drink.
- 20 Q You use crack, okay. How much crack had you smoked prior to
- 21 that?
- 22 A I wasn't counting.
- 23 Q You were tapped out?
- 24 A I wasn't counting how much I was smoking.
- 25 Q You weren't counting, but a good bit?

1 A Right.

2 Q From whatever you saw, was there any, were there any words
3 exchanged or anything like that?

4 A No, there was no words.

5 Q Any indication of what this was about?

6 A Nope. I haven't the foggiest idea.

7 Q So whoever did this walked from behind you and had their
8 back to you and was firing?

9 A Right.

10 Q Did somebody else on scene tell you that Jermaine had -- not
11 that you said at first, but did somebody else on scene tell you
12 it was Jermaine?

13 A There was plenty of people out there to see it.

14 Q Plenty of people out there that told that to you?

15 A Yeah.

16 Q And, okay. But he wasn't, the fellow that got shot, he
17 didn't see who shot him; did he?

18 A No.

19 Q After the shooting you say somebody walked in front of you
20 with their back to you.

21 A Right.

22 Q Did the shooting like this, like I said, with arm around the
23 neck and the other thing. And at that point you ran off?

24 A Yeah, I ran off.

25 Q All right. So at that point the police said it's Jermaine,

1 right, told you that before you told them. Is that right?

2 A Uh-huh.

3 Q All right. And then they pulled you in to interview you.

4 And based on what you heard from other people -- and you saw

5 somebody do the shooting, but their back was to you. Right?

6 A Right.

7 Q And based on what they told you, you said it was Jermaine?

8 A Yeah.

9 Q Okay. And all right. Was Mark McQune out there?

10 A Yes.

11 Q Okay. Was he one of the people that told you that Jermaine

12 did this?

13 A Right. He was one that told the police first.

14 Q And like I said, as far as I know, you never got a

15 particularly good look, you took out of there right then?

16 A Right.

17 Q Do you know Jermaine's brother, Bam?

18 A Yes, I know both of them.

19 Q Also called Desi?

20 A Yep.

21 Q They look kind of a like?

22 A Yeah.

23 Q Could it have been Bam that did this?

24 A I couldn't tell you.

25 Q Okay. But it's easy to mistake Bam from Desi?

1 A Yeah.

2 Q All right.

3 ATTORNEY MATHEWS: All right. I don't have any further
4 questions, Your Honor.

5 THE COURT: Thank you. Redirect Mr. Evans?

6 ATTORNEY EVANS: Thank you, Your Honor.

7 THE COURT: Sir.

8 **REDIRECT EXAMINATION**

9 BY ATTORNEY EVANS:

10 Q Mr. McCord, you Don't use crack cocaine anymore; do you?

11 A No.

12 Q You've had some health problems since then?

13 A Yeah.

14 Q Like what?

15 A I've got a bad heart. And I had two light strokes.

16 Q Mr. Mathews asked you if you had been drinking or using
17 substances like crack or alcohol. Had Mr. White been drinking?

18 A Yes.

19 Q Did you tell the police that Desi was not there?

20 A No. I can't recall that.

21 Q You can't recall or you did not say?

22 A I can't recall it.

23 Q Did you give a statement to Mr. Kinard on July 26th at his
24 office?

25 A Yes.

1 Q And did you, at that time, tell them that Desi was not
2 there?

3 A I might have then, but I can't that time.

4 Q But you did tell him that Jermaine White shot Lennon Poland?

5 A Yes.

6 Q And that you saw it?

7 A Yes.

8 Q And that's your testimony today?

9 A Yes.

10 ATTORNEY EVANS: Thank you.

11 THE WITNESS: All right.

12 THE COURT: Thank you, Mr. McCord. You can step down.

13 Thank you for coming.

14 THE WITNESS: All right.

15 THE COURT: You're free to go. Yes, sir.

16 THE WITNESS: I can go back home?

17 THE COURT: You can go back.

18 THE WITNESS: I need somebody to take me. I need somebody
19 to take me back home.

20 ATTORNEY EVANS: We're trying to make sure he's okay.

21 THE WITNESS: Somebody get me home.

22 ATTORNEY EVANS: Judge, I think we have one more witness.

23 But I think this would be a good time, we do have two
24 stipulations Mr. Mathews and I have signed. And I'll pass those
25 up for you to read, I think, since they're joint.

1 (WHEREUPON, Court's Exhibit 6 is marked for identification
2 and admitted into the record.)

3 THE COURT: Okay. Do you want to publish it to the jury at
4 this time?

5 ATTORNEY EVANS: Please, thank you. Thank you.

6 STIPULATIONS

7 THE COURT: Ladies and gentlemen, the lawyers have agreed on
8 certain stipulations as to testimony. That means because they
9 have agreed, they don't have to call the witnesses to tell you
10 these things, and it saves some time getting these witnesses away
11 from where they're supposed to be and getting them in here to
12 testify, and also save the expense of these folks, because
13 somebody would have to testify before you.

14 The state and the defense agree to the following
15 stipulations of fact: Lennon Lee Poland was transported by EMS
16 from Walterboro to Trident Medical Center in North Charleston,
17 Charleston County, where he died on July 24th, 2018.

18 And the second stipulation is the remains examined by
19 Dr. Batalis at the medical university were those of Lennon Lee
20 Poland.

21 Those are the agreed-upon stipulations. That means that no
22 additional proof or evidence is required in order to establish
23 those as facts in this case. Thank you.

24 ATTORNEY EVANS: Thank you, Your Honor. And then, Your
25 Honor, before the last witness, the only other thing is we will

1 be moving into evidence the Colleton County Fire and Rescue
2 report written by Joslyn Merideth. Mr. Mathews, I understand,
3 has no objection.

4 ATTORNEY MATHEWS: None, Your Honor.

5 ATTORNEY EVANS: Without objection, that will be State's
6 next. I think it's No. 40.

7 (WHEREUPON, State's Exhibit 40 is marked and admitted into
8 the record.)

9 ATTORNEY EVANS: And, Judge, I believe with that, the state
10 calls Michelle Eichenmiller.

11 MICHELLE EICHENMILLER,
12 having first been duly sworn, was examined and testified as
13 follows:

14 CLERK OF COURT: And if you'll say your name, and spell your
15 name, please, for the court reporter.

16 THE WITNESS: Do I need to leave my mask on?

17 CLERK OF COURT: You can take it off.

18 THE COURT: I almost insist on it so that I can hear.

19 THE WITNESS: My name is Michelle Eichenmiller,
20 E-i-c-h-e-n-m-i-l-l-e-r.

21 **DIRECT EXAMINATION**

22 BY ATTORNEY EVANS:

23 Q And, Ms. Eichenmiller, where do you work, ma'am?

24 A I work for the South Carolina Law Enforcement Division, also
25 known as SLED. I work in the forensic lab in the firearms

1 department.

2 Q And what's your title?

3 A Forensic firearms examiner.

4 Q And what does that entail? What do you do there?

5 A We receive items from any agency in the state of South
6 Carolina. I evaluate firearms evidence, so any firearms,
7 bullets, cartridge cases. We also do serial number restorations
8 and occasionally a toolmark case.

9 Q What sort of education and training did you have to go
10 through to get that job?

11 A In order to be a SLED agent you have to have a bachelor's
12 degree, so I have a bachelor's degree in biology. I also have a
13 master's in science and forensic science.

14 Q How about ongoing? Do you continue to train after you
15 start?

16 A We do. And also, to be a firearms examiner, none of those
17 degrees helped me. I had to become an apprentice underneath the
18 examiners that worked there already. So I had a two- to
19 three-year training program where I sat in their offices and
20 learned their job. I also did a lot of reading and microscopic
21 work on my own. At the end of the three- to four-year program,
22 I, took a test, they evaluated my results, and said I was free to
23 do casework on my own.

24 Q How long have you been doing this?

25 A Fifteen years.

1 Q Have you ever testified in court before?

2 A I have.

3 Q How many times, approximately?

4 A Approximately 100.

5 Q All in South Carolina?

6 A Yes.

7 Q Have you been qualified as an expert before?

8 A Yes.

9 Q In what field?

10 A Firearms identification.

11 ATTORNEY EVANS: Your Honor, the state would tender
12 Ms. Eichenmiller as an expert in the field of firearms
13 identification.

14 THE COURT: Mr. Mathews?

15 ATTORNEY MATHEWS: She's an expert.

16 THE COURT: Without objection, Ms. Eichenmiller is so
17 qualified.

18 Q Ms. Eichenmiller, how did you become involved in this case
19 that you're here for today?

20 A We received evidence in the case. I was assigned on the
21 case. And then I began working on it.

22 Q What did that work entail?

23 A I examined a firearm, a fired cartridge case and a fired
24 bullet.

25 Q I'm going to hand you some items that have already been

1 entered into evidence and ask if you can -- do you want some
2 gloves? Okay.

3 This is State's Exhibit 18, 22 and 23. Do you recognize
4 those?

5 A Whenever I receive evidence in a case I'll mark it with the
6 lab number and the item number and my initials. These are items
7 I received in this case.

8 Q So they've been marked with your initials, SLED number, and
9 you can tell where they came from?

10 A Yes.

11 (WHEREUPON, State's Exhibit 41 is marked for
12 identification.)

13 Q All right. And I'm going to ---

14 ATTORNEY EVANS: May I approach the witnesses, Your Honor?

15 THE COURT: Yes, sir.

16 Q --- hand you something which is not yet in evidence, and ask
17 if you recognize that.

18 A This is a fired bullet ID'd in this case. It's still sealed
19 with my initials and the date.

20 Q Would it have arrived to you sealed?

21 A It did.

22 Q What do you do if something arrives unsealed?

23 A Usually our log-in department won't let that evidence in the
24 building. They'll either call the department to fix it, or
25 they'll fix it downstairs. So by the time I get evidence, it's

1 sealed.

2 Q So no issue in this case of any kind of tampering or
3 anything like that?

4 A No.

5 Q And you seal it after you're done with it?

6 A I do.

7 Q And it appears with your name; true?

8 A Yes.

9 Q Is this the bullet that you examined in this case?

10 A Yes.

11 ATTORNEY EVANS: Your Honor, the state would move the bullet
12 into evidence as State's Exhibit 41.

13 THE COURT: Without objection?

14 ATTORNEY MATHEWS: Without objection.

15 THE COURT: Thank you, 41.

16 (WHEREUPON, State's Exhibit 41 is admitted into the record.)

17 Q Ms. Eichenmiller, could you walk the jury through your
18 findings, using the actual exhibits, where possible. Now, I will
19 tell you the gun is secured and still attached to the box for
20 safety.

21 A Okay. As I stated, in this case I received a fired
22 cartridge case, which is State's Exhibit 18. It's .25 auto
23 caliber. I also received the firearm, which is in the box. I
24 also received a magazine body. And then I received the fired
25 bullet.

1 Q What did you notice anything interesting about these items,
2 the gun, the magazine or the shell/projectile? Let's start with
3 the magazine. Did you notice anything unusual about it?

4 A Yes. The magazine was actually, was not functional. It
5 didn't have a spring or a follower, which is the part of the
6 magazine that would hold the cartridges in here. So as it was
7 received, it wouldn't hold any cartridges to help load the
8 firearm.

9 Q So what does that mean in technical terms?

10 A The firearm in this case is a Titan Tiger pistol. It's a
11 semiautomatic pistol. In order to keep firing, it needs
12 cartridges in the magazine. In this case there wouldn't have
13 been any cartridges in the magazine to fire this pistol.

14 Q Because the spring is missing?

15 A The spring and the follower. It's a little piece of plastic
16 that is just above the spring to hold the cartridges in and keep
17 feeding them into the firearm.

18 Q So is the magazine functional?

19 A No.

20 Q How about the gun, is the gun functional?

21 A The gun functioned as designed when I test fired it.

22 Q So how does a gun work without a magazine?

23 A In this case I used a laboratory supply magazine to shoot my
24 test fire. But if I didn't have a magazine, you can just have
25 one, you could hand-load one, into the chamber and pull the

1 trigger. So it would fire once.

2 Q And when you say test fire, I'm not sure we've gone over
3 that yet. How exactly do you conduct your research? Walk us
4 through the process.

5 A In a case where I receive a firearm and fired evidence, I
6 need to examine the firearm for safety. So I take pictures as I
7 receive it. I also document the condition of the firearm, any
8 safety, the name, the make, model, serial numbers. I also
9 document the bullet and the cartridge case on different
10 worksheets, calibers, numbers of lands and grooves, the head
11 slant information, which is the manufacture of the cartridge
12 case.

13 Then I'll test fire it in order to compare the firearm to
14 the fired evidence. So we have a vertical water tank at SLED.
15 It's two stories. You close the lid; you put the firearm muzzle
16 in there; shoot; the water slows it down so I get perfect
17 specimens to compare to any evidence I've received, and I know
18 they came from that firearm.

19 Q So you establish, I guess, a baseline, you might say? You
20 get something that you know is fired from this gun because you do
21 it yourself?

22 A Correct.

23 Q And then you compare it against what you've got?

24 A Correct.

25 Q What did you find when you did that comparison?

1 A I compared the fired bullets and the fired cartridge case to
2 the evidence I received, and I found enough matching individual
3 identifying characteristics of the cartridge case to say it was
4 fired by that firearm.

5 The bullet had some damage and wasn't marked as well as I
6 would like in order to form an opinion. We can give three
7 different opinions. One is it was fired by the firearm; it was
8 not fired by the firearm; or inconclusively means I couldn't
9 tell. In this case, the fired bullet was inconclusive with the
10 firearm. There wasn't enough markings on it, microscopic
11 individual marks, for me to form an opinion.

12 Q Is that an unusual outcome?

13 A No.

14 Q And when you receive a bullet from an autopsy what do you
15 sort of expect before you get into it?

16 A Usually some damage. Maybe some -- it could be a fragment
17 that we receive.

18 Q So just as the bullet causes damage to the person's body,
19 the person's body can damage the bullet at the same time?

20 A Correct.

21 Q And does that appear to be what happened here?

22 A Yeah. The bullet is slightly flattened on one side.

23 Q But the shell casing doesn't have those problems; correct?

24 A Correct.

25 Q And why is that?

1 A In this case it was ejected from the firearm, so it was
2 clear of any other damage.

3 Q And is that typical where you might get a result from a
4 casing but not from a bullet? Do you see that often?

5 A It happens for cartridge cases, as well, because sometimes
6 they're not as marked as well. It could be from damage to them,
7 as well, so ...

8 Q But no damage here that you ---

9 A No.

10 Q And you were able to determine that the shell casing in
11 evidence in this case was fired by the firearm also in evidence?

12 A Yes.

13 Q And is that your opinion to a reasonable degree of
14 scientific certainty?

15 A Yes.

16 Q But the bullet, you cannot say either way, you could not say
17 that it was not fired by the firearm in this case. Correct?

18 A Correct.

19 Q You said this is a .25. Is that a caliber that you see
20 often?

21 A Not too often.

22 Q It's sort of an unusual weapon?

23 A It's on the rarer side.

24 Q Those all the questions I have. Please answer any questions
25 Mr. Mathews has.

1 THE COURT: Mr. Mathews, cross-examine?

2 **CROSS-EXAMINATION**

3 BY ATTORNEY MATHEWS:

4 Q Agent Eichenmiller, how are you today?

5 A I'm fine.

6 Q Okay. Let's get to the issue of what rare means in terms of
7 guns/pistols. Would you say that, since Mr. Evans brought it up,
8 would you say that in the United States there are millions of .25
9 caliber guns out there?

10 A Probably.

11 Q And in South Carolina probably at least hundreds of
12 thousands?

13 A Probably.

14 Q And it's only rare because we have so many guns?

15 A I understood his question to mean it's rare in my casework.

16 Q I see.

17 A And I don't see .25s very often.

18 Q Okay. But there are at least hundreds of thousands in South
19 Carolina?

20 A Probably.

21 Q Okay. And, in fact, we have more guns in America than we
22 have actual people?

23 A That's what I've heard.

24 Q Now, when you look at something, what causes -- let me see
25 if I understand this correctly. You're actually going to help me

1 here. When a bullet is fired the hammer, or whatever, hits the
2 back of the bullet or whatever it is -- what do you call it?

3 A The cartridge.

4 Q The cartridge. And that causes a little explosion when the
5 hammer hits the pin, or whatever hits the back of the cartridge,
6 that creates an indentation at the back of it. Is that right?

7 A Yes, the firing pin impression.

8 Q Okay. And that's going to depend on the manufacturer of the
9 gun and the kind of the gun that it is; right? I mean, when a
10 gun is manufactured they don't stop, the manufacturer doesn't
11 stop, after each gun. It's an assembly line or whatever. So
12 every single gun of a particular brand and a particular year is
13 going to have the same hammer mark. Is it not?

14 A Not necessary.

15 Q Okay. Help me then. Why wouldn't it?

16 A During manufacturing marks can be left on the firing pin
17 that, from manufacturing, that no one really intended to be
18 there, maybe just a stray piece of metal. Also, after
19 manufacturing, depending on how the firearm was treated, was it
20 cleaned, was it used a lot or was it not used at all, could also
21 make more individual marks, which is what I evaluate to make that
22 opinion.

23 Q Okay. So if you get more than one -- if you've ever had a
24 case where you had more than one gun to examine from one bullet,
25 one slug ---

1 A Okay.

2 Q Have you ever had a case where you examined more than one
3 gun for a bullet?

4 A Yes.

5 Q How many times would you say you've done that?

6 A A good bit.

7 Q More than 500?

8 A That I received more than one gun to compare to a bullet?

9 Q Yes.

10 A Probably not that many.

11 Q But somewhere perhaps around the range of 500 times?

12 A I really have no good guess for that.

13 Q Okay, either way. All right. And how many times have you
14 ever had a case where you had -- no, not going to ask that.

15 All right. So on the back, what other factors go into --
16 you've got the pin. What other factors go into how you look at a
17 shell?

18 A I evaluate a cartridge case based on firing pin impressions
19 or breech face marks.

20 The breech face marks come when a tiny explosion happens.
21 It hits the back of the slide, which is where the firing pin
22 lives. But there's also the metal that's around the firing pin,
23 and that can leave marks, as well, that I evaluate.

24 Q Now, as far as the projectile itself, it travels through the
25 barrel of the gun, and there are things that are called scrapings

1 on the bullet, is that right, or striations, or whatever you want
2 to call it?

3 A Correct. This pistol had rifling in the barrel, which
4 causes the bullet to go in a straight pattern, kind of like a
5 quarterback throwing the football, it gives it a twist, but it
6 will go straight.

7 This firearm has six -- let me refer to my notes -- it has
8 six lands and grooves with a right-hand twist.

9 Q Are there any pistols or rifles or anything that you know of
10 that don't have grooves and twists?

11 A Shotguns, but usually not rifles.

12 Q Okay. So when you say this gun, every gun has the rifling
13 that you're talking about? Every pistol that fires a bullet, the
14 bullet -- if it didn't, then the bullet would go like this,
15 wobbly and all like. You talked about a football spiral. You
16 have the twist on it so that it travels straight and doesn't just
17 flail all over the place. Right?

18 A Correct.

19 Q So every bullet that you find is going to have lands and
20 grooves if it's in a condition where you can see it?

21 A Correct.

22 Q Actually, you've got a picture there, you've actually got
23 the bullet, and you can actually see. Are those, the lines that
24 you see on that bullet, are those the rifling from the bullet,
25 from the barrel of the gun?

1 A Yes. The lands and grooves are visible on the bullet to the
2 naked eye. What I evaluate on the bullet is microscopic marks
3 that I look at under magnification.

4 Q And I think you concluded as to the bullet that you couldn't
5 say whether it was this gun and perhaps it was another gun;
6 right?

7 A Correct. It was inconclusive.

8 Q All right. Who's your favorite football team since you
9 mentioned spiraling? Just wanted to ask.

10 A Cleveland Browns.

11 Q Poor thing.

12 ATTORNEY MATHEWS: No further questions.

13 THE COURT: Redirect?

14 ATTORNEY EVANS: Very briefly, Judge.

15 **REDIRECT EXAMINATION**

16 BY ATTORNEY EVANS:

17 Q Agent Eichenmiller, the bullet that you examined, is it
18 consistent with shell casings of this caliber?

19 A The bullet is a .25 auto caliber bullet. The rifling on it
20 is 6/right conventional, which matches the firearm, which is how
21 I make my determination if I'm going to compare it to the
22 firearm. For example, if that bullet was 9-left, I wouldn't
23 compare it to the firearm because there's no way that firearm
24 could have fired it.

25 In this case they were both the same, so then I put it under

1 a microscope to look at it.

2 ATTORNEY EVANS: Nothing further.

3 THE COURT: Thank you. Agent Eichenmiller, you can step
4 down. Thank you for coming.

5 Mr. Evans?

6 ATTORNEY EVANS: Beg the Court's indulgence for just one
7 moment, Judge.

8 THE COURT: Yes, sir.

9 ATTORNEY EVANS: State rests, Your Honor.

10 THE COURT: Thank you. Ladies and gentlemen, the state has
11 now rested its case in chief. That means you have heard all of
12 the evidence that you will hear from the state in the
13 presentation of its case.

14 At every juncture of a trial in this case like, at this
15 point I have to send you out to the jury room to deal with
16 matters that do not require your presence. And so we're going to
17 get you back shortly to continue the morning's work.

18 I remind, as always, of course, not to discuss this case
19 among yourselves while you're in the jury room. There's still
20 more that you're going to hear before you'll be able to start
21 talking about this case among yourselves. I ask you to continue
22 to abide by those rules.

23 We'll combine the morning recess at this time, as well as
24 the time for us to deal with these matters of law outside of your
25 presence. Thank you, ladies and gentlemen.

1 (WHEREUPON, the jury is escorted out of the courtroom at
2 10:33 a.m.)

3 THE COURT: Mr. Mathews, I'll be glad to hear your motion in
4 the defense.

5 ATTORNEY MATHEWS: Your Honor, I've got to ask for a
6 directed verdict, although I, frankly, think there is evidence
7 from which the jury could conclude, if they so like. For the
8 record, I'm not making those greatly ---

9 THE COURT: I understand. And I realize that that does not
10 mean that you are any less zealous for your client's cause than
11 you already are. You always are very zealous in that regard.
12 But you have recognized, of course, the burden that is relatively
13 low on the state at this juncture to get past this particular
14 motion, and you realize what the law is.

15 And as we all know, and I'll state it once again what is
16 obvious to all of us under Rule 19, the cases that are cited
17 under that rule, that all of the evidence in the first place has
18 to be viewed in the light most favorable to the state. And if
19 there is any direct evidence, and our case law continues to say
20 any substantial circumstantial evidence, reasonably tending to
21 prove the guilt of the accused, then the case must go to a jury.

22 The Court is not concerned with the weight of the evidence,
23 but is concerned with the existence of evidence. The English
24 teacher in me repels that the -- the semantics of this rule, as I
25 always put this on my record when I'm ruling on this, the word

1 substantial, to modify circumstantial which modifies evidence, is
2 contrary to the rule itself, is unnecessary and has no place
3 there.

4 When I say that the Court is concerned only with the
5 existence of evidence and not with its weight, and then I quote
6 the rule, the case law, that says substantial circumstantial
7 evidence I expressly am waiving the circumstantial evidence to be
8 substantial. And that's incorrect semantically. And one of
9 these days somebody at the Court of Appeals or Supreme Court is
10 going to say, Let's shut Cooper up and finally get this out of
11 here once and for all.

12 However it is defined, however you use it, the state has met
13 its burden of showing that there is circumstantial and direct
14 evidence which reasonably tends to prove the guilt of the
15 accused.

16 ATTORNEY MATHEWS: Your Honor, I have one other matter on
17 that. I just, I want to make sure. And that is, on the evidence
18 that the jury consider, I still think, and as I had mentioned at
19 the very beginning of the case, that Mark McQune is the main
20 driver of this whole thing, and that it was him that told Ballard
21 that it was Jermaine Silas White that did it.

22 And although that particular statement was redacted and the
23 jury didn't hear it, the mention of the car and all that stuff
24 and how he was developed a suspect, all of that flows from Mark
25 McQune's hearsay.

1 So, Your Honor, I would modify this -- and I don't know that
2 the Court's ruling is going to be different, but it does affect
3 the intensity for which I'm arguing -- and I apologize for that,
4 for making it a relatively quite weak argument to start with. On
5 the admissible evidence, I would contend that there is not
6 sufficient evidence at this point to survive a directed verdict
7 motion, and that is because all of this stuff flows from Mark
8 McQune who has not testified, is not going to testify, and he's
9 the one that said Jermaine Silas White did that and everybody
10 relied upon what he said there.

11 And that is the basis now, now that I've given it a little
12 bit consideration -- my apologies for not saying that
13 immediately. I don't necessarily expect a different ruling, but
14 that is the basis of my argument.

15 THE COURT: I appreciate that additional level of argument
16 on the basis. Mr. McCord said, I was sitting there and I saw my
17 cousin shoot him. On the face, that part, that came in without
18 indicia of provocation. Upon cross-examination then you got into
19 injecting Mr. McQune's statement. He not only, said Mr. McQune,
20 he said there were plenty of people out there who said the same
21 thing. So it could have come from almost any source. I imagine,
22 I believe if there was a crowd there, and they were there looking
23 at this and they see somebody, whoever it is, walk up to somebody
24 else and shoot them in the back of the head, that everybody's
25 going to be saying what they saw.

1 But to say that Mr. McQuine was the only one who saw, or that
2 Mr. McCord was the only one that saw, of course, would fly in the
3 face of what is evidence before the record.

4 Nonetheless, I recognize the argument that you're making in
5 that regard. But, you're right, it doesn't change my ruling. I
6 take the evidence in the light most favorable to the state, and
7 the light most favorable to the state was Mr. McCord, on the
8 stand 30 minutes ago, who said, I saw him shoot him. Okay, thank
9 you.

10 ATTORNEY EVANS: Thank you, Your Honor. I was going to ask
11 to put some argument on the record to help the AG, but I think
12 you've done a better job than I could have.

13 THE COURT: Well, I'm only trying to help the record.

14 ATTORNEY EVANS: But that's what I mean, sir. Yes.

15 THE COURT: Okay, I understand. But we have ruled.

16 DEFENDANT'S 5TH AMENDMENT RIGHTS

17 THE COURT: Mr. Mathews, is this a good time for me to talk
18 with Mr. White about his right to testify or not to testify?
19 Would you like me to go over that at this point in time?

20 ATTORNEY MATHEWS: I think this is a good time.

21 THE COURT: All right. Thank you.

22 THE COURT: Mr. White, I'm going to put you under oath. I
23 need to ask you a couple questions about your right in this
24 regard. I want to make sure that you understand what I explain
25 to you.

1 JERMAINE S. WHITE,
2 having first been duly sworn, was examined and testified
3 outside of the presence of the jury as follows:

4 **EXAMINATION BY THE COURT**

5 BY THE COURT:

6 Q Mr. White, we've come to that stage of the trial now that
7 the state has offered all of its testimony and evidence. And
8 you, as you heard me tell the jury and you already know having
9 been so competently represented Mr. Mathews, now you have the
10 opportunity to offer evidence and testimony on your side of this
11 issue if you choose to. But, you don't have to. That means that
12 you, yourself, have a right to testify in this case if you want
13 to testify. That's a right that is afforded to everybody who's
14 charged with a crime.

15 By the same to the token, you do not have to testify in this
16 case. You have a constitutional right to remain silent, to say
17 nothing in this case. If you choose to exercise that
18 constitutional right, that fact cannot be used against you in the
19 trial of this case. The jury would be told that they cannot even
20 consider the fact that you did not testify in their consideration
21 of your guilt or your innocence. It is not a factor to be held
22 against you. If you exercise your constitutional right, you
23 cannot be punished for doing that.

24 But if you give up that constitutional right not to testify
25 and choose to testify, then you would be subject to every other

1 witness's cross-examination by the other side, just like has
2 happened so far. With every witness who's testified for the
3 state, Mr. Mathews has had a chance to cross-examine. If you
4 choose to testify, then you will be examined not only by
5 Mr. Mathews but also by Mr. Evans or Mr. Utsey, they may
6 cross-examine you.

7 Do you understand what your rights are by testifying or not
8 testifying?

9 A Yes, sir.

10 Q Do you want me to go over any of those with you again?

11 A No, sir.

12 Q So I know you may have made a decision or may not have, but
13 can I assume from what you're telling me that whether you decide
14 to testify or not testify, you're making that decision with full
15 understanding of what your rights are?

16 A Yes, sir.

17 THE COURT: Mr. Mathews, any other further questions you
18 wish to put to Mr. White?

19 ATTORNEY MATHEWS: No, sir. I would like to let him know
20 that the record that would be used to discredit him, if he were
21 to testify, it's really not that bad, the record that the state
22 could use.

23 I think they've got a failure to stop for a blue light,
24 which carries more than a year, and ten years old. The one that
25 gives us some concern is giving false information to a police

1 officer. And I think the others are grand larceny. So none of
2 those are horrible.

3 My problem -- so I would not advise him not to testify on
4 the basis of his prior record, because I don't think it's that
5 bad. I would advise him not to because he's already made a
6 statement that's in evidence, and if all you're going to say is,
7 I didn't do it, there's really no reason to testify.

8 THE COURT: All right, thank you. I agree with the
9 assessment of the admissibility of those records for the charges
10 that you mentioned. They would be admissible, of course, only on
11 the issue of credibility, and the jury would be instructed in
12 that regard. And I can appreciate your evaluation of those as
13 not being so detrimental as to keep him off the stand.

14 ATTORNEY MATHEWS: Your Honor, Mr. White would like a few
15 minutes to discuss this with me, if that's okay.

16 THE COURT: Oh, sure. We're going to continue with recess
17 in this regard. And I will need to know at that point in time
18 about how long you think, if you choose to call witnesses, how
19 long you think it would take to present your case. I say this
20 simply so we can schedule out things like arguments, charge,
21 lunch and things of that nature.

22 And I might need some help from somebody's office in
23 preparing a verdict form. Is there somebody in the solicitor's
24 office or somebody who can help me with the verdict form?

25 ATTORNEY EVANS: We can. I just don't think we have any

1 because we generally don't. I don't think we have any drafted.
2 But if there's any from an old case, we could use that as a base.
3 We'll be happy to actually type it.

4 THE COURT: The clerk, who has seen a good many of those in
5 one capacity or another in the past -- I see somebody who can
6 type it. Won't take long for me to do that. I'll try to work on
7 that here during this break, as well.

8 And the defense has offered evidence in this case. So the
9 oral argument and anything that was stated in open and full as to
10 the facts and the law, and the defense will reply or respond in
11 full, and then the state will reply only as to matters raised by
12 the defense. Is everybody in accord with that order?

13 ATTORNEY EVANS: Yes, sir.

14 ATTORNEY MATHEWS: Yes, sir.

15 THE COURT: All right. We'll continue with recess, and
16 let's go ahead and just say recess until 11:00. That's 15 more
17 minutes. That gives the Court time. We'll start back at 11:00.

18 (WHEREUPON, court recessed at 10:45 a.m. and reconvened at
19 11:34 a.m.)

20 THE COURT: Mr. Mathews, how long do you think it might take
21 to present the defense?

22 ATTORNEY MATHEWS: Maybe 10 seconds.

23 THE COURT: All right. I take it then that when the jury
24 comes in you will rest in the presence of the jury. Is that
25 right?

1 ATTORNEY MATHEWS: That's my intention, Your Honor. It's my
2 belief that Mr. White does not want to testify after we've
3 talked. But I'll let him answer that question.

4 THE COURT: All right. Mr. White, do you concur in
5 Mr. Mathews' understanding that you do not wish to testify in
6 this trial? Is that right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. All right, the jury will be brought in.
9 And I will, of course, recognize you, Mr. Mathews, and give you a
10 chance to rest in the presence of the jury. I will then explain
11 to the jury the process that we will follow, the order of
12 arguments and things of that nature.

13 MATTERS OF LAW

14 Very quickly, I'll say very quickly but it doesn't have to
15 be quickly, the charge conference in this particular case, I've
16 tried cases with both of you gentlemen before, you've been
17 pleasant always in the past and I think I'm familiar with how
18 each other operates. My reasonable doubt definition is from
19 *Victor v. Nebraska*, it is a firmly convinced definition. That
20 will be the definition that I always use.

21 You are free to use, under the law, to use any reasonable
22 doubt definition that our Supreme Court recognizes. Just don't
23 tell the jury that the Judge is going to tell you that reasonable
24 doubt is such and such, because I might not be telling them that.

25 I'm going to tell them reasonable doubt, proof beyond

1 reasonable doubt, is to firmly convince; obviously I will charge
2 the jury as to the fact that the defendant has not testified in
3 this case; I will charge the expert witness testimony; the
4 elements of the offense; circumstances evidence.

5 I've got my charge together. I think I touched all of the
6 things that are relevant in this particular case.

7 Mr. Evans, I'm be glad to hear any exceptions to those or
8 requests for additional charge from the state at this time.

9 ATTORNEY EVANS: Not that I can think of at this moment,
10 Your Honor. I think depending on what would happen with
11 Mr. McCord, we might have had a few unusual ones. But I think
12 this is fairly cut and dry at this point.

13 THE COURT: It is. I mentioned if I had known that
14 Mr. McCord would be so well-behaved, we would have dealt with him
15 yesterday.

16 ATTORNEY EVANS: Yes, sir.

17 THE COURT: Nonetheless, Mr. Mathews, any exceptions or
18 further additional charge from the defense?

19 ATTORNEY MATHEWS: I didn't hear a charge on credibility of
20 witnesses. I presume that's in there somewhere.

21 THE COURT: Yes, sir, it is.

22 ATTORNEY MATHEWS: And beyond that, just before the jury
23 gets out, I just want to renew my, if the Court would just take
24 notice that I'm newing my, motion for a directed verdict on the
25 same grounds. I don't see any reason to argue that in front of

1 the jury, but I would renew that before closing in my case.

2 THE COURT: I note that both of those motions have been made
3 during the trial of the case and, of course, after the
4 presentation of the case from the state. I reviewed my earlier
5 rulings in that regard, and adopt the same rationale that I
6 explained at that particular time.

7 The verdict form is quite simple. Guilt or not guilty as to
8 each of the two charges.

9 ATTORNEY EVANS: Your Honor, can we discuss scheduling
10 before they come out?

11 THE COURT: Yes.

12 ATTORNEY EVANS: Because I see you looking at the clock.
13 And it had been my plan to ask for closing after lunch to give
14 each of us a little bit of time to prepare. But it occurs to me
15 that we have someone with an appointment at 3:00 still on the
16 jury. Isn't that correct?

17 THE COURT: We have a flu shot -- or, a ---

18 ATTORNEY EVANS: A COVID shot at 3:00. Yes, sir. So I'm
19 concerned about giving it to them today. And I realize it's
20 early. And normally we would, you know, I think, press on given
21 how much time we do have left in the day. But I am, to be
22 honest, concerned about giving them the case today knowing that a
23 juror has to leave at 3:00.

24 And I think it would be better for both sides, in all
25 honesty, if we gave it to them fresh early in the morning, I mean

1 early like 9:00 again as we intended to start today if there's
2 nothing wrong. But that's just my thought on the matter.

3 THE COURT: Mr. Mathews, what says the defense?

4 ATTORNEY MATHEWS: Your Honor, I mean, I know this sounds
5 bad, but I'm about done, I want to get this over with. But
6 whatever the Court desires. I don't mind starting fresh. I
7 don't mind pushing on through. Whatever the Court desires.

8 THE COURT: What my intention was, quite frankly, given the
9 likelihood that we would either still be in trial or now, it
10 looks like, deliberations, when that COVID shot is going to be
11 given, I had intended to recess wherever we were and ask one of
12 the sheriff's deputies to take the juror to the site of the test,
13 which is here, the shot, which is here somewhere in Walterboro.
14 If it's on the schedule, I think my experience is that they work
15 right through that. Especially if this is a second shot,
16 probably be, at the most, a 30-minute break.

17 We could instruct the jury that they are not to discuss the
18 case while that juror is not in their midst and let that juror
19 resume his or her place on the panel at that time. Does that
20 create any issues from anybody?

21 ATTORNEY EVANS: You know, this is all kind of a new world
22 for all of us, and I don't know how it would look on appeal if a
23 juror, if they had begun deliberations and then a juror is
24 allowed to leave. And I understand he would be escorted by a
25 deputy, but ...

1 THE COURT: Well, you know, it's not unprecedented. There
2 have been occasions when jurors can't reach a decision by night
3 fall or late night fall, they go home for the night and come back
4 the next day and resume, even in criminal cases.

5 ATTORNEY EVANS: Yes, sir.

6 THE COURT: And so I don't think that we are treading on
7 thin ice, or certainly not on uncharted waters, if we do that.
8 My concern is what is it going to do to this jury who's been here
9 all this time ---

10 ATTORNEY EVANS: Yes, sir.

11 THE COURT: --- to tell them they're going to have to stay
12 another day.

13 ATTORNEY EVANS: And that's why I'm posing that as a
14 question and not insisting or anything, Judge. I would ask for a
15 little bit of time to prepare.

16 THE COURT: Okay. Well, we can do that. I was kind of
17 hoping we would be ready after everybody rested.

18 CLERK OF COURT: Judge, may I approach?

19 THE COURT: Yes, ma'am.

20 (Clerk of Court approaches the bench.)

21 THE COURT: I'll tell you what, let's do, folks. Let's
22 bring the jury out, at least let y'all rest in the presence of
23 the jury. Let me explain the process, and then tell them that
24 the food will be in the jury room at 12:30. I'll let them move
25 about. There won't be arguments or charge under those

1 circumstances until after lunch.

2 But I'm just -- I'm just thinking on the fly here now. I'm
3 trying not to waste all the rest of the day but at the same time
4 give y'all a chance to get ready. Okay. That's what I'm going
5 to do. I'm going to bring them in.

6 Mr. Mathews, after you rest in the presence of the jury, I'm
7 going to think of some subterfuge that I can present to them that
8 will not cause them to lose complete faith in our use of their
9 time, and tell them to be back in the jury room at 12:30 for
10 lynch. When they finish lunch, we can go to arguments and
11 charge. Okay. Bring in the jury, please.

12 (WHEREUPON, the jury is seated in the courtroom at
13 11:45 a.m.)

14 THE COURT: Ladies and gentlemen, at the conclusion of the
15 state's case, as I told you, we had to deal with some matters of
16 law outside of your presence. We've done those things now.

17 I turn to the defense who has the opportunity to offer
18 evidence and testimony, but is under no obligation to do that.
19 Mr. Mathews.

20 ATTORNEY MATHEWS: The defense rests, Your Honor.

21 THE COURT: Thank you. Now, ladies and gentlemen, that
22 means that you have now heard all of the evidence and testimony
23 that you will hear in the trial of this case.

24 You have yet to hear the final arguments that the lawyers
25 present to you or the instructions on the charge of the law which

CLOSING STATEMENT ON BEHALF OF THE STATE

ATTORNEY EVANS: Mr. Mathews. Ladies and gentlemen of the jury.

Started with something so small, .25 caliber projectile flying out of that gun and into Lennon Poland's brain. That's what set us on the path here, ladies and gentlemen. But small things can add up to big things. That's part of your job here in the next few minutes and hours, as the Judge is going to tell you. He is the judge of the law; you are the judges of the facts.

Once I'm done speaking and Mr. Mathews is through speaking, the Judge is going to charge you on the law. And then when he's done, you go back into the jury room, you'll have the evidence, you've heard the testimony, and you will come out and tell us what the truth is.

That's actually what verdict means, vera dicta, the truth speak, in some butchered Latin. You're going to come out and speak the truth. You're going to tell us what the truth is. And the way you do that is, you take all those little pieces and put them together in the big story.

The Judge is also going to tell you that the state has the burden of proof in this case; that we have to prove our case beyond a reasonable doubt; and he'll tell you that that means finding the truth so that you are firmly convinced of Mr. White's guilt. You don't have to remove all doubt, you don't have to

1 determine that the other seven billion people on this planet did
2 not commit this murder.

3 But I believe that when we're through, you'll come out and
4 you'll tell us that you are firmly convinced that Jermaine White
5 is guilty.

6 (WHEREUPON, a portion of a DVD is played.)

7 ATTORNEY EVANS: That's one time.

8 (WHEREUPON, a portion of a DVD is played.)

9 ATTORNEY EVANS: Yeah. That's two times.

10 (WHEREUPON, a portion of a DVD is played.)

11 ATTORNEY EVANS: That's three times. White, and response,
12 Yeah, to Jermaine Silas White as a question, and White again.
13 Three times he told you who did this. That's not all he said.

14 (WHEREUPON, a portion of a DVD is played.)

15 ATTORNEY EVANS: He said, I'm telling. As y'all know from
16 watching the rest of this, Mr. Poland was picked up, taken to
17 Charleston County Trident Hospital. This is the Colleton County
18 Fire and Rescue report, which is in evidence. He told them that
19 he was in 10-out-of-10 pain. He cried on his way. He suffered.
20 But he fought. He tried to be here to be on that stand. He
21 fought for nine days. Unconscious, but he fought.

22 But he died. And we all know how. And we all know it's a
23 murder. The Judge is going to tell you what the elements of
24 murder are, because every crime has elements, building blocks,
25 okay. He's going to tell you that murder is a premeditated

1 killing of another person with malice aforethought.

2 And I don't think this is an issue in this case. I don't
3 think this is a defendant did something but doesn't meet the
4 elements case. I think this is a who-did-it case. Because if
5 you shoot someone in the head and they die from it, that's
6 murder, that's malice.

7 The other easy question here today is, if you find him
8 guilty of murder, we have this other charge, possession of a
9 weapon during commission a violent crime. The Judge is going to
10 tell you that murder is a violent crime. If you find that
11 Mr. White committed a murder with a gun/a firearm, that's a
12 deadly weapon. There's only one way to commit this murder, and
13 that's with a gun. If you find him guilty of murder, the next
14 question is easy.

15 The only question for you today is who did it and was that
16 person Jermaine White. Lennon Poland told you three times that
17 it was. And that's not all. You've got quite a few exhibits in
18 this case. The Judge is going to tell you, of course, that
19 you'll be entitled to bring them back into the jury room.

20 This is State's Exhibit No. 24, a burned cellphone.
21 Lieutenant Kinard testified he smelled the fire coming from
22 Mr. White's house. And Mr. White, in his interview, admitted he
23 burned the phone. They said, Why? He said, why not? The reason
24 why is because he was trying to cover his tracks because he had
25 been caught. That's the same reason why he said this.

1 (WHEREUPON, a portion of a DVD is played.)

2 ATTORNEY EVANS: I should have ran. He's trying to cover up
3 those tracks. He wished he had gone all the way, gotten out of
4 here because he knew he had been caught.

5 (WHEREUPON, a portion of a DVD is played.)

6 ATTORNEY EVANS: Now, I know that's hard to hear, but he
7 said exactly what Detective Kinard heard and talked about.
8 That's what I told FBI, man, why'd you have to come out here and
9 get in my business? He says, I'm telling.

10 This is what you have to do, put the pieces together. You
11 can't hear all the evidence that relates to itself, to each
12 other, at the same time. They come in one witness at a time. He
13 says I'm telling; that's what I told FBI.

14 Now let's talk about what else Detective Ballard found when
15 he got there. When he pulls in he sees this car. He doesn't
16 know what it means yet, he doesn't have a vehicle description,
17 but that's caught on his bodycam and preserved.

18 We know that this is Tonya's car because she took the photo,
19 she was there when it was taken. Look at this grill, that
20 curvature. And she said, looking at this one, That looks like an
21 88, that looks like her car. This is just a side angle of her
22 car and this paint damage. And you heard Detective Kinard say
23 that, although they couldn't preserve it, they could see that
24 same paint damage in another version of this video. We wish we
25 could put that before you today. If this case happened in 2021,

1 we would. But they saw it, that distinctive paint.

2 And you can see it here as Jermaine White pulls in to the
3 Horizon, the Ghetto BP, at 11:30. He goes inside and makes a
4 purchase. There is no question that the man in this photo,
5 Exhibit 29, is Jermaine White. He is driving this car.

6 Now, where else does that car show up? The same camera at
7 the Horizon, moments after it pulls out from the scene. That's
8 not Horizon's fault that this is grainy. They're trying to catch
9 crimes in their own store, in their own parking lot. That's why
10 this one's good and this one's blurry, because we had to zoom in
11 on it. But if you look close, you can see it, the same paint
12 damage.

13 He's driving that same car that he's had access to all day.
14 And where's he going? That camera aims this way. That's back
15 home where they arrested him the next day. If you're going from
16 here to here, Williams Seafood right there, that little red
17 building, to Cleveland Street, and you take a right from Hampton
18 and Robertson, and that's exactly what that video showed you he
19 did. It was him.

20 How do we know it was him? He told us. He said, No one
21 drives that car but me.

22 (WHEREUPON, a portion of a DVD is played.)

23 ATTORNEY EVANS: Nobody drives that car but me. He's
24 telling you it's him in the car. Nobody drives that car but me.

25 He says a lot of other stuff in this interview. And I know

1 it's long, and I know that Captain Grant said it wasn't a
2 successful interview because he didn't admit killing Mr. Poland.
3 That's a big one. It would make your job a lot easier.

4 But I disagree with Captain Grant, I think it was a
5 successful interview. There is so much he tells us. He says he
6 doesn't know. First he asked, What time was it supposed to be?
7 And when they tell him and ask him, Where were you at 3:30, you
8 know, 3:30 to 4:00, Well, I don't really keep up with the time, I
9 don't know. The most important question of his life, from two
10 days earlier, and he doesn't know and he doesn't keep up with
11 time, even though he wanted to know what time it was. What else
12 does he say?

13 (WHEREUPON, a portion of a DVD is played.)

14 ATTORNEY EVANS: You'll get a match to that weapon. This
15 weapon? He tells them, You'll get a match to it. He told them
16 right there. He knows it's the murder weapon.

17 (WHEREUPON, a portion of a DVD is played.)

18 ATTORNEY EVANS: Were you at home with Tonya? Well, just
19 say I was with my mom and dad. Pick an alibi, any alibi. He
20 says that the car had nothing to do with the shooting. You've
21 seen that it does have everything do with the shooting.

22 Now let's talk about Tonya, all right. She came on the
23 stand yesterday. She told you that Mr. White is her
24 ex-boyfriend. Obviously not someone you'd ever expect to be
25 testifying against in a murder case. And, by the way, the Judge

1 is going to tell you that you're entitled to, and you should,
2 evaluate the credibility of the witnesses who came before you,
3 because that's part of how believable they are. That's
4 credibility, believability.

5 When you're talking about someone who's close to you and
6 admitting that there's some evidence against them, that's hard.
7 That's not something that she wanted to do. That makes her more
8 credible. We'll talk about that again in a minute.

9 But what did she say? Did anybody else have access to that
10 car? Not to my knowledge, no. What did she say happened the
11 next day? What did she hear from Mr. White? He called her and
12 said he needed help getting rid of a gun. She couldn't help, she
13 was at work, but she remembers that call.

14 Let's talk about another witness you heard from this
15 morning, actually, Edwin McCord. Also clearly did not want to be
16 here. Said he's Mr. White's cousin. He's a drug user. That's
17 not easy to admit. Suffered strokes, medical problems, his
18 heart, I think, he said. He did not want to be here to tell you
19 what happened.

20 Again, that reluctance and that familiar relationship makes
21 him more credible, not less, because he did what he had to do,
22 which was he told you that on July 15th, 2018, he saw his cousin,
23 the defendant, Jermaine White, kill the boy behind Williams, he
24 saw him shoot him in the head. He saw it, and he told you.

25 The other witnesses you heard from this morning, I would

1 say, are probably are most credible of any because they have
2 nothing to gain or loss. They're experts, taking time out of
3 their schedules because we asked them to be here. That's part of
4 their job. As a pathologist, you know you're going to be in
5 court a lot. And if you work with SLED, you know you're going to
6 be in court a lot. But still, they don't gain or lose based on
7 how y'all rule. They just come and tell you the truth because
8 they're under oath and it's the right thing do.

9 Dr. Batalis told you what you already know, that if you
10 shoot a man in the head it's not good, and that when that man --
11 I shouldn't say that. When Mr. Poland was shot in the head, he
12 died because of it. Again, he doesn't know Jermaine White, he's
13 never seen him before today, doesn't know a thing about him. He
14 knows about his patient, Lennon Poland, and how he died from that
15 little thing, that little .25.

16 You heard lastly from Michelle Eichenmiller from SLED, an
17 expert just like Dr. Batalis, but an expert in a different field,
18 in firearms. Again, stands nothing to gain or lose from this
19 case. Just doing her job. And she told you that her job was to
20 compare this gun, which works, against this bullet and this
21 shell. Another tiny little thing. And this says everything.
22 This little shell speaks louder than anyone in this case, because
23 this shell came from this gun. And that's what she testified to
24 today.

25 She was honest. She couldn't tell you whether this bullet

1 did or did not. She can't prove it and she can't disprove it.
2 There are three findings that she can enter when she's reviewing
3 this evidence, yes, it did come from the gun; no, it did not; or
4 indetermined. If she was trying to spin a tail and set Mr. White
5 up because she just likes doing that to people, wouldn't she have
6 said that the bullet from the brain matched the gun? It's not
7 what she said. She said she couldn't determine it. She was
8 honest.

9 This is where we need you to use your commonsense. A shell
10 casing found here was fired by a gun down here on different days
11 by different people. That's his home. He might want us to
12 believe that other people live there. Of course other people
13 live there. He might want us to believe that he doesn't leave
14 his room and that just because something's found on the kitchen
15 table -- she called it his kitchen table in the interview, by the
16 way -- says you can't pin that on him. He leaves. He leaves the
17 room, we know that. We know that that shell there and that gun
18 is there.

19 The reason the shell was next to Mr. Poland is because it
20 was from the shot that killed him. There were no other shots.
21 They looked. There was one shot.

22 And what do we know about this gun? This magazine found
23 next to it does not work, it does not load additional rounds up
24 into the gun after the gun fires. It doesn't work. But this gun
25 works. It can fire one shot. If you load it from the top,

1 direct to the chamber, it works. Otherwise, Ms. Eichenmiller
2 couldn't testify today. If she couldn't have fired the gun at
3 her lab, the gray test specimen, she wouldn't have anything to
4 tell you. It works, and it did what he wanted it to do, fire one
5 shot in Mr. Poland's head. Said, I'm going to shoot you, on
6 July 15th, 2018.

7 That's the story that makes sense. The man whose house the
8 gun was found in, who was named three times by the victim, who
9 was named by another man at the scene, who tried to get rid of
10 the gun the next day, who was seen in the car that was also at
11 the scene within five hours on the same day, that's the man that
12 did it. It makes sense because it is true.

13 He is guilty of murdering Lennon Poland on July 15th, 2018.
14 Tell us the truth.

15 THE COURT: Thank you, Mr. Evans. Mr. Mathews.

16 CLOSING STATEMENT ON BEHALF OF THE DEFENSE

17 ATTORNEY MATHEWS: Thank you, Your Honor.

18 Mr. Evans. Mr. Foreman, ladies and gentlemen of the jury.

19 You've heard a ton of things about nothing, about little
20 things. If I am proud of my eyewitness to a murder, that's what
21 I'm going to be spending my time on. I'm not going to be
22 spending my time on what kind of car somebody is driving past a
23 convenience store. I'm not. I spend my lot of time talking
24 about the person who said they saw it.

25 But the reason that you're not hearing anything much about

1 that, a minute and a half out of a 15- or 20-minute- closing, the
2 reason you're not hearing much is because they don't believe it,
3 and because it doesn't make sense with what the two people that
4 don't have any interest in this at all said, the two experts.

5 I asked Dr. Batalis when he was here, before Mr. McCord
6 testified, about stippling. Now, Mr. Evans talked about it some
7 at first. And that's when a gun's fired. You'll recall when I
8 asked him on cross how Mr. McCord said this happened. He said he
9 grabbed him around the neck like that and took the gun and shot
10 like that.

11 You know, from what from Dr. Batalis said, that is not
12 possible. It's not possible. It's not possible because the
13 bullet angle would be going this way instead of this way, and
14 it's not possible because at that range it might be a contact
15 wound.

16 At a minimum, you would expect to find stippling. That's
17 part of the -- it shoots out soot. After nine days, that's
18 likely to be gone, but stippling will still be there, because
19 that's damage to the skin, to the scalp. You would expect to see
20 that. And he did not see that. So what does that tell you?
21 Mr. Evans is right, this is one person that has no reason to lie,
22 no reason to lie at all, and he said that it couldn't happen this
23 way because you would expect to see stippling and because the
24 angle of the bullet would have been completely different.

25 And he admitted he used drugs, and it was clear he didn't

1 want to be there, and I feel sorry for him. But, frankly, he
2 also said that the guy came walking, whoever it was, came
3 walking. He said, yeah, Jermaine, he came walking.

4 But we're spending all this time talking about cars, okay.
5 I think one of the images that you have in there shows what
6 Officer Ballard saw when he came in. His car camera shows when
7 he was going up Hampton Street and he takes a left onto Francis
8 Street and sees Williams Seafood and he's turning like that,
9 there's a car coming from this direction, from his left. All the
10 action, everything, took place to the right.

11 So if he came walking, that's fine, but if he came walking
12 and the person said, He's in a brown car, wasn't telling the
13 truth.

14 And McCord admitted that people were talking back and forth.
15 And the problem with people talking back and forth, there's a
16 game that we played one time in Sunday School, the telephone
17 game, right, and it's how gossip and rumors and people repeating
18 things goes around. And one person starts out and he tells
19 something, the moderator says tell/whisper something to him, now
20 tell that to the next person. It doesn't matter what it is but
21 by the time it got through ten or however many people it was
22 completely different. Because when you repeat stuff, that's how
23 it goes.

24 And that's the reason they didn't spend much time talking
25 about that. You've got an eyewitness who admits basically he

1 told him. You've got somebody -- and that's one of the problems,
2 too, that the assumptions of Officer Ballard, seems like a good
3 fellow, but the problems, he's making conclusions based on very
4 little evidence, and that sets things in stone right there.
5 Okay. He walks up there, and in response to a nonquestion,
6 Poland says, White. Okay. Immediately, for whatever reason and
7 from whatever source, Ballard calls in and says that the
8 suspect's going to be Jermaine Silas White.

9 We've got testimony out there that there's more than one
10 White that hangs out there. One of them, assuming that Poland
11 could have seen anything, which is also unlikely. It's also
12 unlikely because of where. And basically the pathologist said
13 how he was shot, it would not -- maybe he saw something before.
14 If he saw something before -- if I see something, I'm not going
15 to get shot sitting down if I see somebody coming to me, if I see
16 before. And if somebody shoots me and I'm facing forward, I
17 probably am not going to whip my head around in time to see
18 anything. So that's unlikely, too.

19 But we're hearing somebody saying he's in the car but we
20 don't know the details around it, basically. And one of the
21 biggest reasons we're missing here is, why. We've got a who
22 problem and we've got a why problem.

23 The why problem, we hear something he's telling or whatever
24 he's saying, except that the officer testified that there's no
25 indication at all that Lennon Poland was a confidential

1 informant, that he was working for them. And there's no
2 indication that Jermaine thought he was. There's no testimony to
3 that. There's nobody that says, He's hiding this from him or
4 he's telling this. Telling what?

5 We're piecing together these silly little things, silly
6 little pieces of argument, simply because there's not enough real
7 substance there. I mean, there's no question that, God rest his
8 soul, there's no question that Mr. Poland was shot and that he
9 died, and he didn't do it himself. That's all true. But there's
10 no -- we get little bits of jail calls of what Chief Roberts said
11 was a 15-minute call. We get to hear a couple seconds of that.
12 We got zero context for that. We don't know who he was talking
13 to on that one. We don't know what he was talking about. He
14 could have been talking about anything. We just don't know.

15 We have to push these things together to make them fit. The
16 state is working awfully hard to make something fit. And it
17 doesn't, these little bits of evidence don't fit. God knows I've
18 gone to the loop, or Parker's, or something like that, and I hope
19 that somebody doesn't get killed when my car happens to be at
20 Parker's four hours later or whatever, four hours before. That's
21 just silly. It's too much.

22 Somebody may have seen something, but we didn't hear it, we
23 didn't hear it from somebody. The only person, we heard somebody
24 say, I saw it. But it's not possible that they saw it, not the
25 way that the pathologist said. We've got a shell. One of the

1 things -- I'm not going to go through this. You already saw the
2 evidence, I'm not going to show it to you again. If you want to
3 see it again, I'm sure that His Honor can show it to you. But
4 I'm not going to go through all that. You already heard it, you
5 already saw it.

6 One of the things I note in there, too, is when Kinard, he
7 said he makes a point in the video when he sees -- oh, I saw a
8 shell; it's a good thing I didn't step on it, I'm lucky, but I
9 didn't. Right before somebody sees the shell and points it out,
10 he moves the bicycle, okay. Why is that important? It's
11 important because that bicycle is on top of that shell. Had to
12 have been. And that's why he didn't see it. Whether or not it
13 came from this gun, we don't know how long it was there. We
14 don't -- I mean, it's underneath the bicycle. Maybe it flinged
15 around and ended up there. Maybe. But the problem is, once you
16 move a bicycle, you are tampering with the scene.

17 And that's not the only mistake. And these aren't bad
18 people. Good golly, if I get filmed, I'm in trouble. But they
19 made mistakes, and those mistakes mainly, I hope, don't lead to
20 the conviction of somebody who maybe didn't do what they're
21 accused of doing.

22 The state has to prove this. And the reason is, because you
23 can't prove you didn't do something; they have to prove you did.
24 They interrupted the scene by moving the bicycle, first of all,
25 under which the thing is. And, of course, we know that the slug

1 itself -- and you'll get a picture of the slug, and you look at
2 it and you can see the rifling, the lands and grooves, you can
3 see that. You might be able to see more under a microscope, but
4 that bullet looks pretty good to me.

5 And I'll tell you, even so, Agent Eichenmiller said that she
6 couldn't say that this came from this gun but maybe it will match
7 another gun. That's in the report, too, if compared, perhaps if
8 compared, to other guns. I think you'll have the reports. You
9 can look at it and see what it says. But on cross-examination,
10 she said that. It might have come from this gun or it might have
11 come from another gun.

12 And in terms of guns and all that sort of stuff, she said
13 there are a ton of them out there. And that's fine. We've got a
14 right, that's fine. But to say, Is it rare to have a .25? Well,
15 you know, maybe in what I do. How many .25 caliber handguns you
16 think are out there in the country? Millions. Yeah, millions.
17 How many in South Carolina? Hundreds of thousands.

18 She also has compared multiple guns on one scene to a
19 particular slug. She said she's done that maybe as many as 500
20 times. So you have a couple of guns and you compare, and the
21 best you can come up with on the slug is to say, I can't say for
22 sure it didn't come from this gun but it may have come from
23 another gun. That's the slug.

24 The shell itself, she says -- and this isn't like DNA -- she
25 says, Okay, there might be some differences in the shell. But

1 you know, these aren't manufactured by a whole lot of different
2 companies, and they're not going to retool every time they make a
3 gun; this is not DNA, this is not God making one particular
4 person at a time; this is a company making a bunch of them.
5 That's fine, okay. So what's it doing in the house; right?
6 Okay, that's a worthy point.

7 But you also know, and you heard the testimony from Tonya
8 Gibson, that this was Jermaine's dad's house and a bunch of
9 people are in and out of that house and a bunch of people in that
10 house had guns. I mean, it was not unusual. She didn't see
11 Jermaine to have a gun, but there were guns in the house. One of
12 the people who also lived in the house is Jermaine's brother,
13 Desi, a/k/a Bam. It would be nice if we knew more about him.
14 But the fact of the matter is they didn't make any effort to talk
15 to him, because I know him. Oh, he wasn't here; he wasn't in the
16 area. Well, you got an interview. You got to see a couple
17 seconds of an interview that was, you know, 20 minutes long or 30
18 minutes long or whatever.

19 And if they're doing their job right, they're going to get
20 those interviews from everybody, everybody they talk to, because
21 words have a way of changing otherwise. And if they interviewed
22 Desi, there's no evidence of it. And yet he's also White and
23 he's also somebody who's got a gun.

24 And, you know, somebody on scene maybe said, No, it was
25 Jermaine, somebody must have, but we didn't here any evidence of

1 that and we didn't here who. We see somebody who we don't hear
2 from on there. We see Mark McQune, I think they said it was, the
3 first guy that came up and said, He's in a brown car, okay. And
4 he walks off. And then poor Mr. McCord walks up, and he's just
5 standing there not saying much of anything.

6 And the evidence you see, they're supposed to put on gloves
7 and stuff like that, but they did such a bad job. I hate to say
8 it, they're good people, but they did such a bad job, the only
9 fingerprint they find on the ammo box belongs to the officer.

10 That's not -- that doesn't -- I mean, we all make mistakes.
11 Good golly, I made a ton in this trial. I hope you don't hold
12 that against my client. But when you're investigating a murder
13 case you need to be more careful than that. You don't move
14 bicycles; you don't put your own fingerprints on the evidence.

15 And to the extent they did do it right, they took swabs of
16 DNA because we know, we know that when it comes right down to it
17 these scientists do a better job of finding the truth than actual
18 people. That's the truth of the matter. They do. They take the
19 DNA swabs because you know somebody was there. You don't
20 necessarily know when, but you know.

21 And Officer Kinard said he took swabs of the gun. He took
22 swabs of the slide and the trigger and the magazine, and tested
23 them for DNA, and came up with nothing. Maybe he didn't do it
24 right, I don't know. Or maybe, just maybe, it is because
25 Jermaine Silas White never handled that gun.

1 And if he did, it doesn't fire. That's a little tiny gun.
2 You're going to hand-load that and then walk in there and try to
3 keep the magazine in there. It didn't fire; it couldn't fire.
4 They said once if you loaded the thing -- look at that little
5 tiny thing. Hold on a second; I'm going to shoot you, but hold
6 on a second, let me put this in here. It doesn't make any sense.
7 It doesn't make any sense.

8 And so we're talking about cars; we're talking about jail
9 calls of a second or so when you don't get to hear the 15-minute
10 call. From the 15-minute call you get to hear a couple seconds
11 of it. There's no context. This is why we're talking about
12 little things, is because the big things don't matter, they don't
13 add up.

14 Consider all of that. If you need to look at more of the
15 video, you saw it. And I'll tell you, too, in terms of how you
16 interpret it, there's one point where I thought that the state
17 said, I didn't say nothing, and it sounded to me like, I didn't
18 see nothing. But you listen to it and draw your own conclusions.
19 That's at one point in there.

20 But in any event, once you consider that, sometimes the
21 truth is that you don't know the truth. Sometimes the truth is
22 the state didn't prove the truth. What you cannot do is work to
23 fill in the blanks. You cannot do that.

24 When you consider all this evidence, I'm confident that you
25 will find Jermaine Silas White not guilty.

1 THE COURT: Thank you, Mr. Mathews. Mr. Evans.

2 CLOSING STATEMENT RESPONSE ON BEHALF OF THE STATE

3 ATTORNEY EVANS: Thank you, Your Honor. These are the
4 stories that don't make sense, that it could have been some other
5 White. Maybe Silas. There were lots of Whites at that house.
6 Kevin Kinard came in here and told you about his father,
7 Mr. White's father, Silas White, he's an elderly man. Not likely
8 to make a quick getaway from a murder. Could it have been Des,
9 Jermaine's brother?

10 (WHEREUPON, a portion of a DVD is played.)

11 ATTORNEY EVANS: They don't know Des by his real name. They
12 call him Bam. In those three times that Lennon Poland told you
13 who did this did you ever hear Des, did you ever hear Bam?
14 Mr. White told you that nobody knows Des by another name.

15 You know, if this were the State of South Carolina versus --
16 to use some names that are all in the record -- somebody
17 named Eichenmiller was our suspect, somebody named Batalis was
18 our suspect, you can probably run all over with that.

19 This is White. Remember, he's not just calling out White.
20 The second time confirming when he heard the full name, first,
21 middle and last. Is the suspect Jermaine Silas White? He's
22 leaning over, struggling, Yeah. And Ballard told you he
23 understood that to be a confirmation. That was the second time.

24 Mr. Mathews talked to you about Mr. McCord and says he
25 doesn't remember anything right because his testimony doesn't

1 match with Dr. Batalis.

2 You know, there's a difference in memory between the big
3 picture and the little stuff. On my wedding day I remember a lot
4 of stuff about that day. I remember where it was and what
5 everyone was wearing. I even remember going to lunch. I don't
6 remember what I ordered for lunch.

7 McCord remembered what matters. The hardest thing probably
8 he's ever had to admit in his life. His cousin killed a man,
9 that's what he remembers, that's what he testified to today in
10 front of you.

11 Mr. Mathews wants you to believe that Mr. Poland couldn't
12 possibly have seen who killed him. There's no way, it was all
13 put in his head by Mr. Ballard or someone else. But remember
14 what Ballard said? He's never been to a scene where someone's
15 been shot in the head and is still alive. This case is unique,
16 and so it's definitely possible that Mr. Poland saw who did it
17 after it happened. It's certainly possible he saw it before he
18 saw the person coming up even though he was shot in the back of
19 the head.

20 Dr. Batalis even confirmed that for you. His exam could not
21 tell you anything about what Mr. Poland saw. And you saw him
22 moving around in the video.

23 Mr. Mathews wants you to believe that Billy Ballard made
24 mistakes. No, he didn't make a mistake with that bike. What did
25 he tell you priority one is when you get to a shooting scene?

1 Make it safe and try to save their life. He's moving that bike
2 for EMS. He's apologizing to them for not moving himself because
3 he has to stand over the shell to preserve it so that it can come
4 to you. That wasn't a mistake; that was his job. He's trying
5 his best to save Lee Lee's life, or contribute to EMS doing that,
6 not a mistake.

7 Mr. Mathews wants you to believe that this projectile is
8 fine. You can look at it, you can see. Because he's trying to
9 undercut Ms. Eichenmiller's testimony. She testified that it's
10 damaged and it makes it harder to compare, that a body can do
11 both damage to the bullet as the bullet killing the body. She
12 said that. She's the expert. I'm not; Mr. Matthews is not; she
13 is.

14 And there's no evidence, despite what he wants you to
15 believe because of the bike being moved, no evidence of damage to
16 this shell, this shell that came out of this gun. He said that
17 gun won't fire. How'd she get her results? He wants you to
18 remember that there's no fingerprints other than Detective
19 Kinard, and that there's no touch DNA.

20 When did they find the gun? The day of on the scene,
21 moments after it happened? No, that was the shell. They found
22 the gun the next day, after he destroyed evidence. He was
23 covering his tracks. Was he going to get rid of that gun?

24 The story that makes sense is the story you've been hearing
25 since early yesterday morning. Jermaine White drove Tonya

1 Gibson's car, drove to the scene or was at least at the scene,
2 fired a gun into Lennon Poland's head. It killed him nine days
3 later. Jermaine White drove home, and happened to go to the PB
4 in the same car. That's why the car counts, because it puts him
5 right there. That's the story that makes sense.

6 Find him guilty.

7 THE COURT: Thank you, Mr. Evans. Mr. Evans, do you mind
8 moving that ---

9 ATTORNEY EVANS: Yes, sir.

10 THE COURT: --- so I can see all the members of the jury.

11 CHARGE OF THE COURT

12 THE COURT: Mr. Foreman and ladies and gentlemen of the
13 jury, please give me your attention now for a few more moments.
14 You've been patiently listening to the testimony and to the
15 arguments that have been made capably by Mr. Evans and
16 Mr. Mathews. And I ask that you give that same attention to me
17 as I instruct you, or charge you, as to what the law is in this
18 case.

19 It is my duty under our constitution to instruct you as to
20 what the applicable law of the case is. And it is your duty, as
21 jurors, to accept the law as I now say it to you and to decide
22 all of the issues of fact in the case.

23 For that purpose you have to determine the effects and the
24 value of the weight and the importance of the evidence which you
25 have seen and heard. Both the state and this defendant have the

1 right to expect that you will conscientiously consider and
2 evaluate the evidence, and that you'll apply the law of the case
3 to that evidence so that both the state and the defendant will
4 receive a fair and impartial trial at your hands.

5 Throughout the course of this trial, ladies and gentlemen,
6 in this charge if I use the word defendant I'm referring to
7 Jermaine Silas White. Mr. White has been indicted, as you know,
8 by the grand jury of Colleton County, and charged in this
9 Indictment No. 648 with the crime of murder. That indictment
10 accuses Mr. White, here in Colleton County, on or about July the
11 15th of 2008, with malice aforethought, shooting Lennon lee
12 Poland. And Lennon Lee Poland died on July the 24th, 2018, at
13 Trident Medical Center as a proximate result of Jermaine Silas
14 White's actions, specifically shooting him with a firearm on July
15 the 15th, in violation of the law.

16 Mr. White is also charged with possession of a weapon during
17 the commission a violent crime. Indictment 649 says that, on
18 that same day, July the 15th, 2018, the defendant, Jermaine Silas
19 White, did possess a firearm during the commission of a violent
20 crime, the crime of murder, in violation of the law.

21 I remind you again, ladies and gentlemen, as I did before
22 this trial began, that the indictments which I have just read to
23 you are not evidence, nor are they proof of the charges that they
24 contain. They're simply charging documents, legal documents,
25 that tell you or me or anybody else who reads it what this case

1 is all about.

2 And, as you know, to the charges contained in those
3 indictments, Mr. White has entered pleas of not guilty, has asked
4 for a jury trial at your hands, which he has now had. The legal
5 affect of a plea of not guilty in a criminal case is to place the
6 burden of proof on the state to prove the defendant guilty beyond
7 a reasonable doubt before you, as a jury, can convict him and
8 find him guilty.

9 Mr. White is presumed, in law, to be innocent of the charges
10 contained in these indictments. It is a fundamental rule of our
11 law of evidence that a defendant, regardless of the nature of the
12 charges or the seriousness of the charges, will always be
13 presumed innocent of the charges for which he's been indicted
14 unless and until his guilt has been proven by evidence that
15 satisfies you, as a jury, of his guilt beyond a reasonable doubt.

16 The presumption of innocence is not an empty legal phrase,
17 it is not a mere theory. The presumption of innocence is like a
18 robe of righteousness that is placed about the shoulders of the
19 defendant. It assigns to that defendant the class known as the
20 innocent. The presumptive robe of righteousness continues to
21 exist for the benefit of a defendant throughout every phase of
22 this trial. Indeed, it even follows him into the jury room as
23 you deliberate your verdict in this case.

24 The presumption of innocence then continues to exist and
25 unless and until you, as a jury, find that the state has proven

1 his guilt beyond a reasonable doubt. So that then is the burden
2 of the state, to prove guilt beyond a reasonable doubt.

3 Some of you might have served as jurors in civil cases
4 before and, if you did, the trial judge in a civil case said that
5 it is only necessary that the party who has the burden of proof
6 present evidence to you that is more convincing of that party's
7 side than the evidence is on the other party's side.

8 But in criminal cases the state's proof has to be more
9 powerful than that. Here it has to be proved beyond a reasonable
10 doubt. So what then do we mean by proof beyond a reasonable
11 doubt? Proof beyond a reasonable doubt is proof that leaves you
12 firmly convinced of the defendant's guilt. Now, there are very
13 few things in this world that you and I know with absolute
14 certainty, and in criminal cases the law does not require proof
15 that overcomes every possible doubt. And so if, based on your
16 consideration of the evidence, you are firmly convinced that the
17 defendant is guilty of the crime charged, you must find him
18 guilty. If, on the other hand, you think there's a real
19 possibility that he is not guilty, you must give him the benefit
20 of the doubt and find him not guilty.

21 Reasonable doubt can arise from evidence in the case, or it
22 might arise from the lack of evidence in the case. But you,
23 ladies and gentlemen, have to decide whether or not reasonable
24 doubt exists as to the guilt of this defendant.

25 I tell you that he is entitled to every reasonable doubt

1 which arises in the case. And so if, on any issue of fact which
2 is necessary to a conviction, a verdict of guilty, you have a
3 reasonable doubt as to how that issue should be decided, you must
4 resolve that reasonable doubt in favor of the defendant, because
5 a defendant is not required to prove his innocence. The state,
6 on the other hand, is required, in law, to prove every essential
7 element of the charge against him by evidence that satisfies you,
8 as a jury, of his guilt beyond a reasonable doubt before you
9 convict him, can convict him and find him guilty.

10 And in that regard I instruct you now and I emphasize to you
11 that the fact that Mr. White did not testify in this trial on his
12 own behalf is not a factor to be considered by you in any way in
13 your deliberation on the question about his guilt or innocence.
14 It must not be considered by you in any manner whatsoever against
15 him. It must not mitigate against him in any respect whatsoever.

16 A defendant has the constitutional right to remain silent,
17 and the assertion of that constitutional right, in other words
18 the use of the exercise of that constitutional right, cannot and
19 must not be considered by you in your deliberations because, as
20 I've said, under oath you are to reach no inference and draw no
21 conclusion whatsoever from the fact that Mr. White did not
22 testify in his own behalf. That fact should not even be
23 discussed by you in the jury room.

24 The burden of proof, as I have had, is upon the state. The
25 defendant has no obligation to prove his innocence. And the

1 burden of proof remains on the state to prove guilt beyond a
2 reasonable doubt. And the fact that he did not testify is not a
3 factor to be considered by you in determining his guilt or
4 innocence.

5 And so then, ladies and gentlemen, if, upon the whole case,
6 you have a reasonable doubt as to guilt or the innocence of the
7 defendant, he is entitled to that reasonable doubt and would be
8 entitled to an acquittal and a verdict of not guilty. But, on
9 the other hand, if, upon the whole case, you find that the state
10 has proven by evidence which satisfies you, as a jury, of his
11 guilt beyond a reasonable doubt then, in such circumstances, it
12 is equally your duty to convict him and to find him guilty.

13 Now, during this trial, ladies and gentlemen, you and I each
14 have our separate duties to perform. As a trial judge it's my
15 responsibility to preside over the trial of this case, obviously.
16 And I also have the responsibility of ruling upon, or passing
17 upon, the admissibility of the evidence that has been offered
18 during the course of the trial. And so you are to consider only
19 the competent evidence before you, that is, you are to consider
20 only the testimony which has been offered from this witness chair
21 right here and those items or those documents of evidence that
22 you will take with you into your jury room and deliberate your
23 verdict and the stipulations that I read to you during the course
24 of this trial.

25 I have the additional duty, as the judge of the law, to

1 instruct you as to what the law is. And it is your
2 responsibility, as jurors, to accept the law as I charge it to
3 you now to be the correct law.

4 If you came into your service as jurors this week some ideas
5 about what you think the law is or what you would like the law to
6 be and what I'm telling you now the law actually is disagrees
7 with what you think it is or what you would like for it to be,
8 you have to forget what you would like the law to be or what you
9 think the law is, because under your oath you are bound to accept
10 the law as I state it to you now to be the correct law.

11 Now, in every case tried in a court before a jury you, as
12 you know, are the sole and exclusive judge of the facts of the
13 case. You are the judge of the facts; I'm the judge of the law.

14 Our constitution said that, as a trial judge, I can't hint
15 or comment to you or say any opinion about the facts of the case
16 or make any statement to you about the facts of the case. Since
17 you're the sole judge of the facts you're not to gather from
18 anything that I have said to you during this trial or anything
19 that I'm saying to you now in this charge that I have an opinion
20 about the facts of the case. I'm not allowed an opinion about
21 the facts of the case. That is solely a matter for you, ladies
22 and gentlemen, to determine.

23 And so, as jurors then, since it is your duty to determine
24 the effect and the value of the weight of the evidence presented
25 during trial, you must necessarily pass upon the credibility, and

1 that's just another word that means believability, of the
2 witnesses and you have to decide the value and the weight that
3 you will give to their testimony. You and you alone have to
4 decide the force and the effect and the believability of the
5 testimony.

6 Now, when you make this decision about credibility and
7 believability of the witnesses who testified there are a lot of
8 things you can take into account. You can take into account the
9 appearance, the manner of the witness as he or she testified here
10 from the witness stand. We sometimes refer to that as the
11 demeanor of the witness. What does the witness act like, look
12 like on the stand during the course of their testimony? You can
13 ask yourself whether the testimony of a witness was forthright,
14 or did it appear to be hesitant. You can ask yourself, Was the
15 witness's testimony consistent, or did it contain discrepancies
16 within it? You can ask yourself, What was the ability of that
17 witness to know the things that he or she was telling you about?
18 You have a right to consider whether or not the witness had a
19 cause or a reason to be biased or prejudiced in favor of the
20 testimony that he or she was giving, in other words, did the
21 witness have an interest to be served by the testimony. You have
22 a right to ask yourself, Was the testimony of that witness made
23 stronger by other evidence in the case or was it made weaker by
24 other evidence in the case?

25 You have heard in this particular case expert witnesses

1 testify. Namely, most of the time, almost all the time, lay
2 witnesses will be called -- that's normal people like you and
3 me -- who testify in a trial of a case, they're not allowed to
4 offer their opinions about things. They can tell you what they
5 saw and what they heard, but they can't tell you what they
6 concluded from that or what they believed as a result of that
7 because they're just like you, they're lay people, they talk
8 about what they see and hear and then you decide what decisions
9 to make based on that.

10 But expert witnesses are different from that. Expert
11 witnesses are people who have certain knowledge or skills or
12 education or experience in certain fields. Today, forensic
13 pathology for the doctor, and firearms identification by the
14 young lady from SLED. Because of their training as experts, they
15 were qualified as experts and they were allowed to give their
16 opinions about things in which they are qualified as experts.

17 Now, you should consider the expert opinion testimony as
18 just like do you any other evidence in the case. In other words,
19 you give it the weight that you think it should receive. And if
20 you decide that an expert's opinion is not based on enough
21 training or education or experience, or if you think that the
22 reasons that the expert gave for that opinion are not sound or
23 supported by the evidence, then, if that opinion is outweighed by
24 other evidence, you can disregard that opinion testimony
25 entirely. Because the testimony of an expert is not to be given

1 any greater weight than that of any other witness simply because
2 that person is an expert witness.

3 And what that means, ladies and gentlemen, as jurors, you've
4 got the right to believe a smaller portion of the testimony of
5 any single witness, expert or otherwise, and disregard the larger
6 portion of the testimony of that same witness. Or the other way
7 around, you can believe a larger part and disbelieve a smaller
8 part. You can believed everything that a witness tells you, or
9 you can believe none of what a witness said.

10 But you don't you make those decisions arbitrarily, ladies
11 and gentlemen. There's got to be a good reason for you to do so.
12 And that good reason is an exercise in your mental process and
13 bringing into this courtroom to your service as jurors the same
14 abilities that you use every day outside of this courtroom in
15 deciding what you're going to believe and what you're going to
16 base your decisions on based on what you believe. In other
17 words, what we ask you to do as jurors in that jury box and in
18 that jury room is the same thing that you do every day in your
19 jobs, in raising your families, and just getting by, you use your
20 good judgment, your commonsense, your sense of logic and reason
21 and your experiences in life. And you take those abilities that
22 each of you have, and you bring them to bear on what you have
23 heard in this case, and you decide what you consider to be the
24 credible evidence, and you decide what actual facts did, in fact,
25 exist.

1 And once you've done that, you take and apply the law as I'm
2 now stating it to you, and then you'll arrive at a verdict in
3 this particular case.

4 Now, I want to instruct you now as to the charges, the
5 crimes that are charged in those indictments and the elements of
6 the offenses of the two charges.

7 As you know, the first indictment, as I've instructed you,
8 Mr. White is charged with the crime of murder. Murder is defined
9 in our law as the killing of any person with malice aforethought,
10 either expressed or implied. And so in order for the state to
11 meet its burden of proving that Mr. White killed the victim in
12 this case, it first must be proven beyond a reasonable doubt that
13 he did, in fact, kill the victim, and that the killing was done
14 with malice aforethought.

15 Now, the state is not required in law to prove any motive
16 for the killing, but it is required to prove malice. And so what
17 then is malice? Malice is the intentional doing of a wrongful
18 act without just cause or excuse, and with an intent to inflict
19 injury. Malice aforethought is the deliberate and well-informed
20 purpose to do the unlawful act.

21 Aforethought means that the intention to do the unlawful act
22 was conceived or planned sometime before the actual commission of
23 the unlawful act, but it does not need to exist for any
24 particular length of time prior to the act. Malice is a word
25 that suggests a wickedness or a hatred or a determination to do

1 what one knows to be wrong without just cause or excuse or
2 without legal provocation.

3 As I have said, malice need not be in the mind of the one
4 doing the act for any particular length of time before the act of
5 killing in order to render the killing murder. If it is present
6 in the mind of the one doing the killing any length of time
7 before the act, then its presence is sufficient to render the
8 killing murder.

9 Malice can be expressed malice or it can be inferred malice.
10 Malice is said to be expressed if there is shown a violent,
11 deliberate intention to wrongfully take away the life of another
12 human being. Malice can be inferred where no excuse or legal
13 provocation for the killing appears, and when circumstances
14 surrounding the killing show an abandoned and malignant heart, a
15 heart fatally bent upon mischief. So the burden is upon the
16 state to prove beyond a reasonable doubt that the defendant,
17 Mr. White, killed the victim, and that he did it with malice
18 aforethought. Both of those elements have to be proven beyond a
19 reasonable doubt.

20 Mr. White is also accused in the other indictment with
21 possession of a weapon during the commission of a violent crime.
22 This is a separate and distinct offense. And the elements of the
23 crime of possession of a weapon during the commission a violent
24 crime require the state to prove beyond a reasonable doubt that
25 the defendant, Mr. White, was in possession of a firearm during

1 the commission of a murder. A firearm, the pistol that's been
2 introduced into the record, of course, satisfies the definition
3 of a firearm under our law.

4 And so in order to find the defendant guilty of possession
5 of that weapon during the commission of a violent crime, you must
6 first find that he is guilty of committing the violent crime. He
7 obviously can't be found guilty of possession of a weapon during
8 the commission of a violent crime unless you are found guilty of
9 the violent crime itself. And so the state has to prove beyond a
10 reasonable doubt that the weapon was used in and advanced or
11 helped in the commission of the crime of murder.

12 Now, the state attempts to offer by way of proof in support
13 of the charges which is brought in these indictments two types of
14 evidence, direct evidence and circumstantial evidence.

15 Direct evidence is evidence which directly proves the
16 existence of a fact. And you don't have to make any conclusions
17 or any deductions as a basis of it. Direct evidence is when
18 somebody says, I saw this and I heard that, and they tell you
19 what they saw or heard. Don't need any more evidence if you
20 believe that other than the testimony as to what you saw or what
21 you heard, or based on what they heard if you believe their
22 testimony.

23 But circumstantial evidence, however, is proof of a chain of
24 facts and circumstances which indicate the existence of another
25 fact. So you have to use deductive and sense of logic to

1 reasoning to reach conclusions when you're evaluating
2 circumstantial evidence. Crimes can be proven by circumstantial
3 evidence.

4 The law makes no distinction between the weight or value to
5 be given to either direct or circumstantial evidence. However,
6 to the extent that the state relies upon circumstantial evidence,
7 the circumstances must be consistent with each other and they,
8 when taken together, must point conclusively to the guilt of the
9 accused beyond a reasonable doubt.

10 If the circumstances merely portray the defendant's behavior
11 as suspicious, then the proof has failed because the state has a
12 burden of proving the defendant guilty beyond a reasonable doubt,
13 and the burden rests upon the state regardless of whether it
14 relies on direct evidence or circumstantial evidence or some
15 combination of the two.

16 Now, ladies and gentlemen, finally -- that's the word you've
17 been hanging on to here for a while, finally -- finally, ladies
18 and gentlemen, let me instruct you that you're not partisans or
19 advocates for the state of South Carolina, nor for this
20 defendant. You don't serve as jurors to punish your enemies, nor
21 to award your friends. That wouldn't be a system of justice at
22 all. You have been selected by both the state and this defendant
23 to be fair and impartial jurors.

24 It is your duty then, by your joint deliberations, to
25 determine the facts of this case, giving to the defendant the

1 benefit of reasonable doubt on each and every issue. And then to
2 the facts in which you determine to exist, you take and apply the
3 law which I have just given you and thus arrive at a verdict
4 which determines the facts of this case.

5 And once you've done that you will have satisfied your oath
6 as jurors that you took before this trial began to well and truly
7 try this case and render a true verdict according to the evidence
8 and the law, so help you God, and you will discharge your duty to
9 the Court.

10 We have every right to expect that you will do just that and
11 that you will do nothing less than that.

12 Now I want to go over, at this point in time, the forms of
13 the verdict with you. Mr. Foreman, I'm going to ask if you can
14 step over, let me hand you the verdict form. I hate to cross all
15 this to get to you, but there it is right there. This is the
16 form of the verdict that you all will use to express your verdict
17 in this case, ladies and gentlemen. They're written on that
18 sheet. The order in which I have written them there means
19 nothing at all. You are not to reach any conclusion or draw any
20 inference from the order that I write them down. I write them in
21 the order that I find them easiest to explain.

22 There are two charges in this case, and so you will write
23 two verdicts. Your verdict in one case does not necessarily
24 determine your verdict in the other, but it might, depending upon
25 the instructions that I give you now.

1 The two possible verdicts, first of all, as to the crime of
2 murder, the first set of instructions on that sheet say, We, the
3 jury, by unanimous consent in Indictment Number -- the indictment
4 number's there -- find the defendant, Jermaine Silas White,
5 either guilty of murder if the state has met its burden of proof
6 or not guilty of murder if the state has failed to meet its
7 burden of proof.

8 And the second charge of possession of a weapon during the
9 commission of a violent crime, the choices of verdict are the
10 same. We, the jury, by unanimous consent find the defendant,
11 Jermaine Silas White, guilty of possession of a weapon during the
12 commission of a violent crime or not guilty of the possession of
13 a weapon during the commission of a violent crime.

14 I remind you again that you cannot find Mr. White guilty of
15 possession of a weapon during the commission of a violent crime
16 unless you have found him guilty of murder in the first
17 indictment.

18 Now, I have given the form, the verdict to the foreman,
19 ladies and gentlemen, because he's the one that's got to fill it
20 out, but it is not his verdict alone, obviously. The verdict has
21 to be unanimous. All 12 of you must agree as to each of these
22 two charges.

23 And, Mr. Foreman, you are not authorized to fill out that
24 verdict or sign it until all 12 of your number have agreed as to
25 what the verdict will be.

1 I'm going to send you to your jury room, ladies and
2 gentlemen. I want you to wait just a minute before you start
3 your deliberation. I've got to talk to the lawyers to see if
4 I've misstated anything to you or if I left anything out. And if
5 I have, I have to bring you back out to correct whatever I have
6 done wrong.

7 But if I do not have to bring you back out, we will send in
8 the items of evidence. And once the items of evidence are in,
9 you can begin your deliberations. Please, not until then.

10 You'll begin your deliberations, and you will deliberate
11 until you have reached verdicts. At that point in time,
12 Mr. Foreman, you will fill out the verdict form and sign it and
13 knock on the door. Let the bailiff know. And we'll bring you
14 out to receive the verdict.

15 Some of it, we've used technology in this case, as some of
16 the evidence has appeared on disk and things. There's no way for
17 us to get that in the jury room for you to be able to see it in
18 there to operate. But if there's anything on any of those
19 videos, anything on the audios, that you want to hear or see
20 again, if you'll send a note out to us and let us know exactly
21 what it is that you want to see or hear again, we'll be able to
22 locate that, put it up on the screen, and bring you out to let
23 you look at it, once again, just like you saw it the first time.
24 Understand that?

25 All right. Thank you, folks. Please go to your jury room,

1 and do not yet start talking until we send you out the evidence.

2 (WHEREUPON, the jury is escorted out of the courtroom at
3 3:03 p.m.)

4 THE COURT: Mr. Evans, any exceptions or requests for
5 additional charge from the state?

6 ATTORNEY EVANS: No, sir, not from the state.

7 THE COURT: Thank you. Mr. Mathews?

8 ATTORNEY MATHEWS: Your Honor, I did have concern about one
9 thing. If I heard correctly, I believe Your Honor said
10 possession of that weapon in evidence, and I think that's a
11 comment on the facts. I think, I don't know, I guess the best
12 way to fix that is to say a weapon instead of that weapon. And
13 I -- that's my only objection, Your Honor. Everything else is
14 good.

15 THE COURT: And you're right, it probably was a comment upon
16 the facts. I inadvertently rashed (phonetic sp) over into my
17 long-lost freedom of being a federal judge. But I don't think,
18 however, it was so, that it was so, suggestive in its intent or
19 in its spirit so as to render the charge otherwise improper.

20 I note your exception in that regard to preserve appellate
21 rights, but I decline to change it. Thank you.

22 All right, folks. If you all will make sure the evidence is
23 all together, and then send it in.

24 ATTORNEY EVANS: Your Honor, I just want to make sure we're
25 okay if we all feel secure with the gun being attached to the

1 box, because we do have live rounds in evidence.

2 THE COURT: Let's do ---

3 ATTORNEY EVANS: You want us to find another zip tie or
4 leave it in the courtroom until ---

5 THE COURT: I would suggest we just not send in the live
6 evidence, the live ---

7 ATTORNEY EVANS: The live rounds?

8 THE COURT: That's right.

9 ATTORNEY EVANS: Dave?

10 ATTORNEY MATHEWS: Yes, that sounds acceptable.

11 THE COURT: Okay.

12 ATTORNEY EVANS: So then, other than 25. Dave, do you want
13 to come up? They're demonstrative.

14 THE COURT: They don't go.

15 ATTORNEY MATHEWS: Can they send back the empty box? It's
16 got a fingerprint on it. That's the only reason I want to send
17 it back.

18 ATTORNEY EVANS: If we just had a gun lock ---

19 ATTORNEY MATHEWS: I know, but we don't. Do you have any
20 problem with sending the box back?

21 ATTORNEY EVANS: I have no problem sending the box back.
22 Judge, I think the solution is we're going to unseal 25 because
23 Mr. Mathews wants the fingerprint in there.

24 THE COURT: I'm sorry?

25 ATTORNEY EVANS: Mr. Mathews wants them to be able to see

1 the fingerprints on the box of ammunition. So I think the
2 solution is to remove the rounds.

3 THE COURT: Yes.

4 ATTORNEY EVANS: Do we have like a bag or envelope or
5 something up here?

6 THE COURT: That's fine.

7 ATTORNEY EVANS: Dave, are you satisfied?

8 ATTORNEY MATHEWS: I'm satisfied.

9 ATTORNEY EVANS: Okay, we're both satisfied.

10 THE COURT: Did the bullet get away? We'll stand in recess
11 until we hear from the jury. We need to be on sort of standby
12 for this technology to be prepared. They might want to look at
13 some of that stuff. All right.

14 (WHEREUPON, evidence was taken to the jury at 3:14 p.m.)

15 (WHEREUPON, court recessed at 3:14 p.m. while the jury
16 commenced deliberations: thereafter, the court reconvened at 3:40
17 p.m.)

18 THE COURT: I've been advised the ladies and gentlemen of
19 the jury have reached a verdict. Are both the defendant and the
20 state ready to receive the verdict?

21 ATTORNEY EVANS: State's ready, Your Honor.

22 ATTORNEY MATHEWS: Yes, Your Honor.

23 THE COURT: All right. You can bring in the jury.

24 Ladies and gentlemen, as the jury verdict is announced, I
25 expect you to continue to use the same decorum you've exercised

1 throughout the trial of this case. Thank you.

2 (WHEREUPON, the jury is seated in the courtroom at
3 3:41 p.m.)

4 CLERK OF COURT: Mr. Foreman, have you reached a verdict?

5 THE FOREPERSON: Yes, we have.

6 (WHEREUPON, the Clerk of Court obtains the verdict slip and
7 delivers it to the Court.)

8 VERDICT OF THE JURY

9 THE COURT: State of South Carolina versus Jermaine Silas
10 White. We, the jury, by unanimous consent, Indictment No.
11 2018-GS-15-648 find the defendant, Jermaine Silas White, guilty
12 of murder.

13 The second verdict. We, the jury, by unanimous consent, in
14 Indictment 2018-GS-649 find the defendant, Jermaine Silas White,
15 guilty of possession of a weapon during the commission of a
16 violent crime.

17 Mr. Foreperson, is this the verdict of you all?

18 THE FOREPERSON: It is.

19 THE COURT: Ladies and gentlemen, if this is your verdict,
20 would you please indicate so by raising your right hand. Thank
21 you. All hands are raised.

22 Madam clerk, if you will poll the jury, please, by number.
23 Ladies and gentlemen, if you will follow the instructions that
24 the clerk gives you. Your number's going to be called. You will
25 be asked to stand in place and answer to the questions that she

1 THE COURT: 196?

2 CLERK OF COURT: Sixteen, No. 16.

3 THE COURT: Mr. Bishop.

4 CLERK OF COURT: Yes, sir.

5 THE COURT: Thank you.

6 CLERK OF COURT: Mr. Bishop, Juror No. 16, is this your
7 verdict?

8 JUROR NO. 16: Yes.

9 CLERK OF COURT: Is it still your verdict?

10 JUROR NO. 16: Yes.

11 CLERK OF COURT: Thank you. Now, Your Honor.

12 THE COURT: They've all been polled now? Okay, thank you,
13 ma'am.

14 Mr. Mathews, is there anything regarding the jury before the
15 jury is dismissed from the case?

16 ATTORNEY MATHEWS: Your Honor, we had some things that we
17 wanted to make sure were into evidence before the record is
18 closed out. The unredacted tape. And I think that's all. And I
19 would just renew, obviously at this point I'd ask for a -- if the
20 verdicts any way directed, but I understand what the Court's
21 ruling would be on that.

22 But other than making sure that the evidentiary record for
23 appeal is correct, I have no further questions.

24 THE COURT: All right. Mr. Evans, I take it there are no
25 objections to adding or to including the other unredacted video

1 tape?

2 ATTORNEY EVANS: No, sir. I've prepared them.

3 THE COURT: Okay.

4 ATTORNEY EVANS: Yes, sir. They're ready to be made Court's
5 exhibits.

6 (WHEREUPON, Court's Exhibit 7 is marked for identification
7 and admitted into the record.)

8 THE COURT: Okay, thank you. All right. I note the review
9 of the motions made at the conclusion of the state's case in the
10 trial itself. I note additional motions to set aside judgment
11 and whatever else is appropriate in a trial of this nature. I
12 simply renew my ruling or rulings. This has been essentially a
13 jury issue, and the jury has decided the case, properly in my
14 view, and I deny the motions in those regards, and a motion for a
15 new trial, as well.

16 All right. Ladies and gentlemen of the jury, I want to
17 thank you for your service in this regard. We yet have a couple
18 of other matters we need to take up, and then we move to the
19 matter of sentencing. You have a right to be here for
20 sentencing. You don't have to be here. I'm going to dismiss you
21 in a minute. If you want to stay for sentencing, I would suggest
22 that you leave and go back and sit in the back somewhere. But
23 you're free to go as soon as I turn you loose.

24 I want to let you know, folks, that my instructions that I
25 gave you earlier about not talking about this case obviously no

1 2003, which was a 10-year misdemeanor. So there are a number
2 convictions there, but none them are particularly awful.

3 He does have children. He is -- mostly because of his age,
4 he's already 45, a 30-year sentence would make him 73. I guess a
5 little younger now, because he's been in jail now for
6 two-and-half years. But he's going to be in the 70s by the time
7 he gets out, well past the time we would expect that he would get
8 into any trouble. I would only ask the Court to consider the
9 minimum and the possession of the firearm charge concurrent.

10 THE COURT: All right, thank you. Mr. White, do you have
11 anything you want to say on your behalf?

12 THE DEFENDANT: No, sir, I'm good. Thank you.

13 SENTENCE OF THE COURT

14 THE COURT: Mr. White, on Indictment No. 648 charging you
15 with murder, you're to be committed to the State Department of
16 Corrections for a period of 35 years. On the Indictment 649
17 charging you with possession of a weapon, you're to be committed
18 to the Department of Corrections for a period of five years.
19 This sentence is going to be concurrent to each other, with
20 credit for time served.

21 ATTORNEY MATHEWS: Thank you, Your Honor.

22 ATTORNEY EVANS: Thank you, Your Honor.

23 THE COURT: Thank you, gentlemen.

24 (WHEREUPON, court adjourned at 3:59 p.m.)

25 (End of Transcript of Record)

CERTIFICATE OF REPORTER

I, Cathy J. Provost, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial/proceedings of the captioned case, relative to appeal, in the Court of General Sessions for Colleton County, South Carolina, on the 19th, 20th and 21st days of April, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Date: July 2, 2021

Cathy J. Provost

Cathy J. Provost, RMR

WITNESSES

Kinard, WPD,

Stallings, CCSO,

Ament, WPD

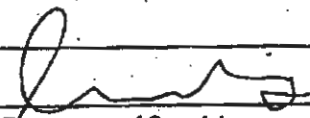
**ARREST WARRANT NUMBER**

2018A1520300335

Date of Arrest: July 25, 2018

ACTION OF GRAND JURY

T. Bill



Foreperson of Grand Jury

Date: 2/22/19

VERDICT

Foreperson of Petit Jury

Date:
INDICTDOCKET NO. 2018GS1500648
AMENDEDThe State of South Carolina
County of Colleton

COURT OF GENERAL SESSIONS

FEBRUARY Term 2019

THE STATE

vs.

Jermaine Silas White

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive
presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper
person and plead guilty to the within
indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

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APR 26 2021

SC Court of Appeals

91 71 44 82 613 610

JUDICIAL
COURT

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

INDICTMENT

2018GS1500648

At a Court of General Sessions, convened on February 28, 2019, the Grand Jurors of Colleton County present upon their oath:

Murder

That in Colleton County, South Carolina, on or about July 15, 2018, the Defendant, Jermaine Silas White, did, with malice aforethought, shoot Lennon Lee Poland and Lennon Lee Poland did die on July 24, 2018 at Trident Medical Center as a proximate result of Jermaine Silas White's actions, to wit: the Defendant did shoot the victim with a firearm on July 15, 2018; all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor

WITNESSES

Kinard, WPD

Stallings, CCSO

DOCKET NO. 2018GS1500648

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

November Term 2018

THE STATE

vs.

Jermaine Silas White

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

ARREST WARRANT NUMBER

2018A1520300335

Date of Arrest. July 25, 2018

ACTION OF GRAND JURY

True Bill

Mary Campbell

Foreperson of Grand Jury

Date: December 15, 2018

VERDICT

Foreperson of Petit Jury

Date:

INDICT

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APR 26 2021
SC Court of Appeals

2018 NOV 15 PM 1 52

CENTRAL JAIL
COLLETON COUNTY

WITNESSES

Kinard, WPD

Stallings, CCSO

ARREST WARRANT NUMBER

2018A1520300339

Date of Arrest: July 25, 2018

ACTION OF GRAND JURY

True Bill

Mary Campbell

Foreperson of Grand Jury

Date November 15, 2018

VERDICT

Foreperson of Petit Jury

Date

INDICT

DOCKET NO. 2018GS1500649

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

November Term 2018

THE STATE

vs.

Jermaine Silas White

Indictment ForPossession of Weapon During
Violent Crime

SC Code: 16-23-490

CDR Code: 0549

After being fully advised as to my
legal rights, I hereby waive
presentment to the Grand Jury

Defendant

I hereby appear in my own proper
person and plead guilty to the v
indictment or to

Defendant

Witness

C.C. P. 18 and 19
RECEIVED

APR 26 2021

SC Court of Appeals

2018 NOV 15 PM 1 52

STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS.

COUNTY OF Colleton

STATE

) INDICTMENT/CASE#:

2018GS1500648

VS.

Jermaine Silas White

) A/W#:

2018A1520300335

AKA:

) Date of Offense:

July 15, 2018

Race: Black

Sex: Male

Age: 45

) S.C. Code §:

16-3-10

DOB: 01-01-1973

SS#: 1-12-345678

) CDR Code #:

0116

Address:

DL#

SID#

) SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or☐ PLEADS

TO: Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ MANDATORY GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted.☐ Lesser Included Offense.☐ Defendant Waives Presentment to Grand Jury.

(def's initials)

The plea is: ☐ Without Negotiations or Recommendation.☐ Negotiated Sentence.☐ Recommendation by the State.

ATTEST:

Read A. Evans 79925

(Solicitor)

(SC Bar #)

(Defendant)

(Attorney for Defendant)

(SC Bar #)

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections☐ County Detention Center.for a determinate term of 35 days/months/years or☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ — provided that upon the service of — days/months/years and or payment of \$ —

plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: #649☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/each \$ _____

3% to County (if paid in installments) \$ 3.75

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter: Cathy Provost

MP-SCCA/217 (04/2018)

☐ Obtain GED☐ Attend Voc. Rehab. Or Job Corp. _____☐ May serve W/E beginning _____☐ Substance Abuse Counseling _____☐ Random Drug/Alcohol Testing _____

Fine may be pd: in equal consecutive weekly/monthly:

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Presiding Judge: Theresa L. (Judge)Judge Code: 054Sentence Date: 4/21/21

STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Colleton

STATE

) INDICTMENT/CASE#: 2018GS1500649

VS.

Jermaine Silas White

) A/W#:

2018A1520300339

AKA:

) Date of Offense:

July 15, 2018

Race: Black

Sex: Male

Age: 45

) S.C. Code §:

16-23-490

DOB: ~~11-11-1973~~SS#: ~~123-45-6789~~

) CDR Code #:

0549

Address:

) SENTENCE SHEET

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☒ PLEADS

TO: Possession of weapon during violent crime

In violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ MANDATORY GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)
The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Reed Evans 79925
 (Solicitor) (SC Bar #) (Defendant) (Attorney for Defendant) (SC Bar #)
 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years and or payment of \$ _____
 plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of
 Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: # 648☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/each \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk Shepp R. JohnsonCourt Reporter: Cathy Provost

MP-SCCA/217 (04/2018)

☐ Obtain GED☐ Attend Voc. Rehab. Or Job Corp. _____☐ May serve W/E beginning _____☐ Substance Abuse Counseling _____☐ Random Drug/Alcohol Testing _____

Fine may be pd. in equal consecutive weekly/monthly

pnits. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.

Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: Theresa L. GossJudge Code: 054Sentence Date: 4/21/21

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Sarah E. Shipe", written over a horizontal line.

Sarah E. Shipe
Appellate Defender

RECEIVED

May 25 2022

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 25th day of May, 2022.

