

NO. 22-970

DISTRICT 2

NORTH CAROLINA COURT OF APPEALS

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STATE OF NORTH CAROLINA

)

)

v.

)

From Hyde County

)

17CRS50135-36

ALFORNIA LEE ANDERSON, JR.,

)

Defendant.

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DEFENDANT-APPELLANT'S BRIEF

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DEFENDANT-APPELLANT'S BRIEF

\*\*\*\*\*

**ISSUES PRESENTED**

- I. Did the trial court err by denying Mr. Anderson's Motion to Dismiss?
- II. Alternatively, did the trial court plainly err by not instructing the jury on intervening acts of others?
- III. Did the trial court plainly err by not instructing on the lesser included offense of involuntary manslaughter when the evidence of malice was in conflict?
- IV. Did the trial court erred by failing to intervene in the State's closing argument about sending a message to other "peddlers of this poison?"

## **STATEMENT OF THE CASE**

On 2 October 2017, a Hyde County Grand Jury indicted Alfordia Lee Anderson, Jr. for two counts of second-degree murder in the deaths of Sarah Reems and Ryan Gibbs. Rpp. 2-3.

The offenses were joined for trial at the 11 October 2021 Criminal Session of Hyde County Superior Court, the Honorable Joshua W. Willey presiding. The jury found Mr. Anderson guilty of both counts of second-degree murder. Rpp. 73-74.

On 18 October 2021, Judge Willey sentenced Mr. Anderson to 180 to 228 months' imprisonment for each count of second-degree murder. The sentences run consecutively. Rpp. 77-80. Mr. Anderson appealed. Tp. 818.

## **STATEMENT OF GROUNDS FOR APPELLATE REVIEW**

The ground for review is a final judgment in a criminal case. N.C.G.S. §§ 7A-27(b); 15A-1444(a).

## **STATEMENT OF THE FACTS**

On 1 June 2017, Ryan Gibbs and Sarah Reems were found dead in their home. There were lines of a white powder on the counter. Tpp. 288-91. Ryan died from "Combined Heroin, Fentanyl, Cocaine, Ethanol Toxicity." Tp. 379; Rp. 13. Sarah died from "Combined Fentanyl, Cocaine, Ethanol Toxicity." Tp. 383; Rp. 24. The pathologist opined that "the fentanyl [was] the main player" in their deaths. Tpp. 380, 383.



The State contended that Mr. Anderson sold Tiffany Webber heroin which she gave to Ryan and Sarah before their deaths. Mr. Anderson was charged with two counts of second-degree murder related to their deaths. Rpp. 2-3.

*Ryan Gibbs, Sarah Reems, and Tiffany Webber*

Ryan Gibbs, 23, worked as a commercial fisherman in Hyde County where he had grown up. Tpp. 282-83. He was dating Sarah Reems, 16. They lived together in Ryan's house. Tpp. 283, 285. On the weekends, everyone would go to parties. Ryan and Sarah would sometimes use cocaine and drink during the parties. Tp. 293.

Tiffany Webber, 25, also grew up in Hyde County. Tpp. 476, 484. Even though Ryan was younger than her, Tiffany was acquainted with him because he lived in the same community and because she'd gone to school with his sister. Tpp. 490-91. Over the years, Ryan purchased cocaine from Tiffany. Tp. 492.

Ryan's sister warned him not to get drugs from Tiffany because she was a drug addict. Ryan's sister knew about Tiffany's addiction because "it's Hyde County, and you, basically, know everything about everyone." Tp. 314.

The week before his death, Ryan had reached out to Tiffany to see if she could get him \$100 worth of cocaine. Tp. 492. Tiffany said she got the cocaine for Ryan and took it to Ryan at the boat dock. Tpp. 494, 496-97.

Tiffany said she bought the cocaine from Alfordia “A.J.” Anderson. She said she told Mr. Anderson that the cocaine was for “the boy from the boat” since by then she was only using heroin. Tpp. 514, 522.

*Tiffany Webber purchased heroin multiple times on 31 May 2017.*

By mid-2016, Tiffany was shooting up heroin everyday “multiple times a day,” “as much as [she] could get.” Tpp. 487, 493. If she did not have the money to buy heroin, she did “[w]hatever [she] needed to get that fix.” Tp. 489.

Tiffany testified that when she started using heroin in 2015, it was brown or tan and sandy looking. Tp. 486. Tiffany said that on 31 May 2017, she bought heroin from Mr. Anderson three times for her personal use. Tp. 503. She preferred to buy heroin from Mr. Anderson because it was “more potent,” “stronger,” and “better quality” than what she could get from others. It got her “higher.” Tpp. 561-62. The heroin probably cost her \$40 each time. Tp. 506. When she bought heroin from Mr. Anderson that day, he was at Joanne Bailey’s house. The heroin she bought the first time was brown. Tpp. 504-505. Tiffany used the heroin at her house then went back to Joanne’s for more. Tp. 506.

The second time Tiffany bought heroin that was white. Tp. 507. She had never seen white heroin before. Tp. 504. “It was a lot stronger and made [her] heart beat fast.” Tp. 507.

Sometime after dark, Tiffany went back to Joanne's for more of the white heroin. Tpp. 507, 509. Tiffany said that all three times she bought heroin from Mr. Anderson, the heroin was packaged in paper. Tp. 511.

Tiffany said that Joanne, Mr. Anderson, Thomas Fisher, and Kendrick Smith were at Joanne's house when she was there buying heroin. Kendrick was "in the chair passed out" the second time she went there. Tpp. 508-09.

*Ryan asks Tiffany to get cocaine for him.*

Late on the night of 31 May 2017, Ryan called Tiffany. She did not answer his call and texted him back. He responded, "looking one." Tpp. 512-13; see Supp. 758. She understood this to mean that he was looking for a gram of cocaine. Tp. 513. Tiffany said she responded by calling Mr. Anderson and telling him that "the boy from the boat wanted \$100 worth of cocaine powder." Tp. 513. Mr. Anderson replied that he did not have any cocaine. Tiffany asked if he knew anyone who did, and he said he didn't. Tp. 515.

Tiffany then tried to get cocaine from someone else. When she couldn't, she contacted Mr. Anderson again. Tp. 516. Eventually, Mr. Anderson told her to come to a house where people were known to use cocaine. Tpp. 516-17. Ryan and Sarah picked Tiffany up and took her there.

Tiffany went into the house and got into an argument with Mr. Anderson. Tpp. 518-21. Tiffany went back to the car and told Ryan she was

going to try to get him cocaine from somewhere else. Ryan said, "I want the same shit that I got last weekend." Tp. 520.

Tiffany kept texting and calling Mr. Anderson and he finally told her to come to Joanne's. Tp. 520. Ryan dropped Tiffany off near Joanne's house. Tpp. 521-22. When Tiffany went to Joanne's, she did not think Mr. Anderson had cocaine. Tiffany went there because she "wanted the drugs." Tp. 532.

When Tiffany went inside, Mr. Anderson said, "[i]t's on the refrigerator." Tp. 523. Tiffany took a piece of paper "off the top of the refrigerator." Tp. 523. She said she gave Mr. Anderson the \$100. Tp. 524. There was something white in the paper. Tiffany pinched some of the drugs because she wanted them because she knew it was heroin. Tp. 523. Tiffany testified that she didn't "exchange any words" with Mr. Anderson at Joanne's. Tp. 524.

*Tiffany Webber gives Ryan heroin.*

Tiffany put the drugs she pinched into her cigarette pack and gave the rest to Ryan. Tp. 526. As they drove off, Ryan weighed the drugs. He was upset because it was only .4 grams which was not "what it should have been." Tiffany was "agitated" because it was about four in the morning, told him not to worry about it and that she would straighten it out. Tp. 526. Ryan took her home. Tp. 526. Tiffany did not see Ryan and Sarah use the drugs. Tpp. 557-58.

Tiffany “didn’t tell them anything” about the drugs. She “just wanted to get out. [She] was ready to leave.” Tp. 527. Tiffany testified Ryan had contacted her between midnight and one and it was around four when they dropped her off.<sup>1</sup> Tp. 564.

Ryan never asked Tiffany to obtain heroin for him. Tp. 495.

*The investigation into Ryan and Sarah’s deaths*

On 1 June 2017, Ryan’s sister found Ryan and Sarah dead in their home. She noticed lines of drugs on the counter and assumed they were cocaine, which she knew Ryan and Sarah used. Tpp. 288-91. She called 911 and police responded to Ryan’s house. Tpp. 288, 411.

The drugs found on the counter at Ryan and Sarah’s house contained heroin and fentanyl, not cocaine. Tp. 590; Rp. 35. A piece of pink paper found with a powder residue on it also contained heroin and fentanyl. Tp. 592; Rp. 35. A red straw also found by the powder contained cocaine base. Tp. 592; Rp. 36.

Officers also found Sarah and Ryan’s cell phones in the house. Tpp. 420, 426. Sarah’s phone was unlocked, and the screen showed a search for “what could cocaine be cut with to make someone dizzy?” Tp. 458; Supp. 21.

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<sup>1</sup> Phone records would show that Ryan contacted Tiffany around 3 a.m. and last contacted her at 4:51. See Supp. 758-59, 761-62.

The last outgoing call from Ryan's phone was to Tiffany at 4:51 a.m. on 1 June 2017.<sup>2</sup> Tpp. 708-712; Supp. 759.

Police interviewed Tiffany about Ryan and Sarah's deaths. In her first interview, she was "not truthful" with the officers. Tp. 530. Tiffany admitted she lied about "events that occurred that night, time, if [she] talked to them, if [she] didn't, what was said, what wasn't said." Tp. 545. She said she was scared because she "knew what [she] had sold [Ryan] wasn't what it was supposed to be." Tpp. 529-30. After police confronted her about inconsistencies with other statements, she changed her statement. Tp. 530.

Tiffany gave officers a piece of white paper that she claimed was the paper she had put the drugs in. By the time she gave the paper to police, she had already used all the drugs. Tp. 536. No controlled substances were found on the piece of paper. Tp. 593; Rp. 36.

*Trial evidence about other drug use*

At trial, Thomas Fisher and Joanne Bailey testified that they had seen Mr. Anderson on 31 May 2017. Thomas said he and Kendrick Smith ran into Mr. Anderson on the street where Joanne lived. Thomas and Kendrick did heroin together that Mr. Anderson gave them. Tpp. 624-25. Thomas did a

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<sup>2</sup> Ryan's phone number was 252.542.0055. Tp. 707. Tiffany's phone number was 336.344.0909. Tp. 693.

little bit of the heroin and Kendrick “a lot.” Tp. 626. Thomas felt good from the heroin, but it “put [Kendrick] to sleep.” Tpp. 626-27.

Joanne said that Thomas, Kendrick, Michael Hardison, and Mr. Anderson came to her house in Mr. Anderson’s car when it was dark out. She said Michael carried Kendrick into Joanne’s house because Kendrick was unconscious. Joanne said that Mr. Anderson was “freaking out.” Tp. 652.

Thomas said they had to wake Kendrick up because he “ODed”. Tp. 628. Thomas and Michael put Kendrick in the bathtub at Joanne’s house. They put cold water and ice into the bathtub with him. Thomas wasn’t sure where Mr. Anderson was when they put Kendrick in the bathtub. Tpp. 628-30. Thomas and Joanne testified that after being in the tub, Kendrick woke up. Tpp. 630, 654. Thomas said that after they moved Kendrick to the chair from the tub, Mr. Anderson came back to “check on everybody.” Tp. 633.

Thomas saw Tiffany at Joanne’s house before Kendrick overdosed. He did not see her any more after that. Tpp. 633-34. Joanne said that Tiffany came over at night, sometime after dinnertime when it was dark, but could not say what time it was. Tp. 656.

Joanne testified that when Tiffany came over, she asked Mr. Anderson for cocaine, and he told her he didn’t have any. Tiffany said, “Well, just give me dope. They’re going to have to deal with that.” Tp. 657. Joanne testified

that dope meant heroin. Tp. 657. Joanne did not recall hearing Mr. Anderson say anything to Tiffany. Tp. 660.

Joanne said that she, Michael, and Thomas did heroin after Tiffany left. Tp. 662. She said she snorted it because Mr. Anderson said it was “too strong” and would not let her inject it. Tp. 663. Joanne thought they did this heroin at the end of the night or “very ... early morning.” Tp. 665. Joanne said Mr. Anderson only sold to Tiffany when he was at her house that day. Tp. 666.

Tiffany testified that she pled guilty to two counts of second-degree murder. Tp. 531. She agreed to testify “truthfully.” Tpp. 531, 542. She was not offered a plea agreement and had not been sentenced at the time of Mr. Anderson’s trial. Tpp. 531, 538. She was later sentenced to an active term on one of the murders and probation on the other.<sup>3</sup>

## **ARGUMENT**

### **I. THE TRIAL COURT ERRED BY DENYING MR. ANDERSON’S MOTION TO DISMISS.**

To convict Mr. Anderson of murder, the State had to prove his sale of drugs to Tiffany proximately caused Ryan and Sarah’s deaths. Because, as a matter of law, Tiffany’s actions were an intervening and superseding cause of

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<sup>3</sup>

<https://webapps.doc.state.nc.us/opi/viewoffender.do?method=view&offenderID=1327819&searchOffenderId=1327819&searchDOBRange=0&listurl=pagelistoffendersearchresults&listpage=1>



their deaths, the trial court erred in denying the motion to dismiss the second-degree murder charges.

**A. Standard of Review**

Whether there is sufficient evidence to support a conviction is reviewed *de novo*. *State v. Bagley*, 183 N.C. App. 514, 523 (2007).

**B. The State did not prove Mr. Anderson's actions proximately caused Ryan and Sarah's deaths.**

"To survive a motion to dismiss, the State must offer substantial evidence of each essential element of the offense and substantial evidence that defendant is the perpetrator." *State v. Lee*, 348 N.C. 474, 488 (1998). "Substantial evidence is evidence from which any rational trier of fact could find the fact to be proved beyond a reasonable doubt." *State v. Sumpter*, 318 N.C. 102, 108 (1986). "The evidence must be taken in the light most favorable to the state." *Id.* at 107. Proof beyond a reasonable doubt is "proof that fully satisfies or entirely convinces" a juror of the defendant's guilt. *State v. Warren*, 348 N.C. 80, 106 (1998).

"Second-degree murder is an unlawful killing with malice, but without premeditation and deliberation." *State v. Brewer*, 328 N.C. 515, 522 (1991). For a defendant to be guilty of second-degree murder, the State must prove "defendant's act was a proximate cause of the victim's death." *State v. Bostic*, 121 N.C. App. 90, 98 (1995). Proof that defendant's action was both the

cause-in-fact (actual cause) and the proximate cause (legal cause) of the victim's death is required "to satisfy the causation element." *State v. Lane*, 115 N.C. App. 25, 28 (1994).

"The general rule is that the intervening or superseding criminal acts of another preclude liability of the initial negligent actor when the injury is caused by the criminal acts." *Tise v. Yates Constr. Co.*, 345 N.C. 456, 460 (1997). For the "negligence of another to insulate defendant from criminal liability, that negligence must be such as to break the causal chain of defendant's negligence; otherwise, defendant's culpable negligence remains a proximate cause, sufficient to find him criminally liable." *State v. Hollingsworth*, 77 N.C. App. 36, 39 (1985) (citing *State v. Ellis*, 25 N.C. App. 319 (1975)).

Evidence was insufficient to show that Mr. Anderson's sale of a controlled substance to Tiffany was the cause of Ryan and Sarah's deaths because Tiffany's actions were an intervening cause.

**C. Tiffany's actions were a superseding cause of Ryan and Sarah's deaths which broke the chain of causation.**

If Tiffany had stopped acting as an intermediary upon being informed that Mr. Anderson did not have any cocaine, Ryan and Sarah would not have died that night from a fentanyl overdose. There was no evidence that Mr. Anderson directly provided heroin or fentanyl to Ryan and Sarah. Tiffany

said she obtained heroin from Mr. Anderson and told Ryan and Sarah it was cocaine. Tiffany's actions caused Ryan and Sarah's deaths.

Tiffany owed Ryan and Sarah a duty to exercise reasonable care to protect them from harm. *Firemen's Mut. Ins. Co. v. High Point Sprinkler Co.*, 266 N.C. 134, 140 (1966) ("Every man is in general bound to use care and skill in his conduct wherever the reasonably prudent person in his shoes would recognize unreasonable risk to others from failure to use such care."). It was undisputed that Tiffany knew the drugs she gave Ryan and Sarah were not cocaine. Yet she led them to believe they were. It was unreasonable for Tiffany to lie to Ryan and Sarah about what drug she delivered to them and to fail to warn them of the potency. Tiffany knew the drugs were strong and potent because she had used them. She knew that heroin and cocaine impacted the body differently. Tpp. 497-98. But she did not warn Ryan and Sarah that she was giving them heroin instead of cocaine.

Lying to Ryan and Sarah created an unreasonable risk that they would misuse the drugs. It also created a foreseeable risk that they would be injured from their use of the drugs since the heroin was far more potent than the cocaine Tiffany was supposed to deliver. *See Estate of Mullis by Dixon v. Monroe Oil Co.*, 349 N.C. 196, 205 (1998) ("Risk-creation behavior ... triggers duty where the risk is both unreasonable and foreseeable."); *see* Tp. 320 ("[W]hen somebody says they used heroin what I'm hearing is they used

fentanyl.”); Tp. 335 (“[A]ny concentration of fentanyl could be a cause of death.”). Tiffany was negligent in her transaction with Ryan.

Had Tiffany exercised reasonable care in telling Ryan and Sarah that she was giving them heroin not cocaine, Ryan and Sarah likely would not have taken the drugs. There was no evidence that Ryan and Sarah had ever used heroin. *See* Tpp. 293-94, 296, 650. Ryan requested cocaine – which he regularly used – and Tiffany gave him something else instead. Tiffany knew that heroin and cocaine did not impact the body in the same way based on her own personal experiences with both drugs. Tpp. 497-98; *see also* Tp. 323 (discussing how cocaine is a stimulant and opiates are depressants). Using that substance like it was cocaine likely caused Ryan and Sarah’s deaths.

Mr. Anderson could not have foreseen that Tiffany would not have told Ryan and Sarah that the drugs were not cocaine after she demanded “the dope” from him and said, “They’re going to have to deal with that.” Tp. 657. Tiffany’s actions were the cause of Ryan and Sarah’s deaths. Her actions broke any chain of causation relating back to Mr. Anderson’s distribution of heroin. The trial court erred in failing to dismiss the charge.

**II. ALTERNATIVELY, THE TRIAL COURT PLAINLY ERRED BY NOT INSTRUCTING THE JURY ON INTERVENING ACTS OF OTHERS.**

Ryan and Sarah intentionally ingested the powder that Tiffany gave them. Tiffany lied to them about what that powder was. The intentional acts

of others were the cause of Ryan and Sarah's deaths. The jury should have been instructed on how to account for those acts when considering if the State had proven that Mr. Anderson proximately caused Ryan and Sarah's deaths.

**A. Standard of Review**

Challenges to the trial court's decisions regarding jury instructions are reviewed *de novo*. *State v. Osorio*, 196 N.C. App. 458, 466 (2009).

**B. The jury should have been instructed to consider whether Tiffany, Ryan, and Sarah's intentional acts were an intervening and superseding cause of their deaths.**

Tiffany's actions were an intervening and superseding cause of Ryan and Sarah's deaths. Tiffany delivered heroin to Ryan and Sarah. There is no dispute that Tiffany intentionally deceived Ryan about what she was giving him. Without Tiffany's actions, Ryan and Sarah likely would not have died on 1 June 2017.

Ryan sought to obtain cocaine. He and Tiffany spent hours trying to obtain cocaine from Mr. Anderson after Mr. Anderson told Tiffany he did not have any. Ryan intentionally sought to buy and use an illegal drug. Sarah used the drug as well and believed the powder was cocaine. Ryan's failure to exercise reasonable care was a cause of his and Sarah's deaths. Their intentional drug use was a cause of death.

The jury was not instructed on how to consider Tiffany, Ryan, or Sarah's intentional actions. Their actions were also potential causes of death. A substantial feature of the present case was whether there were intervening causes or multiple proximate causes of Ryan and Sarah's deaths. *See Warren v. Parks*, 31 N.C. App. 609, 612 (1976) (recognizing "joint and concurring negligence or multiple proximate causes" were substantial features of that case). "Every substantial feature of the case arising on the evidence must be presented to the jury even without a special request for instructions on the issue." *State v. Watson*, 80 N.C. App. 103, 106 (1986).

Here, the jury was instructed

A proximate cause is a real cause, a cause without which the victim's death would not have occurred and one that a reasonably careful and prudent person could foresee would probably produce such injury or some similar injurious result. The defendant's act need not have been the only cause, nor the last or nearest cause. It is sufficient if it occurred with some other cause acting at the same time which in combination with caused the death of the victim.

Tp. 795. The jury should have also been instructed that "the negligence of the person fatally injured, or of a third person, is relevant and material on the question of proximate cause," *State v. Harrington*, 260 N.C. 663, 666 (1963), and that if an intervening act was "the sole cause of death," the jury should find Mr. Anderson not guilty. *See State v. Holsclaw*, 42 N.C. App. 696, 699 (1979).

There were multiple links in the chain the State relied on to get from Mr. Anderson to Ryan and Sarah's deaths. Tiffany intentionally gave the drugs to Ryan. Tiffany intentionally lied to Ryan about the identity of those drugs. Ryan intentionally ingested the drugs. Ryan intentionally shared the drugs with Sarah. Sarah intentionally ingested the drugs. The jury should have been told how to consider Tiffany, Ryan, and Sarah's actions and the impact it had on proximate cause. The trial court erred by failing to instruct on this feature of the case.

**C. The jury probably would have acquitted Mr. Anderson had they been instructed on intervening cause.**

Mr. Anderson's attorneys did not request an instruction on intervening acts. When there is no request for an instruction, the defendant must show plain error. "To establish plain error, defendant must show that the erroneous jury instruction was a fundamental error—that the error had a probable impact on the jury verdict." *State v. Lawrence*, 365 N.C. 506, 518 (2012).

The prosecutor argued that one word summed up the entire trial: accountability. Tp. 741; Rp. 37. He admitted Tiffany, Ryan, and Sarah were accountable. Tpp. 741-42. Yet the jury was not informed of the legal impact of their actions on Mr. Anderson's possible guilt. The evidence of causation was weak. Tiffany, a known drug addict who felt responsible for Ryan and

Sarah's deaths because she had lied to them by giving them heroin and telling them it was cocaine, said she gave drugs from Mr. Anderson to Ryan and Sarah. Tpp. 529-30. No one saw Ryan and Sarah use drugs. Ryan and Sarah intentionally took drugs that night—including cocaine which the State did not allege Mr. Anderson gave to them. The State argued Tiffany, Ryan, and Sarah were accountable for their actions, but the instructions did not reflect how that accountability should be considered. Had the jury been instructed that it could consider Tiffany's act of selling heroin to Ryan as cocaine, Ryan's actions in taking the substance from her, and Ryan and Sarah's intentional use of drugs, the jury probably would have found that Mr. Anderson did not proximately cause their deaths.

**III. THE TRIAL COURT PLAINLY ERRED BY NOT INSTRUCTING ON THE LESSER INCLUDED OFFENSE OF INVOLUNTARY MANSLAUGHTER WHEN THE EVIDENCE OF MALICE WAS IN CONFLICT.**

The State relied on Mr. Anderson recklessly distributing a dangerous substance to prove the malice needed for second-degree murder. But recklessness is also an element of the lesser-included offense of involuntary manslaughter. Since the evidence could have supported a finding that Mr. Anderson acted with culpable negligence rather than malice, an instruction on involuntary manslaughter was required. The trial court plainly erred by failing to give the instruction and a new trial is required.



**A. Standard of Review**

Challenges to the trial court's decisions regarding jury instructions are reviewed *de novo*. *Osorio*, 196 N.C. App. at 466.

**B. Evidence supported a verdict of involuntary manslaughter.**

"The distinguishing difference between second-degree murder and manslaughter is the presence of malice in second-degree murder and its absence in manslaughter." *State v. Gurkin*, 234 N.C. App. 207, 215 (2014). The elements of involuntary manslaughter are: "(1) an unintentional killing; (2) proximately caused by either (a) an unlawful act not amounting to a felony and not ordinarily dangerous to human life, or (b) culpable negligence." *State v. Hudson*, 345 N.C. 729, 733 (1997). "In the context of involuntary manslaughter, culpable negligence is such recklessness or carelessness, proximately resulting in injury or death, as imports a thoughtless disregard of consequences or a heedless indifference to the safety and rights of others." *State v. Barnes*, 226 N.C. App. 318, 328-29 (2013) (cleaned up).

"The distinction between recklessness indicative of murder and recklessness associated with manslaughter is one of degree rather than kind." *State v. Rich*, 351 N.C. 386, 393 (2000) (citation, quotation omitted). "Standing alone, culpable negligence supports the submission of involuntary manslaughter. But when that negligence is accompanied by an act which

imports danger to another [and] is done so recklessly or wantonly as to manifest depravity of mind and disregard of human life, then it is sufficient to support a second-degree murder charge.” *Barnes*, 226 N.C. App. at 328-29 (quoting *Rich*, 351 N.C. at 393). Put differently, “[w]hen defendant’s reckless conduct rises to a level so as to constitute malice, then the defendant is guilty of second-degree murder, but if it does not rise to that level, then the defendant is guilty of involuntary manslaughter.” *Id.* at 329. If “more than one inference” may be drawn from the evidence, it is error for the trial court not to instruct on a lesser offense. *State v. Gause*, 227 N.C. 26, 30 (1946).

In *Barnes*, this Court found the evidence was sufficient to support jury instructions on both second-degree murder and involuntary manslaughter. There, the evidence showed the defendant had sold the decedent methadone and the defendant had “nearly died the month before from an overdose of methadone.” *Barnes*, 226 N.C. App. at 329. Evidence supported both charges even though there was no evidence that the defendant intended to kill the decedent by selling him the methadone. *Id.*

Like in *Barnes*, the allegation here was that Mr. Anderson sold drugs which resulted in the death of another person. There was no evidence to show Mr. Anderson intended to kill anyone. The State’s argument on recklessness rising to the level of malice was centered on two premises: (1) Mr. Anderson sold heroin to Tiffany even though she said she asked for

cocaine and (2) Mr. Anderson knew that Kendrick had overdosed that same night from ingesting the same substance. Rp. 57.

The first premise did not show malice. Tiffany testified that she gave what she knew to be heroin to Ryan and Sarah after Ryan asked her to get him cocaine. Tiffany said that Mr. Anderson only told her the drugs were on the refrigerator. Joanne testified that Tiffany told Mr. Anderson she would take the “dope,” which everyone understood to be heroin. Tiffany knew she gave Ryan and Sarah heroin even if she had initially asked for cocaine. The jury could not have inferred that Mr. Anderson acted with reckless disregard for Ryan and Sarah’s lives when he sold drugs to Tiffany since she knew the nature of the drugs.

As to Kendrick’s overdose, Mr. Anderson tried to help Kendrick by bringing him to Joanne’s. Then he stopped Joanne and Thomas from injecting the heroin and said they had to snort it after what happened to Kendrick. Further, there was evidence that Kendrick had overdosed on the drugs when he combined them with other substances. Tp. 639. There was no testimony that Mr. Anderson knew Kendrick had taken other drugs when Mr. Anderson gave him heroin or that he could have known that Ryan and Sarah had also taken other drugs that day.

Taking the evidence in the light most favorable to Mr. Anderson, as must be done, a reasonable juror could have found that Mr. Anderson acted

not with malice, but merely with “thoughtless disregard of consequences or a heedless indifference to the safety and rights of others” when he sold drugs to Tiffany. *Barnes*, 226 N.C. App. at 328-29; *see also State v. Clark*, 201 N.C. App. 319, 323 (2009) (a reviewing court views the evidence in the light most favorable to the defendant when determining if it supports submission of a lesser included offense). Ultimately, an instruction on a lesser offense is warranted where there is “some doubt or conflict” regarding the elements of the greater offense. *State v. Wright*, 304 N.C. 349, 353 (1981). If there was “some evidence” supporting the lesser offense, then failure to so instruct “constitutes reversible error which is not cured by a verdict of guilty of the greater offense.” *State v. Bell*, 87 N.C. App. 626, 635 (1987). Here there was doubt and conflict regarding whether Mr. Anderson acted with malice—the jury did not have to infer from the evidence that he did so.

The degree of reckless exhibited by Mr. Anderson in selling drugs was for the jury to decide. It could have believed that Mr. Anderson acted with thoughtless disregard rather than with “depravity of mind and disregard of human life.” While it is possible that some people will die from ingesting heroin, most others will not. It is well-established that an instruction on a lesser included offense is required when “there is evidence from which the jury could find that [the] defendant committed the lesser included offense.”

*State v. Boykin*, 310 N.C. 118, 121 (1984). The trial court erred in failing to instruct on involuntary manslaughter.

**C. If properly instructed on involuntary manslaughter, the jury probably would have returned a different verdict.**

Because the evidence supported a verdict of involuntary manslaughter, it was fundamental error not to instruct on it. “A trial court must give instructions on all lesser-included offenses that are supported by the evidence, even in the absence of a special request for such an instruction[.]” *State v. Lawrence*, 352 N.C. 1, 19 (2000). When there is no request for an instruction, the defendant must show plain error. “To establish plain error, defendant must show that the erroneous jury instruction was a fundamental error—that the error had a probable impact on the jury verdict.” *State v. Lawrence*, 365 N.C. 506, 518 (2012).

Our Supreme Court has made clear that “[i]t is reversible error for the trial court not to submit to the jury such lesser included offenses to the crime charged as are supported by the evidence.” *State v. Lytton*, 319 N.C. 422, 426-27 (1987). Additionally, a trial court’s failure to submit a lesser-included offense to the jury is not cured by a guilty verdict on the greater offense because “it cannot be known whether the jury would have convicted of a lesser degree if the permissible degrees arising on the evidence had been correctly submitted to the jury.” *State v. Poole*, 298 N.C. 254, 257 (1979).

Here the jury was faced with only two options—find Mr. Anderson guilty of murder or find him not guilty. Given that two young people died after taking drugs allegedly delivered to them by someone who got them from Mr. Anderson, the jury was likely reluctant to let him off the hook completely. If they had been instructed on manslaughter, the jury would probably have found Mr. Anderson acted recklessly when selling drugs, but not to the level required to show the malice needed for second-degree murder. A new trial is required.

**IV. THE TRIAL COURT ERRED BY FAILING TO INTERVENE IN THE STATE’S CLOSING ARGUMENT ABOUT SENDING A MESSAGE TO OTHER “PEDDLERS OF THIS POISON.”**

During the State’s closing argument, the prosecutor improperly asked the jury to send a message to drug dealers that selling drugs that could result in death would not be tolerated in Hyde County. This type of general deterrence argument is improper, and the trial court should have stepped in to stop it. A new trial is required.

**A. Standard of Review**

If a defendant fails to object, this Court determines if the argument was “so grossly improper that the trial court erred in failing to intervene *ex mero motu*.” *State v. Jones*, 355 N.C. 117, 133 (2002).

**B. The prosecutor improperly argued that the jury should return a verdict of guilty to deter other “peddlers of this poison” from selling drugs in Hyde County.**

During closing argument, “an attorney may not become abusive, inject his personal experiences, express his personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant, or make arguments on the basis of matters outside the record.” N.C.G.S. § 15A-1230(a). “From this it follows that the jury’s decision must be based solely on the evidence presented at trial and the law with respect thereto, and not upon the jury’s perceived accountability ... to the community, or to society in general.” *State v. Boyd*, 311 N.C. 408, 418 (1984).

In a criminal prosecution, the interest of the State “is not that it shall win a case, but that justice shall be done.” *State v. Smith*, 279 N.C. 163, 167 (1971) (citation omitted). “While [a prosecutor] may strike hard blows, he is not at liberty to strike foul ones.” *Id.*

In wrapping up his closing argument, the prosecutor struck a foul blow when he displayed a map of Hyde County and argued,

I’ve got a map of Hyde County. This is your county. It’s not mine. I live in Beaufort County. When this trial is over, I’m going back to my home county.

By your verdict what do your -- what do you want your county to be? Do you want Hyde County to be known that the kingpin, the dealer, is untouchable just because maybe he didn’t deliver the drugs to Ryan and Sarah? Do you

want -- do you want Hyde County to be known as that? As long as I've got a middle person in between me, I'm safe. Do you want Hyde County to be known as a place where all the responsibility is on the user? Are you going to say to yourself and to your fellow citizens in Hyde County that, hey, if you do the drugs, that's on you? It's not on me. You made that choice. Do you want Hyde County to be known as that kind of place, or do you want to do something about it? Do you want Hyde County to send a message to the peddlers of this poison? You come to Hyde County, you distribute these drugs, if people die, you are going to pay. You're going to be held accountable for your actions.

The bottom line is, ladies and gentlemen, you have plenty of evidence to do that. You have the power by your verdict to send a message that we're not going to tolerate this in our county. You also have the law to do that. The law is on the books for a reason, for this reason, for this case. The law is on the books. The evidence is there. The law is there, but don't do this because I'm asking you to do it as your District Attorney. Do it because you want to make a difference in Hyde County.

Do you want to send a message to your fellow citizens that are law abiding that you are doing your part to make this a better place? Also, send a message to the other three or four names of people or more that sell drugs in this county that came from this witness stand: If you continue to do that and somebody dies, then the State is coming after you because they can.

Tpp. 773-75; App. 33-35; *see* Rp. 61. The prosecutor improperly argued the jury should consider not only the evidence offered at trial, but also the community's reputation and impact the verdict would have on other "peddlers of this poison." He asked them not to send a message to Mr. Anderson about his conduct, but "to make a difference in Hyde County."



“[T]he prosecution may not argue the effect of defendant’s conviction on others, *i.e.*, general deterrence[.]” *State v. Abraham*, 338 N.C. 315, 339 (1994). Here, the prosecutor argued general deterrence when asking the jury if “Hyde County [wanted] to send a message to the peddlers of this poison” and to “send a message to the other three or four names of people or more that sell drugs in this county that came from this witness stand: If you continue to do that and somebody dies, then the State is coming after you because they can.” Tpp. 773, 775; App. 33, 35. This argument was grossly improper.

**C. The prosecutor’s remarks render the convictions fundamentally unfair.**

“Improper remarks may be prejudicial either because of their individual stigma or because of the general tenor of the argument as a whole.” *Jones*, 355 N.C. at 133. When there is no objection to an improper closing argument, the prosecutor’s comments are prejudicial if they “so infected the trial with unfairness that they rendered the conviction fundamentally unfair.” *State v. Waring*, 364 N.C. 443, 499-500 (2010).

Throughout the trial, the State sought to paint Mr. Anderson as a self-employed businessman interested only in money—money that he made by selling dangerous, illegal drugs. In opening, the prosecutor claimed Mr. Anderson “got high on the money, not on the drugs.” Tp. 263; *see also* Tp. 265

(“the man who’s in it for the money”); Tp. 270 (“AJ is the one who got the money”). And right from the beginning, the prosecutor labeled Mr. Anderson as “the drug dealer, the one who distributes the drugs, the one who’s in it for the money, not in it for the high[.]” Tp. 273.

During the trial, the prosecutor asked Tiffany about drug dealers in general and how they behaved. Tp. 532. Then he discussed “drug dealers” during the closing argument:

I would submit to you a smart drug dealer doesn’t want to kill. If all of his customers died, where is he going to get his money? He doesn’t want to kill them. He just wants to get them hooked. He doesn’t care about their family. He doesn’t care if they lose their job. He doesn’t care if, like Tiffany Webber, you lose custody of your kids. He doesn’t care about the burdens on our tax system, all the tax dollars that are involved on addiction in this country. He doesn’t care what all the resources that the court system spends just on drug offenses. He doesn’t care about all of that. He just wants the money. He just wants the cash.

Tp. 752; App. 12; *see also* Tpp. 753, 765; App. 13, 25. The prosecutor sought to paint Mr. Anderson as a dangerous outsider who preyed on the citizens of Hyde County:

think of all the things in our society that are negatively impacted by illegal drugs. Think about that. That is -- he has -- he doesn’t care about his community, and what’s even worse, he doesn’t care about Hyde County. Do you know why? Because he goes up to the big city in Mecklenburg. They like to call it the state of Mecklenburg. He goes to the city of Charlotte, and then he comes down here to pray [sic] on you folks, pray [sic] on the citizens of

Hyde County, get what money he can, and then he goes back. He doesn't care.

Tp. 754; App. 14.

At the end of the argument, the prosecutor tied everything together by asking the jury to send a message to drug dealers about Hyde County, about what would be tolerated, and reminded them that neither he nor Mr. Anderson lived in Hyde County. The evidence against Mr. Anderson was not overwhelming—Ryan and Sarah used other drugs on the night of their deaths and Tiffany gave them drugs. The prosecutor's repeated improper references to making money as a drug dealer and sending a message to all "peddlers of this poison" so inflected the entire trial that Mr. Anderson's convictions for second-degree murder are fundamentally unfair.

As our Supreme Court recognized, "[i]f verdicts cannot be won without appealing to prejudice, they ought not to be won at all." *State v. Smith*, 240 N.C. 631, 635-36 (1954). "[C]oming from [the prosecutor's] exalted place with the high respect that he has earned for himself ... such remarks were disastrous to the defendant's right to a fair and impartial trial." *Id.* In the present case, the prosecutor's argument was grossly improper and was calculated to inflame the passions of the jury and cause it to act on those passions. The chances of the jury acting from their passions was compounded by the lack of instructions on intervening causes or lesser offenses. The trial

court abused its discretion in failing to intervene *ex mero motu* in the prosecutor's closing argument. A new trial is required.

### CONCLUSION

Mr. Anderson requests that this Court vacate his convictions. In the alternative, Mr. Anderson requests that this Court remand for a new trial.

Respectfully submitted, this the 26th day of January, 2023.

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### **CERTIFICATE OF COMPLIANCE WITH RULE 28**

I certify Defendant-Appellant's Brief complies with Rule 28(j)(2) of the North Carolina Rules of Appellate Procedure as it is printed in thirteen-point Century Schoolbook and the body of the brief, including footnotes and citations, contains no more than 8,750 words as indicated by the word-processing program used to prepare the brief.

This the 26th day of January, 2023.

Electronically Submitted  
Amanda S. Zimmer  
Assistant Appellate Defender

### **CERTIFICATE OF FILING AND SERVICE**

I certify Defendant-Appellant's Brief has been filed, pursuant to Rule 26 of the North Carolina Rules of Appellate Procedure, by electronic means with the Clerk of the North Carolina Court of Appeals.

I further certify Defendant-Appellant's Brief has been served on Kristin J. Uicker, Special Deputy Attorney General, North Carolina Department of Justice, by electronic means by emailing it to [kuicker@ncdoj.gov](mailto:kuicker@ncdoj.gov).

This the 26th day of January, 2023.

Electronically Submitted  
Amanda S. Zimmer  
Assistant Appellate Defender

NO. 22-970

DISTRICT 2

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

STATE OF NORTH CAROLINA	)	
	)	
v.	)	From Hyde County
	)	17CRS50135-36
ALFORNIA LEE ANDERSON, JR.,	)	
Defendant.	)	

\*\*\*\*\*

APPENDIX

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State's Closing Argument.....App. 1-35

1 THE COURT: All right. The jury is with the  
2 State --

3 MR. EDWARDS: Thank you, Your Honor.

4 THE COURT: -- Mr. Edwards.

5 MR. EDWARDS: May I have just a moment?

6 THE COURT: Yes, sir.

7 MR. EDWARDS: May -- may it please the Court,  
8 counsel, ladies and gentlemen of the jury, I first want to  
9 thank you for your time over the last week. You've taken a  
10 week out of your life to spend up here in the Hyde County  
11 Courthouse, and even for those of you having to travel on  
12 the ferry several hours each way today -- each day has  
13 been -- if nothing more than it's been an inconvenience in  
14 the least, so I want to thank you for your time and  
15 attention this week.

16 I'd like to begin with a word that I believe sums up  
17 this entire trial. It sums up your job as a juror, and that  
18 word is accountability. As a juror are you, by your  
19 verdict, going to hold Alford Lee Anderson accountable for his  
20 actions? That's ultimately the question you have to answer.  
21 Is he accountable?

22 Now Ryan Gibbs and Sarah Reams, they're accountable for  
23 their actions for what they did that night. They're dead.  
24 They made a choice. Even though I submit to you, ladies and  
25 gentlemen, they expected to get cocaine. They thought they

1       were doing cocaine, but they did heroin with fentanyl. They  
2       made a choice, and they're accountable. They're no longer  
3       with us. We've got families in this courtroom that will  
4       never see them again.

5               Tiffany Webber is accountable for her part that she  
6       played in this. She's already pled guilty to two counts of  
7       second degree murder, and, as I've indicated to you, I've  
8       spoke to you about this in jury selection, she will be  
9       punished. She's come into this courtroom and admitted to  
10      what she did and the part that she played. She is  
11      accountable, so you twelve have to decide is he accountable  
12      for his part in all of this.

13              Ladies and gentlemen, you often hear  
14      State versus so and so. Well, who is the State of  
15      North Carolina? Is it Seth Edwards?

16              No. I'm not the State. I represent the State. I  
17      represent all of you. I represent the folks in this  
18      courtroom. I represent the people in the other 99 counties  
19      of North Carolina that when you break the law you will be  
20      held accountable, so keep that in mind, that I'm  
21      representing you. It is your job to come in here and to see  
22      that justice is done today.

23              Defense attorneys love to talk about the burden of  
24      proof. I sat at that table for 12 years before I became the  
25      D.A. They love to describe the burden of proof as something



1       that is just so heavy there's no way that the strongest  
2       person in the world could ever carry it, but that is not  
3       what the law says. The law says that proof, it's burden is  
4       beyond a reasonable doubt. What is that? The judge is  
5       going to tell you. It's proof that fully satisfies or  
6       entirely convinces you of the defendant's guilt.

7               Again, I spoke to you about this in jury selection. It  
8       is not beyond a shadow of a doubt. It is not beyond all  
9       doubt. It is beyond a reasonable doubt. Our North Carolina  
10      Supreme Court has also stated it is not a mere possible  
11      doubt for most things that relate to human affairs are open  
12      to some possible or imaginary doubt, but a reasonable doubt  
13      is a doubt based on reason and common sense. The bottom  
14      line is we are asking you, the judge is asking you, to use  
15      your good old fashion common sense to decide what are the  
16      facts, what's the truth in this case.

17             Use your good old common sense, and here's an example  
18      that I like to give. All right. I've got a pen in my hand,  
19      and let me just first give you a disclaimer. I'm not a  
20      magician. This is not a trick, okay, but I've got a pen,  
21      and I drop it on the floor. Okay. I'm going to pick it up.  
22      All twelve of you can say beyond a shadow of a doubt, beyond  
23      all doubt, that I just dropped that pen and picked it up  
24      because you were an eyewitness. You saw it. There is no  
25      doubt that I did that; however, you leave here today. You

1       get back on the ferry. You're riding two and a half hours,  
2       and you go up to somebody on the ferry: "You know what, I  
3       was in court today, and I saw Seth Edwards. He looked like  
4       a fool, but he pulled a pen out of his pocket, and he  
5       dropped it." Well, that person that you told cannot say  
6       beyond a shadow of a doubt that I did that because that  
7       person was not in this courtroom and did not see it. That  
8       person has to rely on someone else, you, the eyewitness, to  
9       determine whether he or she believes you or not.

10           Each day when you get up you use your common sense, for  
11       example, to decide what clothes to wear in here today. You  
12       were here all last week. You know what the temperature is  
13       like inside. We woke up this morning with a little chill in  
14       the air. You used your common sense to dress appropriately.  
15       You didn't know beyond a shadow of a doubt that you were  
16       going to come here, and maybe the heat was broken, or the  
17       air condition was broken. Then we'd all be suffering, but  
18       you used your common sense to make that decision, so my  
19       point is this: If the burden of proof on the State were  
20       beyond all doubt, the only way we could ever prove a case to  
21       a jury is if all of the jurors were eyewitnesses which is  
22       impossible, so my point is it's a reasonable doubt.

23           Use your common sense to make the decision in this case  
24       to reach your verdict. Absolute proof is not required in  
25       your everyday life for most affairs, and absolute proof is

1 not required in this courtroom either.

2 Okay. Ladies and gentlemen, I want to talk to you in  
3 detail about the law in this case because it is an unusual  
4 law. I talked to you about this in jury selection too. Now  
5 the judge is going to read you the law, and I believe you'll  
6 get -- also get a written paper copy of his instructions as  
7 well for when you are deliberating because it is a lot to  
8 take in. I'm talking. The defense is going to talk, and  
9 you're going to hear the judge instruct you on the law.  
10 It's hard to remember everything, so you will get a paper  
11 copy, but the first element of second degree murder is that  
12 the victim's death was caused by ingesting heroin and  
13 fentanyl.

14 Now I expect the defense to argue to you, ladies and  
15 gentlemen, that even if you believe that AJ distributed the  
16 heroin and fentanyl, how can you be sure beyond a reasonable  
17 doubt that that is what killed him? I certainly expect her  
18 to argue that, lots of reasons, and let me first of all tell  
19 you the first one and that is your common sense tells you,  
20 ladies and gentlemen, that cocaine did not kill Ryan and  
21 Sarah. Alcohol did not kill Ryan and Sarah.

22 Now I do not believe in my opening I said, "Nobody ever  
23 in the world dies from cocaine or alcohol," but if I said  
24 that word, I was referring to Ryan and Sarah.

25 Ryan and Sarah had been doing cocaine and drinking for

1       some time, Ryan, according to Tiffany Webber, for years, and  
2       that did not kill him. Was it good for his heart? Of  
3       course, not. I believe one of the words the experts used  
4       was cardiac -- cardio toxic or something or toxicity. Of  
5       course, it's bad for you, but it did not kill him. What  
6       changed this one night is the heroin and fentanyl. Did they  
7       make bad decisions to use these illegal drugs? Of course,  
8       they did, but it was not killing them. Common sense tells  
9       you what was different about this one night was the heroin  
10      and fentanyl that came from this man right here.

11           There's another reason that you know that cocaine  
12      didn't kill them. Let's go back to what the expert said  
13      from the witness stand. Remember, the doctor is talking  
14      about the parent cocaine, you know, the actual cocaine  
15      that's still in their blood and then the cocaine  
16      metabolites, so when your body is trying to get rid of that  
17      drug it produces a metabolite, so -- so when you first take  
18      a drug, cocaine or heroin, whatever, the cocaine itself is  
19      up here, and the metabolites are here, and as time goes on  
20      and your body is trying to get rid of it, the metabolites go  
21      up, and the cocaine goes down, so in this situation both of  
22      their blood reports show they had very small amounts of  
23      cocaine.

24           They didn't just snort cocaine and then die because if  
25      they had, the amount of the parent cocaine would be much

1 higher in their blood, and it wasn't. It was already going  
2 this way. They had done cocaine within a fairly recent  
3 previous time but not that -- not right then. Cocaine did  
4 not kill them, and the blood reports show it.

5 Also, if they were doing a bunch of cocaine and just  
6 died, why were they out still looking for it for a couple of  
7 hours? They didn't have it. Maybe they used it the day  
8 before, maybe within 24 hours, but they didn't have cocaine.  
9 That's why they were trying to buy it. Cocaine didn't kill  
10 them.

11 Also, Dr. Privette, the medical professional, he said a  
12 number of things. He said two people don't die at the same  
13 time with cocaine. You're not going to have two people that  
14 die at the same time of excessive amounts of alcohol.  
15 You're not going to see two young people that are relatively  
16 healthy that are dying from cocaine. He said that, not Seth  
17 said that. He said that. It's the fentanyl that he has  
18 seen almost every day killing our young people and old alike  
19 but both of them at the same time, it's not the cocaine that  
20 did that.

21 He indicated, Dr. Privette said, that unless you have  
22 an underlying health issue, something really bad with your  
23 heart or something like that, cocaine is not killing these  
24 young people, and although Ryan's heart was enlarged because  
25 of -- he was overweight, that is not the cause of his death.

1 That was not an underlying health disease.

2 Now his heart, as Ms. Peppers tried to get the doctor  
3 to say, "Oh, shouldn't you have amended your report or  
4 changed your report?" He said, "No." He put that it was a  
5 combined -- or a combination of heroin -- for Ryan, heroin,  
6 fentanyl, cocaine, and alcohol.

7 The alcohol, we know, is a suppressant. It slows you  
8 down. It could have slowed their breathing some, but the  
9 cocaine is a stimulant. You heard the doctor say that, so  
10 even with alcohol, it could have slowed his breathing, but  
11 it would not have killed him. It's the fentanyl that killed  
12 him, 50 to 100 times stronger than morphine. Think about  
13 that a second. You go into the hospital and have some of  
14 your -- you've got a broken leg, and they're doing surgery  
15 on you, and they give you morphine, and you hear that, and  
16 you're like good gracious. That's some strong stuff, and  
17 fentanyl is 50 to 100 times stronger than morphine. I mean,  
18 that is big time. That's what killed them.

19 I also believe Dr. Privette did a really good job of  
20 explaining the difference in, say, a cocaine overdose and  
21 then from opiates. Now heroin and fentanyl is an opiate,  
22 but, also, he's referring to the oxycodone, the hydrocodone,  
23 Oxycontin, those type drugs. If somebody takes too many of  
24 those pills, that's when they go lay on the couch, and the  
25 family says, "They look peaceful. They're taking a nap,"

1 and then over time their breathing stops, and they die, but  
2 what did Dr. Privette say about the discharge?

3 (State's exhibit published to the jury.)

4 MR. EDWARDS: That, ladies and gentlemen, is a  
5 classic fentanyl overdose. The foam cone he called it. You  
6 don't see that with cocaine, and he described what causes  
7 that. The fluid builds up in their lungs. It mixes with a  
8 protein, and then it's got to come out somewhere, either  
9 their mouth or their nose, classic fentanyl overdose, so  
10 okay.

11 Second element, defendant intentionally and unlawfully  
12 distributed heroin and fentanyl, this brings me to the  
13 second key word I want to talk to you about. The first one  
14 was accountability which I would argue to you is the over --  
15 overall theme of this case. The second key word is  
16 distributed.

17 Now in the legal business world, what is distribution  
18 in the legal business world? Okay. You've got the makers  
19 of hydrocodone or the makers of an antibiotic. How do they  
20 distribute their product? They -- they manufacture it. You  
21 need the prescription. It goes to the pharmacies. The  
22 pharmacies give it to the consumer. That's all part of the  
23 distribution chain in the legal business world.

24 Now in AJ's business he was involved in distribution as  
25 well. He's got the drug. He's distributing it to Ryan and

1 Sarah, but instead of using a pharmacist, he's got  
2 Tiffany Webber. He gets all the money. She takes the drugs  
3 and distributes to Ryan and Sarah.

4 Notice -- and, again, this is straight from  
5 North Carolina law. The judge is going to say these exact  
6 words. Where does it say defendant intentionally and  
7 unlawfully delivered heroin and fentanyl to Ryan and Sarah?  
8 It doesn't. There's a big difference between distribution  
9 and delivery. The State does not have to prove that AJ  
10 personally put it in their hands, a delivery. It's  
11 distribution, and that's what he's doing, ladies and  
12 gentlemen, if he is distributing this drug.

13 All right. Element three, the defendant's unlawful  
14 distribution of heroin and fentanyl was a proximate cause of  
15 the victim's death. A proximate cause is a real cause, a  
16 cause without which the victim's death would not have  
17 occurred and one that a reasonably careful and prudent  
18 person could foresee would probably produce such injury or  
19 some similar result.

20 All right. The next key word, it's actually one  
21 letter. It's the letter A. Because of this, ladies and  
22 gentlemen, it says his distribution of heroin and fentanyl  
23 was a proximate cause, not thee proximate cause, and why is  
24 that important? The defendant's act need not have been the  
25 only cause, nor the last or nearest cause. It is sufficient



1 if it occurred with some other cause acting at the same time  
2 which in combination with caused the death of Ryan and  
3 Sarah.

4 Now if the word, going back, said it has to be the  
5 proximate cause, then it has -- then that would be just one,  
6 the only cause, so what this means, ladies and gentlemen,  
7 even if you think that cocaine and/or alcohol combined with  
8 the heroin and fentanyl, that's okay under the law because  
9 the heroin and fentanyl is a proximate cause. The cocaine,  
10 I submit to you, was not a proximate cause at all, but even  
11 if you believe that it contributed to it the law says that  
12 it's still sufficient.

13 Also, if you think, "Well, Tiffany Webber, she played a  
14 big part in this." Well, the same thing applies here. It  
15 doesn't have -- it doesn't say that AJ Anderson is the only  
16 person that can be charged and have any involvement. They  
17 both can come together, and if they both play a role, they  
18 both contribute to the cause of their deaths, so that's what  
19 we have here. In other words, AJ's act of distributing to  
20 Tiffany can be a proximate cause, and Tiffany Webber's act  
21 of then distributing it to Ryan and Sarah can be a proximate  
22 cause, so we can have two in this case, and he's still  
23 guilty. The judge is going to tell you this is the law.

24 Now, next slide, the third -- third -- fourth element  
25 -- excuse me. I backed up.

1           The defendant unlawfully and with malice killed the  
2 victim, some -- there are some big words here. Malice  
3 arises when an act that is inherently dangerous to human  
4 life is done so recklessly and wantonly as to manifest a  
5 mind that's utterly without regard for human life and social  
6 duty and deliberately bent on mischief.

7           I asked -- I asked this of you in jury selection.  
8 Where in that definition does it say intent to kill? It  
9 doesn't. The State does not have to prove intent to kill,  
10 and I would submit to you a smart drug dealer doesn't want  
11 to kill. If all of his customers died, where is he going to  
12 get his money? He doesn't want to kill them. He just wants  
13 to get them hooked. He doesn't care about their family. He  
14 doesn't care if they lose their job. He doesn't care if,  
15 like Tiffany Webber, you lose custody of your kids. He  
16 doesn't care about the burdens on our tax system, all the  
17 tax dollars that are involved on addiction in this country.  
18 He doesn't care what all the resources that the court system  
19 spends just on drug offenses. He doesn't care about all of  
20 that. He just wants the money. He just wants the cash.

21           So, again, I know that when you hear the term murder  
22 most people do not think of this factual scenario, and  
23 that's okay. Most people, when they hear the term murder,  
24 also don't think about a vehicular homicide either, but our  
25 legislature thought about it. They've wrote a law

1 specifically for it, and that's why we're here over the last  
2 week.

3 Now when a drug dealer distributes a product as potent  
4 as heroin with fentanyl, 50 to 100 times stronger than  
5 morphine and doesn't care what happens on the end, doesn't  
6 care what happens to the user, first of all, something that  
7 strong is inherently dangerous. Well, how did he know that  
8 particular night? Because somebody overdosed right in front  
9 of him on the same stuff, and he still continued to sell it,  
10 so that -- I'm going to get to that in a minute.

11 Foreseeability, it was foreseeable that Ryan and Sarah  
12 would die because somebody basically died right in front of  
13 him using the same stuff, and he still continued to sell it.  
14 That's definitely dangerous, and he knew it because Ryan --  
15 I mean -- Kendrick Smith had overdosed, had to put him in  
16 the bathtub with everything on -- clothes off except his  
17 underwear, and he continued to sell it all throughout the  
18 night. How reckless is that?

19 A mind utterly without regard for human life. That's  
20 obvious. He didn't care. He was upset when Kendrick Smith  
21 overdosed. "That came from me. If I'm a good person, well,  
22 I think I'm going to get rid of that stuff. It might be too  
23 strong. I don't want to hurt any of my customers. I just  
24 won't -- I just won't make any more money tonight, and I'll  
25 go back, and wherever I get my supply from, and I'll make

1       sure it's safe next time." No. He didn't do that. He  
2       continued to sell all throughout the night watching  
3       Joanne Bailey and Thomas Fisher and Michael Hardison, all of  
4       these people, doing heroin right in front of him. That is  
5       without regard for human life.

6               And then social duty, think of all the things that I've  
7       mentioned, all -- think of all the things in our society  
8       that are negatively impacted by illegal drugs. Think about  
9       that. That is -- he has -- he doesn't care about his  
10      community, and what's even worse, he doesn't care about  
11      Hyde County. Do you know why? Because he goes up to the  
12      big city in Mecklenburg. They like to call it the  
13      state of Mecklenburg. He goes to the city of Charlotte, and  
14      then he comes down here to pray on you folks, pray on the  
15      citizens of Hyde County, get what money he can, and then he  
16      goes back. He doesn't care.

17             Deliberately bent on mischief, mischief is the  
18      wrongdoing that comes out of an action. When you think of  
19      somebody mischievous you might think of your kids or your  
20      grand kids being mischievous, but mischief is what results  
21      when you consciously take an action like selling drugs, and  
22      then all the things that flow from it. That is what  
23      AJ Anderson had done.

24             So, ladies and gentlemen, those -- those are the four  
25      elements. I know I've talked about them at length. I'm

1 going to come back to them in just a moment. It's very  
2 important that I do that especially in this type of case,  
3 and I appreciate your attention.

4 I'm not going to go through and summarize what every  
5 witness did. I'm going to put their names up here, and  
6 you've heard the evidence, and I would submit, ladies and  
7 gentlemen, that what happened on May 31, 2017 into June 1st,  
8 the basic facts are largely undisputed, but you've heard  
9 from his sister, Cameron. You heard Charlie Herina talk  
10 about the crime scene, Ashlee Cowan who processed the crime  
11 scene. You heard from, at length, Tiffany Webber and then  
12 Joanne Bailey and Thomas Fisher, Cecil Suggs, the U.S.  
13 Cellular representative, and then, of course, Randall Cox  
14 with the SBI was like the lead case agent, and then  
15 Ms. Carroll talked about the drugs. Justin Brower analyzed  
16 the blood from their autopsies, and then Jonathan Privette  
17 was the medical doctor.

18 Now I expect the defense to spend some time talking to  
19 you about Tiffany Webber, maybe list all the reasons that  
20 maybe you shouldn't believe her. I will say this, ladies  
21 and gentlemen, about Tiffany Webber: She pled guilty  
22 straight up, no plea bargain, no sentence concession from me  
23 or anybody on my staff. Nobody has made any promises to her  
24 that if you come in and testify then we're going to help you  
25 with your sentence. First of all, the D.A. doesn't sentence

1 anybody anyway. It would be up to the judge, but there's no  
2 -- no promises from the State of North Carolina to  
3 Tiffany Webber.

4 Now did she lie when she was first questioned a few  
5 days after this? Of course, she did. Number one, she said  
6 she was scared. She knew she was in trouble. She was still  
7 on heroin. She was confronted with things and she came and  
8 changed and said, "Well, no. Let me tell you what  
9 happened." Now after she's locked up for a number of months  
10 she's sober, clear head. What does she do? She comes in  
11 this very courtroom and pleads guilty straight up to two  
12 counts of second degree murder.

13 There are some other reasons I submit that she was a  
14 credible witness in this trial, and ultimately, ladies and  
15 gentlemen, that is your main role, is your job is to assess  
16 the credibility of the witnesses and then take the law that  
17 the judge gives you and decide what's the truth and that's  
18 just your role. I can't do that. The defense can't do  
19 that. The judge can't do that. That is your role.

20 I submit to you that Tiffany Webber's testimony was  
21 corroborated a number of ways, number one, by other  
22 witnesses. She's talking about all the contacts she had  
23 that night with AJ buying her own heroin as well as trying  
24 to get it from Ryan. Other witnesses indicated AJ didn't  
25 have cocaine, and Joanne Bailey told you at her house

1 Tiffany comes in, says, "Just give me the dope. They'll  
2 have to deal with it," and in Hyde County the dope is  
3 heroin. That also -- that statement indicates AJ knew it  
4 was going to Ryan and Sarah. They'll have to deal with it.  
5 He knew it wasn't for Tiffany. Tiffany didn't do cocaine.  
6 She's doing heroin all day every day.

7 I can't imagine her life, the life of a heroin addict,  
8 but you've heard Thomas Fisher and Joanne Bailey talk about  
9 it too. I cannot imagine doing heroin to the point you  
10 basically pass out. You wake up a couple of hours later.  
11 You do it again. Then you pass out. You wake up a couple  
12 of hours later. You do it again. If you don't have any  
13 money, you perform sexual favors. You do whatever it takes  
14 to get it, whatever it takes. I can't imagine. I know you  
15 can't either, but that was Tiffany Webber's life.

16 AJ knew that that's what she did. All the other  
17 witnesses knew that all Tiffany Webber did was do heroin, no  
18 evidence whatsoever that Ryan and Sarah ever did any heroin.  
19 You've not heard one single witness testify to that.

20 I submit to you that Tiffany Webber is a believable  
21 witness. The text messages and phone calls back that up.  
22 I'm not going to put all these on the screen, but I do want  
23 to just show this to illustrate because they were  
24 highlighted on the night, early morning hours, of June 1st.

25 These are text messages. This is AJ Anderson's phone.

1 This is his -- this is his U.S. Cellular phone that he used  
2 in Hyde County primarily. He had a 704 area code when he  
3 went back to the big city.

4 All right. So this is June the 1st at 22 minutes after  
5 midnight. This is Webber and Anderson, Webber and Anderson,  
6 just text messages, Webber and Anderson. That's 12:39 to  
7 about 1:45 in the morning. Then they pick back up at 3:39,  
8 3:40, after 4 A.M. in the morning, just text messages,  
9 Webber and Anderson, phone calls, Webber and Anderson,  
10 June 1st, four minutes after midnight, these phone calls,  
11 Webber and Anderson, 5:45 in the morning, all the way up to  
12 5:45 in the morning. Then there's a blank period. I submit  
13 to you that's when somebody passed out. That's when Tiffany  
14 went home after she had pinched off. She did another round  
15 of heroin, passed out, and then down here Tiffany and AJ are  
16 talking again about 2 P.M., June 1st. Ryan and Sarah had  
17 not been found yet, continued to call.

18 So my -- my point with these, ladies and gentlemen, is  
19 the defense will argue to you this is all about  
20 Tiffany Webber and those phone calls and texts show that  
21 they both were right in it. She's talking to him. He's  
22 talking -- he called her, and he's texted her back and  
23 forth, back and forth. They're both involved in this  
24 transaction, and she testified about calling and texting  
25 him. He called her, come to -- come to Steve Payne's. He



1 called her, come to Joanne's, so the phone calls, those  
2 logs, back up her testimony that they did, in fact, happen.

3 Now the last and maybe most important reason that I  
4 submit to you she's a believable witness -- I want to read  
5 to you this -- part of this instruction the judge is going  
6 to give you: You are the sole judges of the believability  
7 of a witness. You must decide whether you believe the  
8 testimony of any witness. You can believe all, any part, or  
9 none of a witness's testimony. You should use the same  
10 tests of truthfulness that you use in your everyday affairs,  
11 so your common sense.

12 Among other things, these tests may include the  
13 opportunity of a witness to see, hear, know, or remember the  
14 facts or occurrences, the manner and appearance of the  
15 witness, so you've eyeballed Tiffany Webber. You sat right  
16 here. You watched her testify. Did you believe her? I  
17 can't answer that for you. That's a question that you've  
18 got to answer for yourself. I submit though that what she  
19 testified to is corroborated by other witnesses and other  
20 documentary evidence like the phone logs.

21 Does she have any interest, bias, prejudice, or  
22 partiality, her apparent understanding and fairness, whether  
23 the testimony is reasonable, whether it's consistent with  
24 other believable evidence? I submit to you, ladies and  
25 gentlemen, that it was, particularly, as it relates to the

1 time line of what happened that night.

2 Okay. In my opening I said that the defendant was in  
3 business for himself. I -- I like to call it  
4 AJ's Sales and Service. That's what he -- that's the  
5 business he was in. Just think about what he did on the  
6 short time frame on the evening of May 31st up until five or  
7 six in the morning of June 1st.

8 Okay. He starts off earlier that day providing heroin  
9 to Thomas Fisher and Kendrick Smith. Thomas Fisher said he  
10 got the heroin from AJ. Thomas Fisher said that, if you  
11 recall, he snorted just a little bit, and I said, "Well, how  
12 did you snort it?" He said, "A dollar bill," and then what  
13 did Kendrick Smith do? He snorted the rest, and he snorted  
14 a lot. He snorted too much. It just about killed him, so  
15 then they end up going to Joanne's house, and somebody  
16 called Joanne. I don't remember if it was AJ or who said,  
17 "Come outside." She comes outside, and Joanne and  
18 Thomas Fisher said what? His lips were blue. The color had  
19 drained out of his face. He was unconscious. He was not  
20 talking. He couldn't even walk. They had to pick him up.  
21 He was passed out and take him inside to revive him.

22 Now luckily for Kendrick Smith he was with some other  
23 people that didn't die, and they saved his life. He's alive  
24 and breathing. Ryan and Sarah were not so lucky. They did  
25 the same stuff at the same time, and it killed them both.

1 One couldn't even save the other. There was no one else  
2 around at three, four, five in the morning that could have  
3 put them in a bathtub and dumped ice water on them or used  
4 Narcan, some other way to revive them, so AJ starts his day  
5 by providing it to -- to Thomas Fisher and Kendrick Smith,  
6 and he knows it's powerful because of what happened to  
7 Kendrick Smith, but he's not done for the day.

8 He's selling to Tiffany Webber multiple times. She  
9 said that, "I went up and bought from him on three occasions  
10 that night." She would buy just a little bit, and she  
11 described for you that she took enough of that heroin with  
12 fentanyl that was no more than her fingernail, and then  
13 she's diluting it. She's putting it in water, so it's being  
14 diluted. She's not snorting it pure, and then she is  
15 putting it in a syringe and shooting up and she's doing that  
16 all day every day which leads me in just moment to talk  
17 about another key word which will be tolerance, but before I  
18 get to that what else did he do that day?

19 AJ, he's still in sales and service. He's at  
20 Steve Payne's house, a bunch of crack being sold there. He  
21 then distributes, remember, not deliver. He distributes the  
22 heroin to Ryan and Sarah via Tiffany Webber. After Kendrick  
23 overdoses, after he sends it to the kids on the boat that he  
24 knows wants cocaine and not heroin, after all of that he  
25 still gives heroin to Thomas Fisher and Joanne Bailey there

1 at the house, and Michael Hardison was the third one.

2 Remember, she -- Joanne Bailey said that he told us,  
3 "The only way you can do this is sniff it. You can't shoot  
4 it." He knew it was strong. That's what Joanne -- he knew  
5 it was strong, so at that point is he the good Samaritan  
6 drug dealer? Okay. I'm going to supervise this, and, you  
7 know, you can't shoot it up. Of course, one of them snuck a  
8 little bit and went into the other room apparently and then  
9 shot it up so he's still distributing it.

10 Now I -- ladies and gentlemen, I picture -- on this  
11 night I picture AJ standing over in the corner in somebody's  
12 kitchen just like this, just watching all these addicts.  
13 He's got the money in his pocket and the drugs in his pocket  
14 and he's just watching. He's not doing a bit of heroin.  
15 He's not doing cocaine. He's not taking methamphetamine. I  
16 believe the testimony is he wasn't even drinking because,  
17 see, he's a smart business man. He runs AJ's Sales and  
18 Service. He's the sole owner of that business, and he knows  
19 that if he's high, then he can't keep track of what's going  
20 on. If he's doing the drugs, then that's going to affect  
21 his bottom line.

22 First of all, if he uses the drugs, then he can't sell  
23 them, so he's staying sober, of sober mind, because he's  
24 going -- he's worried about his bottom line. He's worried  
25 about the dollar, so if you think about it, because of this

1 man right here three people overdosed within a 24-hour  
2 period. One survived by the grace of God. The other two  
3 didn't, so one man in Hyde County, North Carolina caused  
4 three overdoses within a 24-hour period.

5 Here is another key word, tolerance. You heard  
6 Dr. Brower talk about tolerance. Recall what Dr. Brower  
7 said about the drug addict who goes to prison, is in prison  
8 for six or eight months, maybe longer. The day he or she  
9 gets out they think they can go back to doing the drugs --  
10 the amount of drugs they were doing before they went to  
11 prison, and he talked about all the cases he had seen where  
12 they get out of prison and then, "Oh, I'm going to start  
13 back on my same dose of heroin," or whatever and they die.  
14 It kills them because they have no tolerance.

15 Now Tiffany Webber had some tolerance. She's doing it  
16 five, six, eight, ten times a day. She knows exactly how  
17 much she can do at a time. She measures it with her pinkie  
18 if there's no other method. She knows just what she can do.  
19 She had a tolerance for heroin. That's why she didn't die.  
20 Ryan and Sarah had no tolerance for heroin. That's why they  
21 died. There's no testimony or evidence that they ever had  
22 done heroin, certainly, not with any fentanyl in it. They  
23 had no tolerance, and they died.

24 Now Ryan and Sarah did have some tolerance but not for  
25 heroin. They had tolerance for cocaine. They had tolerance

1 for drinking even though it's not healthy for you. You  
2 heard -- you heard Cameron Gibbs talk about their routine.  
3 They do a little bump in the car. When they get back to the  
4 house they put the lines out. That's a nice size couple of  
5 lines right there, so that was them about to snort a line of  
6 what they thought was cocaine. That's a lot. I would  
7 submit to you it looks like a lot, so they had -- they had a  
8 tolerance for cocaine. That's even further evidence that it  
9 didn't kill them. Okay. You see that right there.

10 On -- on May the 31st -- so just very quickly go  
11 through the chronology -- AJ is in town. He meets up with  
12 Kendrick Smith and Thomas Fisher. They do some heroin.  
13 Kendrick Smith overdoses and almost dies. They go to  
14 Joanne Bailey's house. Joanne comes out, helps them bring  
15 Kendrick Smith in, and they revive him. He sits in a -- in  
16 a recliner the rest of the night throwing up throughout the  
17 night, but he lives.

18 Tiffany, her customary, just normal, day, she's  
19 contacting AJ at least three times for heroin, and then a  
20 little after three in the morning she gets -- she gets a  
21 call from Ryan Gibbs. She doesn't pick up the call, but she  
22 texts him and says, "Hey, man. What's up?", and he texts  
23 her back and says, "I'm looking one," so what does she do?  
24 She calls the man, AJ's Sales and Service.

25 You got any cocaine? Nope, don't have any cocaine,

1       only got dope. She says, "Ryan, I'm sorry. They don't have  
2       any cocaine," ride around Engelhard for a little while. AJ  
3       gets up with Tiffany, contacts her, says, "Come to  
4       Steve Payne's on North Lake Road," just a little ways past  
5       Ryan's house. She's thinking, okay, he's a drug dealer. He  
6       lies. All drug dealers lie. They're not truthful about  
7       what they're carrying. They don't want anybody to know how  
8       much money is in their pocket, so she's thinking he's  
9       probably got some cocaine.

10           She goes to Steve Payne's house, goes inside, no  
11       cocaine. Don't you want this \$100, AJ? Don't you want this  
12       money from the boy -- the kids on the boat? Nope, so she  
13       leaves. They get in an argument, and she leaves. They're  
14       riding around some more. Tiffany says, "You know what,  
15       Ryan, it ain't looking too good for you tonight. We might  
16       need to go try to find some cocaine from somebody else." He  
17       says, "Nope," because in his words he wanted the same shit  
18       as last weekend, the same cocaine that he got from  
19       AJ's Sales and Service.

20           He apparently liked the product, and he wanted it  
21       again. He didn't want cocaine from anybody else. He wanted  
22       AJ's cocaine, so Tiffany contacted AJ back. He's still  
23       probably holding out, so then he finally says, "Just come to  
24       Joanne's," so Tiffany has to think finally, finally, he's  
25       going to do it, so she goes into Joanne's house, but

1 Tiffany, she's not worried about Ryan and Sarah. She's  
2 worried about Tiffany. She's worried about her next fix,  
3 and she told you that. She testified to that.

4 She admitted to pinching some off. She admitted to  
5 you, ladies and gentlemen, that she did not go back to Ryan  
6 and Sarah and say, "Look, this is not your cocaine. This is  
7 heroin, and you better be careful," because if she had done  
8 that, then they never would have taken it.

9 She -- she had already stolen her part and didn't want  
10 to tell them but you know what, AJ is in the house. He knew  
11 it was going to them. He knew they didn't do heroin. He  
12 could have made the decision right then, look, Tiffany, this  
13 ain't happening tonight. He also knew that that heroin  
14 wasn't for Tiffany because she didn't have \$100. She never  
15 had \$100. She might have 20, 40, maybe 60, but she  
16 certainly didn't have \$100. He knew it was for the boys --  
17 the kids on the boat. He could have at that point agreed to  
18 not sell it to her. That's his part in this. That's his  
19 accountability in this.

20 He could have -- he could have -- it started with him.  
21 Now it may have finished with Tiffany, but it started with  
22 him, so I submit to you, ladies and gentlemen, that based on  
23 the testimony of Cameron Gibbs, as well as the physical  
24 evidence, what you saw at the house, Ryan's routine was when  
25 they first got it, what did she say? Cameron said they --



1       they take the bag or pass it around, take a little credit  
2       card, do a little bit of bump, sniff it in the car, and then  
3       when they get home they divide it up.

4             I submit to you, ladies and gentlemen, and I'm going to  
5       get to this in just a moment. Matter of fact, I'll get to  
6       it right now.

7             They never snorted a line at the house. I submit to  
8       you that they did a bump in the car. They got back to the  
9       house, divided the lines up, and before they could ever do  
10      it, they dropped dead. How do we know that? Okay. Here's  
11      another photograph that shows the red straw, and Cameron  
12      said, "That's the straw that we used to snort the cocaine."  
13      Now Ms. Carroll from the crime lab, she testified that the  
14      two lines tested positive for heroin with fentanyl, but  
15      interestingly, the straw did not have heroin with fentanyl.  
16      It had cocaine residue, so what does your common sense tell  
17      you? That they didn't -- they never snorted a line. They  
18      never even got to it.

19            If you think about the bump, if you think about taking  
20      a bump which was enough of your fingernail, Tiffany Webber,  
21      who had a huge tolerance, was taking that but diluting it  
22      with water. If they take that bump and sniff it and they  
23      have no tolerance whatsoever for the fentanyl, it's 50 to  
24      100 times stronger than morphine, that killed them. That  
25      was enough to kill two people with no tolerance.

1           Now why do we think that Tiffany and Ryan thought it  
2           was cocaine? Well, I showed you this as well. When they  
3           picked up Sarah's cell phone it was actually unlocked, that  
4           Randall Cox with the SBI said, "You know, it was actually  
5           unlocked. There was not a pass code." They picked it up  
6           and turned it on and Google, what could cocaine be cut with  
7           to make someone dizzy? They were like this ain't -- this  
8           ain't what we've been doing before. This is -- this is  
9           different. Could there be something in this cocaine that's  
10          -- I'm not feeling so -- I'm not feeling too good, so they  
11          did the bump I submit to you. They snorted it in some way.

12                There was no evidence of any track marks from the  
13                medical examiner, no evidence they were shooting anything  
14                up. They had to get it in their body some how. I submit to  
15                you they snorted it, and that little bit was all it took to  
16                kill them.

17                All right. I want to talk to you just a moment about  
18                what I call the digital time line from the phone records.  
19                The phone records show, starting at four minutes after  
20                twelve, for almost two hours Webber and Anderson are in  
21                constant contact. I submit to you she's buying heroin every  
22                time she can get it.

23                These records indicate that at 3:08 is when Ryan calls  
24                Webber, and the records show it went to voice mail, so she  
25                didn't pick up, but three minutes later she calls him back

1 -- or texts him, "Hey, man. What's up?" Ryan says, "Not  
2 shit. You going to get me straight." It's 3:12 when he  
3 texted her, says he's looking one which she said that meant  
4 -- Tiffany said he was looking for one gram of cocaine, so  
5 the next minute after they're calling, at 3:16, she's  
6 calling AJ: "Hey, man. You got any cocaine?"

7 See, this goes on for about 15 minutes, and then  
8 Tiffany texted AJ and says, "I'm on the way," so she was --  
9 and he told her to come to Steve Payne's house, so she did.  
10 Then there's -- Webber answered or continued to text, you  
11 know, why don't you have any cocaine? I need some -- these  
12 folks want some cocaine. It's 4:00 in the morning. Tiffany  
13 and AJ speak for several minutes on the phone, and then they  
14 continue to communicate with one another, and then you've  
15 got down here 4:24 in the morning Ryan is calling Tiffany.  
16 I believe that she indicated that that took place while she  
17 was inside Joanne's.

18 You know, they're parked on the truck -- I mean -- in  
19 his truck. They stopped at that little bridge there in  
20 Engelhard when you turn right off the main road as you're  
21 going toward Golden Street. They stopped there. They let  
22 Tiffany out, and she walked.

23 Now, ladies and gentlemen, at 4:50, 4:51, in the  
24 morning Ryan is calling Tiffany twice, and she did not  
25 answer. I submit to you at that point they've already gone

1 to Lazy Lane and dropped Tiffany off for the night. Tiffany  
2 testified when she got home she did a little bit, but didn't  
3 do all the heroin because she wanted to save some for when  
4 she woke up. I submit to you she had shot up. She might  
5 have been passed out.

6 Ryan Gibbs calling Tiffany, "What in the world did you  
7 give us? What in the world is wrong with this stuff? This  
8 ain't what -- this isn't like the cocaine I got from AJ last  
9 weekend."

10 See, then down here -- actually I -- I misspoke.

11 Tiffany did not answer at 4:50, 4:51. She probably is  
12 shooting up, but she's still awake, and then right through  
13 here she's trying to call AJ, and he's not answering. It's  
14 going straight to his voice mail at 5:45, and then the  
15 records indicate that shortly after that, with Tiffany's  
16 records, there was a period of time where she was just  
17 passed out. I got ahead of myself a little bit.

18 Getting toward the end, four elements of the crime, the  
19 State must prove that Ryan and Sarah's death was caused by  
20 heroin and fentanyl. I've talked about that at length. He  
21 intended to distribute the heroin and fentanyl. Again, no  
22 delivery. It's distribution. The heroin with the fentanyl  
23 was a proximate cause of death, does not have to be the  
24 proximate cause and that he acted with malice.

25 The judge is going to read this to you again. I will

1 not read the exact words again. The bottom line, without  
2 the heroin and fentanyl you don't have a death. They're not  
3 dying.

4 Now I submit to you the word where it said he could  
5 reasonably foresee, this was foreseeable with what happened  
6 to Kendrick Smith earlier that day who had basically died,  
7 and they brought him back. He knew how potent it was and  
8 how dangerous it was.

9 Lastly, his actions don't have to be the only cause.  
10 He, in conjunction with Tiffany Webber, their combination of  
11 acts, can be proximate cause. It's sufficient if his act  
12 occurred with some other cause acting at the same time which  
13 in combination with caused the death of the victim, so even  
14 if you say, "Well, this never would have happened without  
15 Tiffany. Well, it never would have happened without AJ. He  
16 started this thing. Well, it never would have happened if  
17 Ryan and Sarah just hadn't taken those drugs." Where in the  
18 elements of the crime does it put any responsibility on the  
19 drug user? You don't see it because it's not there. Our  
20 legislature saw fit to put this law in effect for this exact  
21 situation. All of you agreed to follow the law as the judge  
22 gives it to you and not how you think it should be and I'm  
23 sure that you'll do that.

24 Again, even if you think that the cocaine or alcohol  
25 may have played a part and combined with the heroin, the

1 State has still proven its case beyond a reasonable doubt,  
2 these big words again.

3 Ladies and gentlemen, if what he did on this night is  
4 not reckless, I don't know what is. If what he did on this  
5 night was without regard for human life, I don't know what  
6 is. If what he did on this night was not inherently  
7 dangerous, I don't know what is.

8 You know, I talked about the examples of prescription  
9 drugs and antibiotics. Well, what does a manufacturer do  
10 when there's a problem with a food or a drug? They issue a  
11 recall. They take it all off the shelf. They lose money,  
12 but at some point they have to decide that the safety of the  
13 consumer is more important than the money, and you know that  
14 there are manufacturers in this country who have been sued  
15 for billions of dollars when they've tried to cover  
16 something up.

17 He could have issued a recall that night. He had  
18 already sold and made money off of it. He could have pulled  
19 it off the shelf. He could have said enough is enough. I'm  
20 going to take a loss on this dope that I've already paid  
21 some other dealer for, but at least my customers will still  
22 be alive. He could have taken -- issued a recall, but he  
23 didn't do it because he was worried about the money. It was  
24 all about the money, profit greater than human life, so he  
25 put his sales over his service is what he did on this

1 occasion. He put the money over the safety of his  
2 customers.

3 All right. I've got two slides left.

4 Ladies and gentlemen, obviously, when I sit down I'm  
5 not going to have an opportunity to speak to you again. The  
6 defense is going to present their argument to you. Then the  
7 judge is going to instruct you as to the law that you should  
8 apply in this case.

9 You are going to be provided two verdict sheets just  
10 like I'm holding in my hand, one for Ryan and one for Sarah.  
11 For example, this verdict sheet is entitled  
12 State of North Carolina versus Alford Lee Anderson. It  
13 says: We the jury, by unanimous verdict, find the  
14 defendant, Alford Lee Anderson, Jr., guilty of second  
15 degree murder of Sarah Reams or not guilty. I submit to  
16 you, ladies and gentlemen, the State has proven beyond a  
17 reasonable doubt all the elements of this crime for  
18 Sarah Reams and will ask you to check the guilty block.  
19 Your foreperson is going to need to date it and sign it and  
20 it's going to be the same on the second sheet for  
21 Ryan Gibbs. He is guilty of second degree murder.

22 Okay. I've got a map of Hyde County. This is your  
23 county. It's not mine. I live in Beaufort County. When  
24 this trial is over, I'm going back to my home county.

25 By your verdict what do you -- what do you want your

1 county to be? Do you want Hyde County to be known that the  
2 kingpin, the dealer, is untouchable just because maybe he  
3 didn't deliver the drugs to Ryan and Sarah? Do you want --  
4 do you want Hyde County to be known as that? As long as  
5 I've got a middle person in between me, I'm safe. Do you  
6 want Hyde County to be known as a place where all the  
7 responsibility is on the user? Are you going to say to  
8 yourself and to your fellow citizens in Hyde County that,  
9 hey, if you do the drugs, that's on you? It's not on me.  
10 You made that choice. Do you want Hyde County to be known  
11 as that kind of place, or do you want to do something about  
12 it? Do you want Hyde County to send a message to the  
13 peddlers of this poison? You come to Hyde County, you  
14 distribute these drugs, if people die, you are going to pay.  
15 You're going to be held accountable for your actions.

16 The bottom line is, ladies and gentlemen, you have  
17 plenty of evidence to do that. You have the power by your  
18 verdict to send a message that we're not going to tolerate  
19 this in our county. You also have the law to do that. The  
20 law is on the books for a reason, for this reason, for this  
21 case. The law is on the books. The evidence is there. The  
22 law is there, but don't do this because I'm asking you to do  
23 it as your District Attorney. Do it because you want to  
24 make a difference in Hyde County.

25 Do you want to send a message to your fellow citizens



1       that are law abiding that you are doing your part to make  
2       this a better place? Also, send a message to the other  
3       three or four names of people or more that sell drugs in  
4       this county that came from this witness stand: If you  
5       continue to do that and somebody dies, then the State is  
6       coming after you because they can.

7               By your verdict, ladies and gentlemen, you will answer  
8       that question as to whether Alford Lee Anderson, Jr. is  
9       accountable because if you find him guilty, you are saying  
10      that he is accountable for his actions. He is accountable  
11      for the deaths of Ryan and Sarah. If you were to find him  
12      not guilty, you're also saying, "Well, he's not accountable.  
13      It's not on him."

14             What type of message do you want to send in this case?

15             I submit to you, ladies and gentlemen, hold him  
16      accountable for his actions.

17             Thank you.

18             THE COURT: All right. The jury is with the  
19      defense.

20             MS. PEPPERS: Thank you, Judge.

21             Good morning again, ladies and gentlemen.

22             May it please the Court and counsel, my name is  
23      Paris Peppers. This is Tyrone McClean. He is my  
24      co-counsel, and we represent Mr. Alford Anderson.

25             It's been a pleasure to meet with you this last week