

VOLUME II OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMAAL HINSON,

APPELLANT

Appellate Case No. 2011-203569

RECORD ON APPEAL

REID T. SHERARD
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
(803) 799-2000

ROBERT M. DUDEK
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorneys for Appellant

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ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202-0192
(803) 576-1800

Attorneys for Respondent

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1 These are the ones I'm putting in.

2 MS. CLEARY: No, I haven't seen these.

3 (Pause.)

4 MS. CLEARY: No objection.

5 (WHEREUPON, State's Exhibit Nos. 164 AND
6 165 were marked for identification and
7 received into evidence.)

8 MS. CAMPBELL: Your Honor, may the witness
9 step down?

10 THE COURT: Yes, ma'am.

11 (Witness steps down.)

12 Q I am going to show you what is marked as State's
13 Exhibit 164. Come on this side so the court
14 reporter can hear you better. What area of town
15 does this show?

16 A This is the northeast side of Richland County.
17 Most specifically it would be the Vineyards
18 Crossing subdivision.

19 Q Okay. If you will step back so they can see on
20 that side too. The Vineyards Crossing
21 subdivision -- and we keep talking about Baccharis
22 Drive. Is it shown here on the diagram?

23 A Yes, ma'am, this would be Baccharis Drive. Once
24 you make the entrance into the Vineyards Crossing
25 subdivision on Vineyards Crossing Drive you run

1 into Baccharis Drive right here. At this
2 intersection you need to go left to right.

3 Q And there have been several mentions of the Salley
4 household and the house next-door as well as the
5 Banks' house, which was two doors down, are those
6 reflected here?

7 A Yes, ma'am. The Salley residence is four houses
8 down from the corner, which would be this house
9 depicted right here, the Banks' house is two houses
10 down from that, which would be this house here.

11 Q As far as anyone having any relationship with
12 anyone in the Vineyards, did Mr. Hinson have any
13 reason to be in the Vineyards as far as living
14 there or being related to anyone there?

15 A No, ma'am, he did not.

16 Q And State's Exhibit Number -- what did I do with
17 it; there it is -- 165, is this a closer-up view of
18 the Banks' house as well as the Salleys' house?

19 A It is. The Salleys' house is depicted here as 
20 , and this is ,
21 which would be the Banks' residence.

22 Q And where did the actual shooting take place?

23 A Based on the crime scene photographs and what we
24 have observed, with some certainty we can say that
25 it occurred in this area right here, which is the

1 grassy knoll between 268 and 272, which is the
2 house next-door to the Salleys.

3 Q And that would have been actually in the yard, the
4 Salleys' yard?

5 A Yes, ma'am, it would have been in the Salleys'
6 yard.

7 Q And I believe Marker B that was testified to
8 earlier was where the actual blood was when he fell
9 when he was shot. Is that shown here in this
10 picture?

11 A It is.

12 Q And would that have been in the Salleys' yard?

13 A It would have been in the Salleys' yard, yes.

14 Q And State's Exhibit 17 as well, for the record, you
15 can actually see the line between the houses?

16 A You can actually see the property line in between
17 the houses based upon the grass right here.

18 Q And is that depicted here?

19 A It is actually depicted on the aerial photograph
20 here.

21 Q And that would have occurred right in here in this
22 yard?

23 A Yes, ma'am.

24 (Witness returns to witness stand.)

25 Q Thank you. In your review of this case of the

1 evidence, who was the first person -- or who was
2 the aggressor in this case?

3 A Jamaal Hinson.

4 MS. CAMPBELL: Beg the Court's indulgence.
5 (Pause.)

6 Q I'm sorry, I've misquoted something. The number
7 that I referred to, the 834 number, I misspoke.
8 That actually belongs to Raymond Asberry?

9 A Correct.

10 Q And then there is also a number of phone calls
11 between him and Devan Bailey, and the Defendant's
12 cell number would have been?

13 A .

14 Q 2001. And it shows both accepted calls?

15 A Yes.

16 Q Jamaal Hinson, the shooter in this case, do you see
17 him here in the courtroom?

18 A I do.

19 Q Can you identify him for the jury?

20 A Yes, ma'am. Seated between his lawyers at the
21 table.

22 MS. CAMPBELL: Your Honor, may the record
23 reflect he has identified the Defendant?

24 THE COURT: Yes, ma'am.

25 MS. CAMPBELL: Thank you.

1 THE COURT: All right, please answer any
2 questions Ms. Cleary may have.

3 CROSS-EXAMINATION

4 BY MS. CLEARY:

5 Q Investigator?

6 A Yes, ma'am.

7 Q Is this the report that you submitted on this case?

8 A Yes, ma'am, it is.

9 Q And it doesn't have the page numbers on it. Is
10 this report complete?

11 A Yes, ma'am, it is.

12 Q And is it accurate?

13 A It sure is.

14 Q And truthful?

15 A Yes, ma'am.

16 Q Okay. And you just -- she -- the prosecutor asked
17 you if Jamaal had any business in Vineyards
18 Crossing. Do you have any evidence that he was
19 trespassing on the Banks' property?

20 A No, ma'am.

21 Q And, in fact, didn't the Banks say that he had been
22 there visiting?

23 A Yes, ma'am, he was --

24 Q They certainly didn't say that he was not welcome
25 in their neighborhood?

1 A Correct.

2 Q Okay. And Jamaal Hinson's parents' house where you
3 served the warrant, it is actually in a subdivision
4 right across from Longtown Road, is that correct?

5 A It is down I believe off of Lee Road off of
6 Longtown, yes, ma'am.

7 Q And Lee Road is the road that is just -- it is kind
8 of the main road close to Vineyards as well?

9 A Yes, ma'am.

10 Q So he was not very far from where he lived?

11 A Not far at all, no, ma'am.

12 Q Okay. Now, you said that Demario was not
13 cooperative, is that correct?

14 A He -- he -- we had to go find him at Blythewood
15 High School. I didn't say he wasn't cooperative.
16 He -- we had to find him at Blythewood High School,
17 and he gave us a statement as to what he did that
18 day.

19 Q Okay. And there was no indication that he was
20 present during this shooting?

21 A No, ma'am, no indication he was present during the
22 shooting.

23 Q Okay. So did he try to obstruct your investigation
24 in any way once you got a hold of him?

25 A No, ma'am.

1 Q Okay. Now, this map here that you said shows the
2 property lines, is this the first time you have
3 seen this?

4 A No, ma'am.

5 Q Okay. And when did you first get this?

6 A Earlier in the week.

7 Q Oh, earlier in the week. Okay. This is the first
8 time I have seen it, but. Okay, so when you were
9 investigating this crime before this trial, you
10 weren't interested in what property -- whose
11 property anything occurred on?

12 A We were interested in whose property it occurred
13 on. And we, during the investigation with some
14 certainty we believed that it occurred on the
15 Salley residence.

16 Q You also said that you interviewed Raymond Asberry,
17 is that true?

18 A I did not interview Raymond Asberry. Sergeant
19 Ellis interviewed Raymond Asberry, along with
20 Investigator Kevin Preston.

21 Q Oh, okay. Now, you stated that all of your
22 evidence indicated that the aggressor in this case
23 was Jamaal Hinson?

24 A Yes, ma'am.

25 Q All of your evidence?

1 A He pointed the gun at --

2 Q Okay. Did you receive any evidence that Anthony
3 came storming towards Jamaal?

4 A Not to my knowledge. I know that one of the
5 individuals that Sergeant Ellis talked to made
6 reference to that.

7 Q So you had that information?

8 A We had that information, yes, ma'am.

9 Q Okay. So the only witness that testified that
10 Jamaal came up and started it was Andina?

11 A I believe in all the rest of the statements that
12 were taken the other witnesses there, the boys in
13 the truck, as well as Devan Bailey, would tell you
14 that the gun was pulled first and then the blows
15 were thrown.

16 Q Okay. But they told you that he drew the gun
17 first?

18 A He drew the gun first, yes, ma'am.

19 Q Okay. But they -- didn't they also tell you that
20 Anthony had approached him, had come running up to
21 him?

22 A They -- I believe they approached each other. And
23 Jamaal approached Mr. Salley's residence where he
24 was sitting in the car.

25 Q So you have evidence that he went up to the house?

1 A He was walking towards the house based on the
2 statements that we have from all of the witnesses,
3 the boys in the truck, Devan Bailey --

4 Q No, let me --

5 MS. CAMPBELL: Objection, Your Honor, he has a
6 right to finish answering.

7 Q I'm sorry. Go ahead.

8 A Based on the statements that we had gotten, Jamaal
9 Hinson left the Banks' residence and was walking
10 towards the Salley residence. Anthony Salley
11 exited the vehicle he was in and was walking
12 towards Anthony -- I mean, excuse me, was walking
13 towards Jamaal Hinson.

14 Q So it is your testimony that all the witnesses have
15 testified that Jamaal came across here and was
16 going up here to the house?

17 A Was walking in that direction, yes, ma'am.

18 Q Didn't Devan say he was walking to give him a
19 cigar?

20 A I believe Devan --

21 Q That they were parked around here?

22 A They were parked in front of the Salley residence.
23 Jamaal was coming outside.

24 Q So he was going towards the truck, wasn't that the
25 testimony?

1 A I don't believe so.

2 Q Okay. So you are saying that the witnesses said
3 that he walked across here and went up towards the
4 house?

5 A That he was walking towards --

6 Q Or the car?

7 A -- up towards [REDACTED].

8 Q And did you do any investigation into Anthony's
9 background at all?

10 A We routinely run their criminal background as well
11 as any other information that we have. That is
12 routinely ran throughout the course of the
13 investigation.

14 Q Okay. In the course of your investigation did you
15 learn about --

16 MS. CAMPBELL: Objection, Your Honor. Can we
17 approach?

18 (WHEREUPON, a bench conference was held
19 in the presence of the jury but out of
20 the hearing of the jury.)

21 THE COURT: Overruled.

22 BY MS. CLEARY:

23 Q Did you -- in the course of your investigation did
24 you have an occasion to learn that there might be
25 photos that showed that Jamaal had injuries as well

1 as Anthony?

2 A While he was in Atlanta?

3 Q Yes?

4 A Yes.

5 Q Did you try to get those?

6 A No, ma'am.

7 Q Okay. So you weren't interested in seeing whether
8 Jamaal had any injuries as well?

9 A We didn't have access to those photographs.

10 Q You didn't have access to it?

11 A No, ma'am. He wasn't arrested -- he was arrested
12 two weeks after the incident and he was transported
13 to us I believe a day and a half after he was
14 arrested in Atlanta.

15 Q Did you try to see if the Atlanta police had taken
16 his cell phone from him when they arrested him?

17 A No, ma'am.

18 Q All right. Thank you.

19 MS. CLEARY: That's all the questions I have.

20 THE COURT: Anything else from the State?

21 MS. CAMPBELL: I don't have anything further.

22 THE COURT: Anything? All right. Sir, you
23 may step down.

24 (Witness steps down.)

25 MS. CAMPBELL: Can I check one thing, Your

1 Honor?

2 THE COURT: Yes, ma'am.

3 (Pause.)

4 MS. SIMPSON: Your Honor, at this time the
5 State rests.

6 THE COURT: All right. Ladies and gentlemen
7 of the jury, at this time the State has rested
8 their case. There are some matters of law that I
9 need to take up with the attorneys outside of your
10 presence, and therefore I'm going to send you back
11 to the jury room. This may -- it may take about 15
12 or 20 minutes. I'll bring you back in.

13 Thank you.

14 (WHEREUPON, jury retires to the jury room.)

15 THE COURT: All right. The State has rested.
16 Any motions?

17 MS. CLEARY: Yes, Your Honor. We move for a
18 directed verdict on behalf of the Defendant. Of
19 course, as you know, murder is the killing of
20 another with malice aforethought, express or
21 implied. And the State must present direct
22 evidence or substantial circumstantial evidence.

23 In this case we do not believe that they have
24 presented evidence that Jamaal Hinson acted in
25 malice after he retrieved the gun. There is no

1 express malice. There are no words. There is no
2 indication from any of the witnesses that he had
3 any sort of reason for wanting to kill him.

4 The -- there is no evidence of any
5 premeditation on his part. Devan testified he was
6 just going to give him a cigar and that Anthony
7 approached him and then they got into a fight.
8 Obviously there was no sort of plan at all.

9 And so I don't believe that they have met
10 their burden of proving the malice required.

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

12 MS. CAMPBELL: Your Honor, the evidence in
13 this case is pretty overwhelming as to the presence
14 of malice. We don't have to prove premeditation;
15 however, in this case he had it. Basically the
16 Defendant met up with some young men who he was
17 selling weed to. At that point he directs them
18 before going in the neighborhood that he knows
19 where Jamaal lives, he takes him by his home and he
20 gets his tool, number one.

21 When he exits the home, the Banks' home, which
22 is two doors down from the victim's home, he then
23 is approaching. At that point he says something, I
24 don't remember the exact words, about, this is
25 going to be your day -- I don't remember what the

1 words were. As he is approaching, according to one
2 of the witnesses, at one time in the course of the
3 fight, it is ongoing, he tells, according to one
4 other witness, another guy to shoot the victim in
5 the case. And I think the uncontradicted evidence
6 in this case is that at that point he then did go
7 get the gun and shoot the victim at his own
8 residence.

9 To say that this case doesn't have malice, and
10 of course in the light most favorable to the State,
11 would be a mischaracterization. We don't have to
12 prove premeditation in this case, but I would
13 suggest we do. Devan Bailey was directed to pull
14 in front of a house in which he did not drop off
15 the victim earlier in order to box in the victim so
16 that he could not leave his own yard, effectively
17 he was held hostage in his own driveway. We feel
18 like this case reeks of malice, respectfully, Your
19 Honor.

20 THE COURT: All right. Based on the testimony
21 that has been presented, I am going to respectfully
22 deny the motion. I believe there are genuine
23 issues of fact for the jury to decide regarding the
24 case, and I will respectfully deny the motion.

25 All right. Give me one second.

1 (Pause.)

2 THE COURT: All right. Ms. Cleary, I want to
3 ask your client to stand. Is he prepared to
4 testify? I have to read him his rights
5 regarding --

6 MS. CLEARY: Well, I did want to take up
7 scheduling with you, but certainly -- I mean, I'm
8 not -- I don't know whether we need to go forward
9 today with his testimony.

10 THE COURT: Well, it is 3:30. I'd like to
11 keep the case moving.

12 MS. CLEARY: Okay. Well, then what I wanted
13 to do is to be able to clarify the ruling in terms
14 of what we can do -- in terms of proving our case
15 or presenting evidence of self-defense, and I
16 wanted to -- can I do that now?

17 THE COURT: Yes, ma'am. And I guess we need
18 to address the issue, the 404 issue that we talked
19 about again earlier as to -- I'm guessing that you
20 are wondering if you put him up, if he presents
21 evidence of the victim's character -- of course,
22 all the case law says that he -- that they can
23 rebut it by putting up evidence of the victim's
24 good character, which I think your concern is
25 whether or not they can put up any evidence of his

1 character. And if they can, what can they put in.

2 MS. CLEARY: Exactly. And I just wanted to
3 clarify, because she said I was wavering between
4 accident and self-defense. As you know, the case
5 law requires that in order to get a charge of
6 accident I have to show that he was entitled to arm
7 himself under the law, and one of the ways that
8 that is done is arming one's self in self-defense.
9 As in State v. Burris and State v. McCaskill.

10 So that is why that I have been -- that is why
11 I have to bring up the self-defense because I have
12 to show that he lawfully armed himself in
13 self-defense, not that he acted in self-defense
14 when he fired the weapon, but that when he armed
15 himself he was entitled to do so in self-defense.

16 And so I do not intend to be wavering between
17 the two defenses. Clearly our defense is accident,
18 and that is what I told the jury.

19 And in order to establish that self-defense
20 that I have to prove, I have to show in order to
21 get an accident charge, one of the things, the
22 elements I have to show is that he had a reasonable
23 belief that Anthony was armed.

24 And so all of my research prior to this trial
25 in discussing it with the experts showed that I was

1 entitled to show evidence that Anthony carried a
2 gun and that Jamaal knew about that and that was
3 the cause of his fear. And that they would then be
4 entitled to rebut evidence, for example, to try to
5 show that Jamaal did not know that Anthony carried
6 a gun or to show that Anthony did not carry a gun,
7 but that by introducing that, just to show his
8 state of mind, I was not opening the door for any
9 sort of, you know, alleged gang affiliation in
10 Atlanta two weeks later or every bad thing ever
11 said about Jamaal, and so I need to know what the
12 parameters are before I can even know how to
13 proceed with my case.

14 And since I've been just a little bit thrown
15 for a loop, I would just respectfully ask that I be
16 allowed to begin it tomorrow. Jamaal is not even
17 going to be my first witness. I have other
18 witnesses that are not going to be lengthy
19 because -- well, Shanicka Lee is the witness that I
20 want to have to establish that -- because in her
21 statement she said that, he told me -- and that was
22 referring to Anthony -- that he was going to blast
23 me and show me a gun.

24 Okay. Now, she is not anxious to testify and
25 does not want to testify because -- and even

1 suggested that we might have to send the police out
2 to get her. But that is all that we want from her.
3 And I believe -- I don't know whether she is going
4 to say that she told Jamaal that or not, but Jamaal
5 will testify that they were good friends, they were
6 very good friends. And there is other evidence in
7 the record to show that. And that she did tell him
8 that about Anthony, and so that he knew that
9 Anthony was telling him that he -- you know, he had
10 a reason to be afraid of him.

11 And then we would also want to be able to put
12 up Raymond Asberry who could corroborate that he
13 was there when these discussions about Anthony
14 having, you know, carrying a gun and being willing
15 to show it took place.

16 THE COURT: All right. Are they here prepared
17 to testify?

18 MS. CLEARY: I'm sorry?

19 THE COURT: Are they here prepared to testify?

20 MS. CLEARY: Well, Shanicka -- I may have
21 to -- well, I just need 15 minutes to try to get
22 them here. I mean, I admit that it is my life
23 experience that I didn't realize it was going to,
24 you know, move so quickly, but we have all had
25 scheduling issues, and I have not objected to

1 any -- you know, starting after their witness from
2 Atlanta got here. And I would just, since it is
3 3:30, well, 3:35, and I still think that the case
4 can be done by tomorrow -- I would first of all ask
5 that you allow me to find out today what the
6 parameters of the prior bad acts are going to be so
7 I can know whether I even want to have to call a
8 case at all. And then, secondly, I would ask that
9 you allow me to wait until first thing tomorrow
10 morning.

11 THE COURT: Yes, ma'am?

12 MS. CAMPBELL: Your Honor, we have no problem
13 if she needs 15 minutes to get her witness here.
14 We will be glad to accommodate her. We still have
15 hours in the day that are useful and we can go
16 ahead and start, we would just ask. And as far as
17 accommodating anybody's schedule, I mean, we had no
18 problem yesterday morning when we couldn't work at
19 all accommodating her schedule. And, you know, you
20 have been very good about accommodating ours as
21 well, your Honor. And if she needs 15 minutes to
22 get them here, we'll be glad to. We don't have a
23 problem waiting 15 minutes.

24 MS. CLEARY: Judge, may I just emphasize that
25 maybe they didn't work at all yesterday morning,

1 but I was doing an oral argument I was compelled to
2 do by the Court of Appeals.

3 MS. CAMPBELL: I understand. And I would just
4 put on the record you required as far as scheduling
5 when we thought we would be finished this morning
6 in front of the defense attorney we told you
7 lunchtime. We even went a little bit past that and
8 gave her some extra time as far as, you know,
9 scheduling everything. You know, we're aware of
10 the scheduling conflicts and problems that come
11 with that, Your Honor. We would like to go
12 forward.

13 As well as her wanting you to rule kind of in
14 space about what, you know, comes in and doesn't
15 come in as far as her client, I think that she
16 can -- you read the law to her on several occasions
17 as to what she opens the door up to and what the
18 State is able to do, I believe, Your Honor. You
19 have been very clear with her about what may or may
20 not come in.

21 MS. CLEARY: Well, I'm entitled to know what
22 bad acts it is that they want to bring in.

23 THE COURT: I think the way -- in reading 404
24 (a)(1) it says that: If in a criminal case
25 evidence of a pertinent trait of character offered

1 by an accused -- and I have it here. It goes in.
2 And the federal gives a little bit more detail.
3 But it talks about basically if you put in evidence
4 offered by an accused, then the prosecution can
5 rebut -- I mean, offered by the accused regarding
6 the victim, the prosecution can rebut the same. So
7 basically you can't say -- by virtue of you saying,
8 oh, my client just went over there to --

9 MS. CLEARY: Give him a cigar.

10 THE COURT: -- give him a cigar. And then he,
11 by saying that, and then you want to introduce
12 evidence to say that the victim is -- he thought
13 the victim was violent because the victim --

14 MS. CLEARY: He had reason to be afraid of the
15 victim and that is why he saw fit to arm himself.

16 THE COURT: I'm just trying to see how that is
17 going to play out. How -- if you think that
18 somebody is afraid -- if you are afraid of
19 somebody, you are just going over there to offer
20 him a cigar?

21 MS. CLEARY: No, he was bringing it to Devan.
22 And Devan testified that the reason he parked in
23 front of Anthony's house was because he thought
24 that that was Jamaal sitting in the car. So that
25 there is no sense or reason shown there. But in

1 any case --

2 THE COURT: I think -- and what is it that you
3 want these people to be able to testify to
4 regarding the victim's violent nature, that he
5 had --

6 MS. CLEARY: Not his violent nature, but that
7 he possessed a gun and showed it to Shanicka.
8 That's it.

9 THE COURT: All right. And which means they
10 would be able to, if they had evidence of the
11 Defendant possessing a gun --

12 MS. CLEARY: No, that is a completely
13 different issue.

14 THE COURT: No. It says -- the rule says,
15 evidence of a pertinent trait of character offered
16 by an accused by the prosecution to rebut the same
17 or if evidence of a trait of the character of the
18 alleged victim of the crime is offered by the
19 accused and admitted under 404 (a)(2).

20 And this is -- I'm reading this from the
21 federal evidence book. And it says: Evidence of a
22 pertinent trait of character offered by the
23 prosecution. Because you are in essence saying
24 that he is going there to be peaceful.

25 MS. CLEARY: No.

1 THE COURT: To give -- well, you are saying he
2 went there with no malice -- he didn't go there to
3 cause a fight?

4 MS. CLEARY: He didn't go there to see Amp at
5 all -- I mean, Anthony at all.

6 THE COURT: To his house?

7 MS. CLEARY: No. I mean, he went -- walked
8 over to where the truck was parked in front of
9 Anthony's house. He didn't go to his house. He --
10 the testimony is that he walked from the Banks'
11 house over towards where the car was parked on the
12 street and that he and Amp met up at that point.

13 But in any case, I just want to clarify, I am
14 not trying to introduce testimony of his
15 reputation. I am not going to ask anybody about
16 his reputation. I'm asking about specific
17 instance, which I think they can rebut, and they
18 can rebut that -- whether he was a gun carrier or
19 not. And they can rebut whether there was any
20 reason for Jamaal to fear him.

21 But in terms of -- and, like I say, I don't
22 even know what the bad act evidence is that they
23 want to bring in, and I believe I'm entitled to
24 know that.

25 THE COURT: Is there any evidence that he

1 carried a gun?

2 MS. CAMPBELL: Oh, lots of it. I mean, he is
3 out on an assault charge where he shot another guy
4 and said it was an accident -- or he shot at, he
5 missed that one -- when this happened. And I can
6 go on and on.

7 There is also evidence that at one point he
8 tried to get a gun and he was trying to -- he was
9 going to rob this victim on a prior occasion. And
10 let me get my list, Your Honor.

11 (Pause.)

12 MS. CAMPBELL: There is other evidence of bad
13 blood between the two. We tried to stay within the
14 rule and keep it clean, Your Honor. We haven't
15 gone into any of the gang stuff, which is another
16 reason that they didn't get along is because he was
17 in a gang and he hated the victim's best friend.

18 There is all kinds of reasons he had to go
19 there. And, of course, Your Honor, just the very
20 fact that he armed himself prior to going to the
21 neighborhood in and of itself kind of refutes some
22 of what she is arguing.

23 He of course, because of his conviction, is
24 not even allowed to carry a gun lawfully.

25 THE COURT: I was going to ask that too. She

1 is saying he can lawfully arm himself. I was going
2 to ask, if he has a felony he can't lawfully carry
3 a gun.

4 MS. CLEARY: Your Honor, there are numerous
5 cases specifically on point. State versus Burris
6 being one. In that case the Defendant was in
7 illegal possession of a handgun. Nonetheless, the
8 Supreme Court said that he could still be entitled
9 to arm himself if he met the elements of
10 self-defense. And that case was specifically on
11 point.

12 THE COURT: If he met the elements of
13 self-defense..

14 MS. CLEARY: Right.

15 THE COURT: But you are saying you are not
16 arguing -- your defense is not self-defense.

17 MS. CLEARY: No, it is also accident as well
18 that they address in that case. There is specific
19 case law on that.

20 THE COURT: I guess the -- tell me how he
21 meets the elements of self-defense, the first
22 element of self-defense.

23 MS. CLEARY: Okay. It is our assertion that
24 with no interest in Anthony at all he came across
25 the yard to give Devan a thing, a blunt, that he

1 was not looking for any trouble.

2 So in that sense, then he would not be -- he
3 would be without fault in bringing on the
4 difficulty.

5 And in cases where the Court has found that
6 the Defendant couldn't use that and he was at fault
7 or cases where they could go and try to rob
8 somebody and then that person fights back, well, no
9 obviously you can't use self-defense in those
10 circumstances, but we don't have that here.

11 And the act of arming himself, as I just
12 stated, there are cases that are specific about
13 this, and there was one case where -- I think
14 Burris is a case where a 17-year-old boy had a
15 gun -- that the act of arming himself does not mean
16 that he intended to fight. I mean, in this country
17 you are allowed to carry a gun if you think that
18 you might be in danger. And when he went over
19 to -- and I'm not -- when he -- I mean, it is our
20 assertion that he knew that Anthony was a dangerous
21 guy and that the whole -- there are numerous people
22 in this neighborhood carrying guns. I mean,
23 Shanicka can testify that she also brandished a gun
24 at some point and that he felt it was necessary to
25 be armed because of that. And so then he also has

1 to show the fact he is in actual imminent danger of
2 losing his life.

3 Now, at the point that he retrieved the gun,
4 it had already been pointed at his friend, maybe at
5 him. He had already been punched in the face. So
6 we already knew that there was serious hostility by
7 Amp against him. So the law wouldn't require him
8 to just leave the gun on the ground or leave it
9 with Andina. He retrieved the gun in self-defense,
10 which he is allowed to do. He is not required to
11 just leave it there and run from the scene and get
12 shot in the back. I mean, there is obviously a
13 fight going on and there is a lot of anger and
14 animosity. So at that point his fear of losing his
15 life would be obvious.

16 But in order to show -- and, like I said, I'm
17 not showing self-defense, I just show that he armed
18 himself in self-defense, so then we also would show
19 that his belief that he needed to be armed was
20 reasonable. And that is where we get into --

21 THE COURT: His belief that he needed to be
22 armed -- and I would maybe understand that if he
23 was going to the grocery store and he -- or the
24 mall and the victim frequently hung out there and
25 then he felt like he needed to be armed to protect

1 himself, but the first part of self-defense says
2 that he didn't bring about any part of the
3 difficulty.

4 And I guess I just can't understand how, on a
5 self-defense how you are going to get past the fact
6 that he leaves his house, gets a gun, and goes to
7 the Defendant's house or two doors down from the
8 Defendant's house and ultimately ends up in front
9 of the Defendant. And then the fourth element of
10 self-defense says that he had an opportunity to
11 retreat -- that he didn't have an opportunity to
12 retreat.

13 MS. CLEARY: The -- he was at the Banks' house
14 because he was having a relationship with Lauren
15 Banks, and he can testify to that. He was invited
16 there. He was welcome to be there. So going to
17 their house and then going, you know, into the
18 property in front of their house, I mean, that is
19 not inviting difficulty in the sense that the case
20 law shows, which is usually when you go up and you
21 try to rob somebody. And in Burris the Defendant
22 was entitled to an accident and self-defense
23 charge. He had also --

24 (Pause.)

25 MS. CLEARY: Okay. He had previously shot the

1 gun into the ground. That did not preclude an act
2 of defense. He --

3 THE COURT: What is the cite for Burris?

4 MS. CLEARY: 334 S.C. 256, 513 S.E.2d 104. In
5 addition, State v. Mekkler was a case where the
6 jury had been charged accident. And the Court said
7 that the intentional pulling of the hammer back on
8 a shotgun in this case it can still be involuntary
9 manslaughter because she claimed to discharge it
10 accidentally.

11 So even if she unintentionally pulled the
12 trigger, I mean, in this case she claimed to
13 unintentionally pull it, and the Court said you
14 still get that charge because intentionally pulling
15 a hammer back on a shotgun can still be involuntary
16 manslaughter.

17 And Mekkler is also instructive on the issue
18 of -- in that case they allow the Defendant to
19 bring in that she had made a statement -- the
20 Defendant's statement had been, it was her or me,
21 what was I supposed to do, sort of thing. Very
22 similar to what we have.

23 And that is admissible to show that the
24 Defendant believed he was in imminent danger of
25 losing his life. But those statements were

1 admissible to show self-defense.

2 THE COURT: Okay. All right. Let me hear the
3 response from the State.

4 MS. CAMPBELL: Your Honor, may we just quote
5 State versus -- which one do you want, involuntary
6 manslaughter or the accident one first?

7 Involuntarily manslaughter, State versus
8 Willie Reese, which was tried here in this
9 courthouse, talked about how because he was there
10 pointing and presenting a firearm that he was not
11 entitled to an involuntary manslaughter charge.
12 The Supreme Court, not Court of Appeals.

13 THE COURT: Which case is that?

14 MS. CAMPBELL: State v. Willie Reese,
15 R-E-E-S-E.

16 State versus Goodson and everything else, Your
17 Honor, as far as her getting an accident charge,
18 she must then prove the elements that he was
19 unlawfully in possession of a pistol. And I don't
20 know how she differentiates -- I guess she admits
21 that he wasn't entitled to be armed, it was
22 unlawful for him to bring the pistol over there,
23 but then the victim reacted and knocked it out of
24 his hand and then he became lawfully armed after
25 the fight and they were walking away is her

1 argument? That is what I got.

2 THE COURT: All right.

3 MS. CAMPBELL: He still has a duty to retreat.
4 He still has to be without fault. The first person
5 uncontradicted, she can't say differently, that
6 pulled out a weapon in this case and started the
7 entire altercation is her client by every witness,
8 by her own client's admission, I assume. If he
9 says something different, I can't anticipate that
10 at this point.

11 So to say he even gets a self-defense charge
12 would not be proper in this case with these facts.
13 The victim is in his own home and it is undisputed
14 that the initial confrontation takes place in a
15 driveway and that the actual shooting takes place
16 in the grassy area of the front yard. So he has a
17 duty to retreat. He is the one that brings the
18 gun. He is the one that sets the whole thing up,
19 he and Devan Bailey. And he is the one that pulls
20 out the gun first. How was he without fault in
21 bringing on -- at whatever point she wants to say
22 he becomes armed, which I submit, Your Honor, that
23 he becomes armed when he goes to his house to get
24 his gun to go to this neighborhood, which he is not
25 lawfully in possession of.

1 I'm not saying that there are not cases where
2 a person cannot arm themselves if they meet the
3 other elements of self-defense, but the case law
4 says she has to meet all the elements of
5 self-defense, and she doesn't. State versus Reese
6 is 370 S.C. 31. And that is on the involuntary
7 manslaughter in that case.

8 Your Honor, I just don't see how under any way
9 she tries to twist this that she can get past those
10 two prongs, that he is without fault or, and/or
11 that he didn't have a duty to retreat. No one is
12 alleging this is his home, his car. I mean, there
13 is nothing about Castle Doctrine here that applies.
14 So at this point she is stuck with the four
15 elements of self-defense. And, respectfully, Your
16 Honor, I don't think she can meet at least two of
17 them.

18 You know, it has to be imminent danger of
19 losing his life. At no point, also, Your Honor
20 which is integral to this, he has to be in actual
21 imminent danger of losing his life or actually
22 believed he was in imminent danger. There is no
23 point that even anyone, any of his friends say
24 that -- Mr. Salley is in his own yard. And as far
25 as the testimony in this case, actually the others

1 say that Mr. Salley was losing the fight, that he
2 ultimately quit because he went to get the gun to
3 finish it off.

4 THE COURT: All right. And some of this I
5 guess will be -- the argument is probably more
6 appropriate for a charge conference as to, you
7 know, what I will charge at the end of the case.

8 MS. CAMPBELL: Yes, ma'am.

9 THE COURT: But I guess I would need -- we
10 would need to proffer Shanicka Lee's testimony as
11 to what she is going to say regarding the incident
12 with -- I'm assuming you want to call her first,
13 because she is going to have -- you are going to
14 have to have her testify, number one, that he knew
15 about what happened.

16 MS. CLEARY: Right.

17 THE COURT: In order -- he can't just say,
18 I -- he can't -- I mean, you have got to be able to
19 link his state of mind to the incident -- for him
20 knowing of the incident. I'm assuming that is why
21 you want to call her.

22 MS. CLEARY: Right. But she --

23 THE COURT: That she told him.

24 MS. CLEARY: She may say that she didn't tell
25 him that.

1 THE COURT: Then how are you going to
2 establish that he knew about --

3 MS. CLEARY: Because they were friends. They
4 were very close. He can testify that she told him
5 and also Raymond Asberry was also present when she
6 told him.

7 This is Andina Lee's sister. And I'm
8 anticipating that she is not going to work with me.

9 MS. CAMPBELL: Has she talked to her?

10 MS. CLEARY: Yes.

11 MS. CAMPBELL: And she is not working with
12 you. So she told you she didn't tell him that?

13 MS. CLEARY: I have a statement from her where
14 she says --

15 MS. CAMPBELL: That she says that happened,
16 not that she told you --

17 MS. CLEARY: Right. But she says that she --
18 that Anthony told me he was going to blast me and
19 showed me a gun. And I also -- there is tons of
20 evidence in the discovery that Shanicka and Jamaal
21 are friends.

22 THE COURT: I guess -- well, but it doesn't
23 matter if they are friends or not, it has to be
24 something where she is saying that she told him so
25 he would -- if she says, I told him that about the

1 incident that happened, then he knows about it
2 because she is saying, this is what happened and he
3 told me, the victim told me this.

4 I'm just trying to understand how do you get
5 to your client's state of mind being able to prove
6 that he knew about this other than I guess him
7 saying somebody told him. She is going to say she
8 didn't tell him, he is going to say she did,
9 according to what you are saying.

10 MS. CLEARY: I can impeach her credibility in
11 terms of -- if she says, no, I never told him, you
12 know, this was such a commonplace event in my life
13 I never mentioned it to someone that I spend a
14 great deal of time with. Then his testimony and
15 Raymond's provide evidence that, yes, he did know
16 about it.

17 My point is not to show that it happened, my
18 point is to show that Jamaal knew about it, and
19 that is what I believe would be inferred that she
20 would have told him and then corroborate that with
21 Raymond and Jamaal's testimony.

22 MS. CAMPBELL: So Raymond is going to
23 corroborate triple hearsay testimony about what he
24 heard --

25 MS. CLEARY: No, he was present.

1 MS. CAMPBELL: -- Shanicka say to him.

2 MS. CLEARY: He was present when she said it,
3 so -- and we're not --

4 MS. CAMPBELL: Said it or said it to him?

5 MS. CLEARY: It is the only way that we can
6 show state of mind. It is the only way that we can
7 show he had knowledge of it.

8 THE COURT: Well, I mean, I don't know if
9 Raymond -- if she comes in and says it and she says
10 that she didn't tell him, I'm not sure how Raymond
11 is going to come in and say that she did.

12 MS. CAMPBELL: Thank you.

13 THE COURT: Which is definitely going to be --
14 how are you going to get it in under hearsay?

15 MS. CLEARY: Because we are not offering it
16 for the truth of the matter asserted, we are
17 offering it to show Jamaal's state of mind. And
18 Mekkler speaks to how -- you know, what hearsay
19 evidence is normally -- hearsay is admissible when
20 it shows a state of mind necessary for it to show
21 self-defense.

22 THE COURT: All right. I'll give you -- I
23 mean, we worked -- I mean, it kind of defeats the
24 purpose for working late last night to leave early
25 today. I think you have an investigator. Y'all

1 can try to see if y'all can locate her. If y'all
2 can try to locate her and/or Mr. -- I mean, I just
3 don't want to lose -- I planned on working till
4 5:30 or so, 6:00 o'clock this afternoon.

5 MS. CAMPBELL: She said she could get them in
6 in 15 minutes. Can we go ahead --

7 THE COURT: She said she needed 15 minutes to
8 try to see if she could locate her. She said she
9 is not cooperating.

10 MS. CAMPBELL: What about Mr. Asberry? He was
11 here earlier. Where is he? Did she send him away?

12 MS. CLEARY: I haven't talked to him. I
13 didn't know he was here. And I don't really
14 appreciate the implication.

15 MS. CAMPBELL: She doesn't know who her own
16 witness is sitting in the courtroom?

17 MS. CLEARY: I haven't talked to him. My
18 investigator talked to him. Stop impugning my
19 integrity.

20 THE COURT: All right, guys. Try to see if
21 you can get Mr. Asberry, if he is going to testify,
22 or if Ms. Shanicka Lee is going to testify. I'm
23 not inclined to lose an afternoon, an hour, hour
24 and a half of testimony.

25 MS. CLEARY: Okay. Are we going till 6:00?

1 THE COURT: Probably about 5:30. It just -- I
2 was trying to get through with the case today if we
3 could.

4 MS. CLEARY: Well --

5 THE COURT: And I'm not saying we are. I'm
6 just saying I didn't intend on stopping at 3:30 or
7 4:00 o'clock. I mean, I think this morning they
8 kind of knew that -- well, they anticipated that
9 they were going to finish before lunch. They
10 didn't. So we knew it was going to probably end
11 sometime this afternoon, early part of this
12 afternoon, their case would end the early part of
13 this afternoon.

14 And as far as self-defense and accident and
15 all that, at this point I guess the reason you are
16 bringing that up is because you want me to make a
17 ruling as to what they can put in if your client
18 puts up evidence regarding the victim's -- bad act
19 on the part of the victim.

20 And, like I said, I think it is pretty clear
21 that if he is going to get up and they are going to
22 say that he went over there to take -- you know, he
23 didn't go over there to cause any problems,
24 dada-dada-dada-da, then it goes -- it is going to
25 be evidence to rebut what he is saying.

1 MS. CLEARY: Okay, so --

2 THE COURT: Evidence of peacefulness. Did he
3 go over there to be peaceful or did he go over
4 there to -- it is either one or the other.

5 MS. CLEARY: Well, no, he went over there to
6 talk to Devan. And that is what Devon's testimony
7 was as well. Or to give Devan a cigar. I mean,
8 that --

9 THE COURT: Well, there has also, Ms. Cleary,
10 been testimony that for one person saying that,
11 this is exactly what I wanted, there is another
12 testimony where he says, I'm going to my house to
13 get my tool. There has also been testimony that he
14 goes to one house and then he comes back and they
15 notice that he is in the other yard. There has
16 also been testimony that he pulls the gun first.
17 The victim strikes him, knocked the gun out of his
18 hand. There has also been testimony that the
19 victim -- that he is getting the best of the
20 victim. And there has been testimony that the
21 victim, I believe, was on the ground where she had
22 to help -- when the girlfriend had to pick him up
23 off the ground. So, I mean, I understand you are
24 relying on the testimony of Devan Bailey.

25 MS. CLEARY: As well as Derrick Diamond and

1 Quinton Emerson as well.

2 THE COURT: And they are both the ones that
3 said he picked -- he took the gun and picked it up
4 and pointed it at the victim.

5 MS. CLEARY: Right. But they also say that he
6 was walking towards Devan to give Devan something
7 and that Anthony approached him.

8 But what I need to know, though, before I
9 decide how we're going to proceed is, is it your
10 ruling that evidence that he told Richard Johnson
11 that he was a GD, is that evidence more probative
12 than prejudicial at this point? I mean, to show
13 that he is not peaceful, like they are saying that
14 they can do.

15 THE COURT: I guess I'm confused now.

16 MS. CLEARY: I need to know which specific
17 act --

18 THE COURT: I'm trying to figure out -- now,
19 evidence that he told Richard Johnson that he was a
20 GD.

21 MS. CLEARY: Well, they proffered the
22 testimony of Richard Johnson in Atlanta, for
23 example, that Jamaal told him he was a GD. Is that
24 the sort of evidence that you are saying would be
25 admissible to show he is a bad guy?

1 THE COURT: No, I think what you are trying to
2 do, you are trying to show that the accused
3 carried -- I mean, the victim carried a gun, right?

4 MS. CLEARY: Right.

5 THE COURT: I think they would probably have
6 the ability to say, so did the Defendant. And
7 unless --

8 MS. CLEARY: Well, we already know that.

9 THE COURT: He didn't say anything about --
10 but I think they can get into other past acts of
11 him --

12 MS. CLEARY: I need to know for how many years
13 and, you know, what I need to prepare for.

14 THE COURT: It is not -- I mean, under the
15 rules she can go back --

16 MS. CLEARY: I mean, I don't think that is
17 what the rules say. The rule says they can
18 introduce prior bad acts if they are relative under
19 any of these Lyles exceptions.

20 MS. CAMPBELL: No, Your Honor. I mean, you
21 read her the rule over and over. It says what it
22 says. And it limits us only in rebuttal to
23 whatever she puts up. But once she puts in, you
24 know, that trait, then we're allowed to go into it
25 on specific instances.

1 THE COURT: And you are saying those would
2 be -- I'm not -- I'm still not sure of the stuff
3 that happened in Atlanta afterwards because
4 nobody --

5 MS. CAMPBELL: I'm not sure about that either.
6 I'm talking about other things.

7 THE COURT: Nobody said anything -- he didn't
8 say anything about a gun. He didn't say any -- so
9 his proffered testimony --

10 MS. CAMPBELL: I proffered it out of an
11 abundance of caution. And I don't know what he is
12 going to say when he gets up there.

13 THE COURT: She is saying that they are going
14 to -- if you put -- they want to put in the fact
15 that he has had these assault charges, he's had
16 this, he has had that, under his prior bad acts.
17 And you can go back what, ten years on that?

18 MS. CAMPBELL: As much as we need to, Your
19 Honor, but, you know, essentially she is putting
20 his character in evidence.

21 MS. CLEARY: Your Honor, I believe that if he
22 testified that he had never gotten into any
23 trouble, then that would be opening it up to all
24 sorts of evidence. And there are cases that show,
25 you know, for example, the case where the Defendant

1 said he'd always protected women and cared a lot
2 about women. Well, that then allows the State to
3 bring in evidence of prior conflicts with women and
4 prior attacks on women because he opened it up by
5 saying specifically, I protect women.

6 If Jamaal sits up there and says, I'm a
7 peace-loving man, I don't ever carry a gun, then
8 they can bring in the incidences.

9 And I just want to make sure for my record as
10 well that you realize that I'm arguing that they
11 are not admissible under these rules because we're
12 trying to bring in a specific incident of conduct
13 not to show that that conduct happened, but that
14 Jamaal's state of mind was reasonable. Okay. We
15 are not trying to show that Anthony is a bad
16 person, we're not going to ask anybody about his
17 reputation or any kind of bad things that he has
18 ever done that we do have information about. This
19 is a specific incident of him carrying a gun
20 because of course they made it sound like, you
21 know, he was --

22 THE COURT: But you don't want to just bring
23 in the fact that he carries a gun, you want to
24 bring in the fact that he pulled a gun on a female,
25 that the victim pulled a gun on a female and told

1 her that he was going to blast her or bust a cap in
2 her, or something like that.

3 MS. CLEARY: Well, I mean --

4 THE COURT: And some people may not think
5 carrying a gun, just simply carrying a gun is a bad
6 act, but I think him pulling a gun on someone and
7 telling them that he is going to bust a cap in
8 them, if that is what it is that you are --

9 MS. CLEARY: Well, I think it is part of our
10 obligation to show that Jamaal had a reasonable
11 fear, and so just carrying a gun is not a
12 reasonable fear, willingness to use it shows that
13 he has a reasonable fear. And I also wanted to
14 emphasize --

15 THE COURT: And don't you -- and if they have
16 to prove -- they have to prove -- disprove your
17 self-defense claim beyond a reasonable doubt.

18 MS. CLEARY: Uh-huh. So, as I said --

19 THE COURT: And so they would have the
20 opportunity to put something up that says, no, he
21 wasn't afraid and, no, he wasn't afraid, and this
22 is why he wasn't afraid because --

23 MS. CLEARY: If they have evidence he wasn't
24 afraid, yes. But to say he was engaged in a prior
25 incident with something totally unrelated to this

1 case, it doesn't show he wasn't afraid. It is not
2 probative of that, and clearly it is prejudicial,
3 unduly prejudicial and not probative. The only
4 purpose is to show he is a bad guy.

5 THE COURT: All right. Well, what we are
6 going to do first is, because the clock is ticking,
7 we need to take that 15 minute break, see if you
8 can locate Shanicka, and if you can locate her, get
9 her in here this afternoon so she can testify. If
10 I have to proffer her testimony I'll proffer her
11 testimony. If I have to proffer Mr. Asberry's
12 testimony we will proffer both of their testimony,
13 and then I can make a ruling as to that.

14 MS. CAMPBELL: Thank you.

15 MS. CLEARY: Thank you.

16 THE COURT: Thank you. We'll take about a 15
17 minute break. We'll let them know it is going to
18 probably be -- I will let them know another 15 or
19 20 minutes.

20 (WHEREUPON, a break was taken.)

21 THE COURT: Any luck?

22 MS. CLEARY: I have not been able to reach
23 Shanicka. Just two seconds ago we had a missed
24 call, we thought maybe it was her so she has gone
25 out to try to return it. And then we were told

1 my concern.

2 THE COURT: Okay.

3 (Pause.)

4 THE COURT: All right. We're going back on
5 the record. Mr. Hinson, let me have you stand,
6 sir.

7 (The Defendant complies.)

8 THE COURT: And I'm sure your attorney has
9 explained to you, but I will go ahead and I have to
10 advise you of your rights, sir.

11 You understand that you have the right --
12 under our constitution, that the State has the
13 burden of proving your guilt beyond a reasonable
14 doubt. That you and your attorney do not have to
15 present any evidence. You do not have to testify,
16 sir. If you choose not to testify, the burden is
17 solely upon the State to prove your guilt beyond a
18 reasonable doubt. You have the right to remain
19 silent. The burden, once again, is solely upon the
20 State to present evidence and to prove you guilty
21 beyond a reasonable doubt.

22 However, sir, if you wish to testify, the time
23 to testify will be in the morning at 9:30. You do
24 not have to give me a decision at this time. I
25 will let you talk to your attorney about it this

1 evening or first thing in the morning. All right?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: But you do understand your rights,
4 is that correct?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. Thank you, sir.

7 THE DEFENDANT: All right.

8 THE COURT: All right, anything else? Oh, if
9 you all have proposed charges, can you please
10 e-mail those to Aaron, to my law clerk tonight?
11 And he'll get you the e-mail address. He'll write
12 it down for you if you need it. I think we'll
13 start -- is Jackie still here?

14 THE CLERK: I'm here.

15 THE COURT: We will order lunch for the jurors
16 tomorrow. But I think once -- I don't know if
17 y'all are going to have anything on rebuttal, but
18 once the Defendant puts up their case, if they put
19 up one, we'll order lunch, and just be prepared to
20 do closing arguments on tomorrow, argue and charge
21 sometime tomorrow, I don't know what time tomorrow,
22 but sometime tomorrow.

23 All right. Thank you. See you all in the
24 morning at 9:30.

25 (WHEREUPON, court adjourned for the

1 evening.)

2 NOVEMBER 17, 2011

3 THE COURT: All right. Good morning. You may
4 be seated.

5 All right, are you ready?

6 MS. CAMPBELL: The only thing, Your Honor, is
7 his prior record. I think he has got to make a
8 decision on whether or not he is testifying.

9 THE COURT: Ms. Cleary, is he testifying?

10 MS. CLEARY: Yes, he is.

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

12 MS. CAMPBELL: As far as his prior record
13 goes, he has a rioting conviction --

14 THE COURT: A what?

15 MS. CAMPBELL: -- and a burglary second
16 degree. Rioting.

17 THE COURT: Oh, rioting. I thought you said
18 writing. I was going to say --

19 MS. CAMPBELL: Not writing.

20 THE COURT: Rioting and --

21 MS. CAMPBELL: And that would be the extent of
22 convictions. Pending in our office he also has a
23 PWID marijuana and an ABHAN offense. Do you have
24 his prior record?

25 THE COURT: Rioting and burglary second. And

1 pending is PWID marijuana, you said?

2 MS. CAMPBELL: PWID marijuana.

3 THE COURT: And ABHAN?

4 MS. CAMPBELL: And ABHAN.

5 THE COURT: Yes, ma'am, I will be glad to hear
6 from you.

7 MS. CLEARY: I need to make sure the record is
8 clear for appellate purposes. There are a couple
9 of issues we argued up here that were not on the
10 record.

11 The first thing I'd like to make clear is that
12 I believe that his statement to the police that he
13 felt like it was him or me is clearly admissible,
14 even without him testifying based on the State
15 versus Mekkler where the Court specifically said
16 that was admissible to show the element of
17 self-defense that the Defendant believed that he
18 was in danger of losing his life.

19 And also, I attempted to attack the police
20 investigation by showing that even though the
21 police knew that Jamaal explained that the killing
22 was not intentional or not with malice, that they
23 did nothing to investigate that possibility.

24 And under Kyle v. Whitley and other cases, of
25 course the caliber of the investigation is

1 certainly probative and can be attacked in order to
2 present our case.

3 And I believe that the inability for us to be
4 able to introduce that stuff under the State's --
5 or even bring it up during the State's case in
6 chief is a violation of his Sixth Amendment right
7 to present a defense. And also Article 1, Section
8 14 of the South Carolina Constitution which
9 provides that Hinson has the right to be fully
10 heard in his defense.

11 THE COURT: All right. Anything?

12 MS. CAMPBELL: Your Honor, we just rely on
13 what we discussed, those were self-serving
14 statements, in addition to the case law. In
15 addition, she mischaracterized what the statement
16 was to the police anyway.

17 All she said was, what was I supposed to do,
18 I just picked it up. He always wanted to fight and
19 stuff.

20 I don't see anywhere where it says what she
21 just put on the record it says as far as any
22 statements made to the police. But even if it did
23 say that, Your Honor, I understand it comes in once
24 he testifies; however, if it was a self-serving
25 statement it would properly be excluded.

1 THE COURT: All right. And my ruling was -- I
2 believe my ruling at the bench was that -- well, I
3 believe the question was, of the four witnesses
4 didn't one witness -- didn't one witness -- did any
5 of the witnesses tell you that he was acting in
6 self-defense or that he was not initiating the
7 fight. I believe that was the question. And there
8 were four witnesses that, in the course of the
9 question, that you were asking him about, which he
10 was not one of the witnesses that -- one of the
11 four witnesses that you were referring to. I think
12 it was the three other people that were in the car,
13 plus the young lady that was there, Ms. Lee.

14 When we approached the bench, I believe you
15 asked at that time could you ask him if there were
16 any other witnesses -- any other witnesses that
17 told you that he was -- that he did not initiate
18 the fight. There was some discussion, I guess, as
19 to whether or not he was a Defendant, witness or
20 what the Defendant was. But the question was not
21 referred to as the Defendant, and I think that was
22 one of the reasons that I sustained the objection.

23 The other reason was because it was
24 self-serving, but I did state that if the statement
25 came in that I would allow you to recall the

1 officer to put them on the stand regarding the
2 caliber of the investigation and their lack of
3 investigation, if that is what I think you are
4 alleging.

5 MS. CLEARY: All right. One more.

6 THE COURT: Yes, ma'am.

7 MS. CLEARY: I feel like I need to make the
8 record clear about the prior bad acts as well.
9 And, quite frankly, I believe that the State lacks
10 standard in the tribunal in constantly asserting to
11 you that if Jamaal testifies that he was afraid of
12 Anthony and just went over there to give Devan a
13 cigar, then the door is open for Evans to say that
14 he was an active member of a gang or that he
15 assaulted an unrelated person or that he has ever
16 been arrested for a PWID.

17 THE COURT: All right. And I don't make a
18 ruling on that. I think I left and I said, I will
19 rule when I get back. And then you all, when I
20 came back, y'all said y'all agreed to it.

21 And I said -- I think my ruling was that I
22 really couldn't even rule on it until I heard the
23 testimony of Shanicka Lee. And she was never
24 called. Y'all told me that she would probably not
25 be a witness and that she -- you were going to go

1 ahead and call the Defendant. I never made a final
2 ruling on that.

3 MS. CLEARY: Well, I proffered what her
4 statement said, which was that Amp had held a gun
5 on her. And you said that that was remote and not
6 admissible under State versus Day. So therefore we
7 decided not to call her.

8 THE COURT: You were going to -- but, no, the
9 way you were trying to get it in was through the --
10 her sister.

11 MS. CLEARY: No, no, no. I'm talking about, I
12 have a signed written statement from Shanicka that
13 the police took where she said -- and I wanted to
14 get that in with Shanicka testifying that Anthony
15 had held a gun to her and then Jamaal would testify
16 that he knew about that, but you said that that was
17 not admissible because she didn't hold a gun on
18 him.

19 THE COURT: But I also stated that we would
20 proffer Shanicka's testimony, and she has never
21 been presented to proffer her testimony.

22 MS. CLEARY: But I told you what it is that
23 she said in her statement. I mean, so no matter
24 what she said I could bring in that statement.

25 THE COURT: The problem is you are trying

1 to -- the problem is you are trying to say, one,
2 that it is state of mind. And I think we had some
3 discussion. There is a difference between saying
4 he carried a gun, that the victim carried a gun,
5 and her getting into a specific instance that he
6 was not involved in. And I further read, I think
7 that case of State v. -- is it the State v. Day
8 case? And in that case the facts are definitely
9 different than the facts in this case.

10 In that case, the victim and the Defendant
11 were riding around, they were plotting a murder.
12 He was -- it was a murder for hire case, or
13 something like that. They are riding in the car at
14 the time. So, I mean, the facts in that case are
15 totally -- the victim and the Defendant were riding
16 in the car together at the time of the incident.

17 The Court held that evidence of a prior act of
18 violence by the victim directed towards the
19 witnesses was admissible in a murder prosecution
20 and is relevant to an essential element of the
21 Defendant's self-defense claim to prove the
22 Defendant had reasonable apprehension of violence
23 from the victim where four months prior to the
24 victim's death the victim held a double-barrel gun
25 to the witness's head for 18 hours as he drove

1 around the county accusing her of being involved in
2 a drug trafficking scheme in his residence.

3 The difference is the Defendant here was not a
4 party to -- he and the sister and the sister
5 possibly having a gun and the victim possibly
6 having a gun, he was not a part of that. You have
7 not been able to link him to knowing about that.
8 If he was there, if the victim held a gun to him,
9 then I would say, okay, yes, that can come in. If
10 he was there and he saw it. If there was some
11 criminal conspiracy going on and he was a part of
12 it and he knew it -- that is what was happening in
13 the State v. Day case -- and he knew about it, then
14 that would -- I mean, that would come in. But
15 there has been no link here to link Shanicka Lee --
16 him having -- his state of mind as to the victim
17 carrying a gun or being -- not even carrying a gun.
18 You want to say the victim pointed -- that he was
19 afraid of the victim because of this incident
20 because he knew that the victim had pulled a gun on
21 somebody before. And there is nothing that puts
22 anything to his state of mind to show that he knew
23 about this.

24 And I think my ruling yesterday was that you
25 were going to try to locate Ms. Shanicka Lee, and

1 you asked for 15 minutes to do that. And I told
2 you that I would -- before I could rule that I
3 probably needed to proffer her statement. And she
4 is not here to testify. So I can't -- I mean, I
5 can't even hear what she is going to say.

6 There was some discussion you said yesterday
7 that Shanicka Lee is going to say that she didn't
8 tell him and but that he is going to say that she
9 did tell him.

10 So until I hear her testimony, I don't know if
11 she told him or not. The statement is not the
12 issue. The issue is whether or not he knew about
13 it. How did he know about it, how did he find out
14 about it. And nobody has presented me any evidence
15 to show me how he found out about it.

16 So I think -- I didn't rule on it as to
17 whether or not the statement could come in because
18 I never heard -- no one ever presented her to
19 proffer her statement.

20 MS. CLEARY: Well, the only way that we could
21 establish that he knew about it is from his
22 testimony.

23 THE COURT: Well, his testimony and her
24 testimony are conflicting, according to you.

25 MS. CLEARY: Right. But I can show that her

1 testimony is not credible, that she and Jamaal were
2 very good friends, and that that was the sort of
3 thing that she would have told him because they
4 were good friends. And there is also -- there was
5 another -- the victim's sister, Eliasias Salley, has
6 said that Shanicka always talked shit about Amp to
7 Jamaal.

8 THE COURT: I understand that. But I did not
9 rule -- my ruling was that I was not going to rule
10 until we proffered her testimony to hear what she
11 had to say, and she has not been presented.

12 So, I mean, I understand, you can state it for
13 the record, but I don't even think I made a ruling
14 on as to whether or not she could testify to what
15 it is that she is going to testify until I actually
16 heard the statement.

17 Because the only thing I had was that you said
18 that she is going to probably say, no, I didn't
19 tell him that, and he is going to say, yes, she
20 did. And then you also offered Mr. DeBerry -- is
21 it DeBerry or Asberry -- Asberry to I guess
22 corroborate that, yes, she is lying, I was there
23 when he said it. But then he has not been called
24 to testify either.

25 MS. CLEARY: Okay. Well, the reason that I'm

1 not going to call them is because from what I
2 understand your ruling to be is that if I attack
3 the victim by saying that he had propensity for
4 violence, then your ruling is that then they can
5 bring in any kind of --

6 THE COURT: I said there is a chance,
7 depending on what he said, there is a chance that
8 they may be able to -- if he testifies that he went
9 over there and he didn't go over there to cause any
10 problems, he was peaceful, or if any of the other
11 victims -- and that the victim was the aggressor,
12 and if any of the other witnesses says that he was
13 over there and he was over there and he was
14 peaceful, dada-dada-da, then I think at that point
15 that is when that probably comes in.

16 But a whole lot of this is just speculation
17 because I can't -- I haven't heard any of that.
18 And I'm more than happy to proffer any testimony
19 that I need to proffer, but -- which is the proper
20 way to go about doing it, is proffer the testimony
21 and then I can make a ruling on it. But I haven't
22 had the testimony to make any ruling.

23 And I already told her that I didn't know how
24 she was going to get into anything that happened in
25 Atlanta. And I think we pretty much agree. I

1 pretty much suggested that that probably is not
2 going to come in. But of course I would have to
3 hear testimony before -- proffered testimony before
4 I could even make a ruling on it. Because I'm just
5 kind of ruling in a vacuum. And I don't -- until I
6 hear the testimony I don't know.

7 I mean, so if you want to proffer Ms. Lee's
8 testimony, if you want to proffer Mr. Asberry or if
9 you want to proffer your client's testimony, I will
10 be glad to do so, but -- and then make a ruling.
11 But that was my -- I think my decision yesterday,
12 is that we were going to proffer testimony, take 15
13 minutes, y'all were going to try to locate Ms. Lee
14 to see what she said.

15 She may come in and say, yes, I did tell him.

16 MS. CLEARY: Okay. I understand. But
17 yesterday you did say several times that you
18 thought that evidence of a pertinent trait of
19 character of the victim of the crime offered by an
20 accused or by the prosecution to rebut the same or
21 evidence of a character trait of peacefulness of
22 the victim offered by the prosecution in a homicide
23 case to rebut evidence that the victim was the
24 first aggressor; that you interpreted that to mean
25 that the prosecution can rebut the same meant that

1 they could attack his character, but the rule
2 states that if we attack the character of the
3 victim, they can rebut the same, the character of
4 the victim. They can show evidence that the victim
5 was peaceful, not his character. That is not what
6 the rule says. You cannot rebut bad character
7 evidence about the victim with good character
8 evidence, or you cannot rebut bad character
9 evidence about the Defendant, only could they show
10 good character evidence about the victim. And I
11 think --

12 THE COURT: But I think if you open the door
13 regarding primary aggressor and that the victim was
14 aggressive and if the -- under the rules, if he
15 says that he went over there to be peaceful, and
16 peacefulness is a -- and we talked about that.
17 Peacefulness as a characteristic -- and you said he
18 is not going over there to say he is going over
19 being peaceful. If he goes over there and says, I
20 am being -- I was going over there to be peaceful,
21 or, I was just going over there to -- for whatever
22 reason, I wasn't going to cause any problems,
23 then -- and it all depends on how he said it or
24 what he says -- then once he invokes his character,
25 I think then under Rule 404 they have a right to

1 rebut his character, is what I think I was saying
2 yesterday.

3 If he invoked his character, they have a right
4 to -- they have a right to rebut his character, if
5 the Defendant -- if he invokes the victim's
6 character, they have a right to rebut the victim's
7 character by putting up character witnesses to say
8 he was a great person, dada-dada-dada-da.

9 But if he goes over there -- that is what I
10 was saying to you, it just depends on what he is
11 going to say. But we haven't heard anything, so I
12 don't think I can rule on it. And my decision was
13 that we were going to proffer the testimony of
14 Shanicka Lee and anybody else, and we just haven't
15 done that.

16 MS. CLEARY: Can I take one moment?

17 THE COURT: Yes.

18 (Pause.)

19 THE COURT: And I can have Debbie look it back
20 up, if you'd like, to tell us exactly what I said
21 when we broke yesterday for 15 minutes to locate
22 Ms. Shanicka Lee. But I'm almost positive -- I
23 might be wrong -- I'm almost positive that I said
24 we would proffer her testimony to see what she
25 would say and then I would make a decision.

1 MS. CLEARY: Okay.

2 THE COURT: All right.

3 MS. CLEARY: I think I understand your ruling,
4 but -- and we are going to go ahead and have Jamaal
5 testify.

6 THE COURT: Do you want to proffer his
7 testimony?

8 MS. CLEARY: No. But I believe that there is
9 relevant evidence related to his prior altercation
10 with Anthony's friend, Richard Thomas, that the
11 State has provided me information about. So we
12 would go ahead and address that issue.

13 THE COURT: And I think that is admissible.
14 Prior conduct -- there is cases that say prior
15 conduct --

16 MS. CLEARY: So --

17 THE COURT: I never ruled that that wasn't
18 admissible.

19 MS. CLEARY: I know. I just wanted to let you
20 know that we are going to go ahead and address that
21 head-on and that part of our reason is to show, you
22 know, the fear.

23 THE COURT: Yes, it is State versus Taylor.
24 In a murder case, evidence of previous difficulty
25 between the accused and the decedent is admissible.

1 508 S.E.2d 870. There are several cases that state
2 that.

3 MS. CLEARY: And this is actually testimony
4 about a prior incident with Anthony's friend, I
5 think some has testified that Richard and Anthony
6 were friends. And my client will testify he saw
7 Richard and Anthony earlier that day and he knew
8 that they were friends. And we're not -- and that
9 he was -- you know, that is why he got his gun
10 because it was fear. I mean, obviously she can try
11 to show that that is not true, but that is
12 basically how we're going to present our defense
13 instead of talking about Anthony and whether he
14 carried a gun.

15 THE COURT: All right. Well, let me ask you
16 this. Does he have any -- other than the Shanicka
17 Lee, does he have any other knowledge -- is he
18 going to testify to any other knowledge of him
19 carrying a gun, the victim?

20 MS. CLEARY: No.

21 THE COURT: Because I think we talked about
22 this yesterday. There is a difference between him
23 carrying a gun and him pointing and presenting a
24 gun at somebody.

25 MS. CLEARY: If you -- if it is admissible,

1 he'll testify that, you know, he generally believed
2 that he carried a gun.

3 THE COURT: And I don't think that is
4 character.

5 MS. CAMPBELL: I'm sorry, Your Honor? I just
6 missed what you said, I apologize.

7 THE COURT: That he knows that he carries a
8 gun.

9 MS. CAMPBELL: That's fine. It opens the door
10 of why he knows that.

11 THE COURT: That is not bad character.
12 Somebody carrying a gun is not -- I don't think it
13 invokes 404 because it is not --

14 MS. CAMPBELL: Well, it is illegal.

15 THE COURT: For the victim to carry a gun?

16 MS. CAMPBELL: Yes. Just as it is illegal as
17 he was carrying a gun that day, it is illegal for
18 the victim to carry a gun under unlawful carrying
19 of a pistol. His is illegal because he has been
20 convicted of a felony. Unless you have a permit,
21 and there is no one indicating anyone has a permit.

22 MS. CLEARY: Well --

23 MS. CAMPBELL: But if she will just let him
24 testify, then we can object, you know, at the
25 proper time when they are going somewhere or

1 something, but, you know, I mean -- and I
2 understand her concerns in trying to tailor this
3 testimony, but she kind of just needs to put it up
4 and then, you know, I mean, we have a right to
5 cross-examine.

6 THE COURT: She is just trying to make sure
7 she didn't open the door so if she says -- if he
8 says, I know he carried a gun, she doesn't want
9 y'all to -- which I don't think it is going to rise
10 to him being able to get any character evidence in.
11 I mean, the most that they are going to be able to
12 say is the Defendant carried a gun.

13 MS. CLEARY: Which we know.

14 MS. CAMPBELL: And I'm not saying it will come
15 in at that point under character evidence; however,
16 impeachment as to bad blood.

17 THE COURT: Impeachment as to bad blood
18 between --

19 MS. CAMPBELL: Not as to specific prior
20 instances as to why there is bad blood between the
21 two, that is a different issue.

22 THE COURT: Which brings up the gang issue?

23 MS. CAMPBELL: No, ma'am.

24 THE COURT: I'm not familiar with what y'all
25 are talking about.

1 MS. CAMPBELL: Before I go into any gang or
2 anything of that nature, Your Honor, I will let the
3 Court know. I don't plan on -- I don't know what
4 he is going to say. It is hard for me to do all
5 this as it is for you in a vacuum without knowing
6 what he is going to say. I don't think she has the
7 right to have you rule on everything. I think she
8 needs to put up the testimony and if we object, we
9 object, or whatever. She understands the rules and
10 where she is going with things. I don't know that
11 it is fair to ask you in a vacuum to prejudge every
12 single question or answer that she's going to get
13 her -- that her client is going to say. You know,
14 that is kind of the nature of what we're here for.

15 THE COURT: All right.

16 MS. CLEARY: Well, we are ready to go forward.

17 THE COURT: What is your position, Ms.
18 Campbell, regarding her putting in -- I think the
19 law clearly says that she can put in the
20 information regarding previous difficulty between
21 the Defendant and the victim.

22 MS. CAMPBELL: I have no problem with her
23 putting in previous difficulty between them, other
24 than I have then the right to cross-examine him on
25 those issues.

1 THE COURT: All right.

2 MS. CLEARY: I forgot, he has shackles on. I
3 don't know how you want to address that, but I
4 don't want the jury to see him in shackles.

5 THE COURT: Yes, sir. I will ask the deputy.

6 THE DEPUTY: Normally we just put them on the
7 witness stand.

8 THE COURT: They won't be able to see him from
9 the witness stand, will they?

10 THE DEPUTY: No, ma'am.

11 THE COURT: The shackles are not on his hands,
12 are they?

13 THE DEPUTY: No, ma'am, just his feet.

14 MS. CLEARY: Can I look at the witness stand
15 for a second?

16 THE COURT: Yes, ma'am.

17 (Pause.)

18 MS. CLEARY: Do you want to go ahead and put
19 him up there?

20 THE COURT: Are you ready? Okay.

21 (The Defendant is seated on the witness
22 stand.)

23 THE COURT: We will swear him in front of the
24 jury.

25 You can bring them in.

1 (WHEREUPON, the jury came into open
2 court at approximately 11:24 a.m.)

3 THE BAILIFF: The jury is present, Your Honor.

4 THE COURT: All right. Good morning, ladies
5 and gentlemen of the jury. As I told you
6 yesterday, the State has rested and the Defendant
7 has an opportunity to present a case if they choose
8 to do so, and they do choose to present a case.
9 And Ms. Cleary has already called her first
10 witness, the Defendant.

11 Yes, ma'am, you may -- well, he needs to be
12 sworn, I'm sorry, I didn't swear you.

13 THE BAILIFF: Place your left hand on the
14 Bible, raise your right hand.

15 (Witness complies.)

16 THE CLERK: Do you solemnly swear or affirm
17 that the testimony you give in this case will be
18 the truth, the whole truth, and nothing but the
19 truth, so help you God?

20 THE WITNESS: Yes, ma'am, I do.

21 THE CLERK: Please state your full name for
22 the record.

23 THE WITNESS: Jamaal Hinson.

24 THE COURT: Yes, ma'am.

25 JAMAAL HINSON,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. CLEARY:

4 Q Jamaal, how old are you?

5 A I'm 21.

6 Q And where are you from?

7 A I'm from the northeast part of town.

8 Q And where did you go to school?

9 A I went to LR and I went to Blythewood High.

10 Q And have you ever testified before? Have you ever
11 sat up there in the witness stand?

12 A No, I have not.

13 Q Are you a little nervous?

14 A A little bit.

15 Q Okay. You've had some problems with the law
16 before, right?

17 A Yes. Not that many, though.

18 Q And you were convicted of burglary second degree in
19 2007?

20 A Yes, ma'am, I pled guilty to that.

21 Q You pled guilty? Why did you plead guilty?

22 A Because I was guilty.

23 Q Okay. Because you were guilty. And have you
24 served your time for that conviction?

25 A I did, in '07.

1 Q And I know that we just learned that on your rap
2 sheet there is a 2004 conviction for rioting?

3 A Well, Luck Campbell said 2005. I don't remember
4 that. I don't recall that at all.

5 Q Okay. But it is possible that there was some
6 charge back then?

7 A Really it is not. I was in alternative school in
8 '05.

9 Q But you admit that you have some convictions?

10 A I do.

11 Q All right. Now, let me ask you about Richard
12 Thomas -- not Richard Johnson, who is the fellow in
13 Atlanta, but Richard Thomas, who was mentioned in
14 earlier testimony this week as being a friend of
15 Anthony's. Did you know Richard Johnson -- I mean,
16 Richard Thomas?

17 A Yes, well, I met Richard Thomas back in 2004. I
18 had moved from Leesburg and I was going to go to
19 Blythewood, but Blythewood wasn't finished being
20 built, so therefore they had freshmen at
21 Blythewood -- they had class at the middle school.

22 THE COURT REPORTER: I'm sorry, I didn't hear
23 you.

24 A I met Richard Thomas in 2004. When I went from
25 Leesburg I had moved to Ashley Ridge off of Lee

1 Road, but I was supposed to go to either Ridgeview
2 or Blythewood, but Ridgeview was too full and
3 Blythewood wasn't finished being built yet, so
4 therefore the ninth graders had to go to Blythewood
5 Middle School. It was called Freshmen at
6 Blythewood.

7 Q Freshmen at Blythewood?

8 A And I met him through a female that I was engaged
9 with, named Ashley Thomas.

10 Q Okay. So you had known him for a good while in
11 2010?

12 A Right.

13 Q Okay. What was your experience with Richard in the
14 past year or so before this incident?

15 A In the past year? I mean, we ain't like each other
16 at all. Every time we see each other, it is always
17 get into a physical contact or a verbal contact.

18 Q Did you know him to carry a weapon?

19 A Yes, ma'am. In fact -- in fact, he was on My
20 Space, he had got a teardrop, bragging about how he
21 killed somebody, so I knew he carried a pistol.

22 Q He was bragging about how he had killed somebody?

23 A Yes, ma'am.

24 Q All right. And did you know Anthony Salley?

25 A I didn't know him like that, I just knew that he

1 was friends with Richard.

2 Q So had you ever had a fight, physical fight with
3 Anthony prior to this?

4 A No, not prior to this situation. I only had one
5 conversation with him ever in my life before the
6 situation ever occurred.

7 Q And did you know that -- did you know whether he
8 carried a weapon?

9 A No, I can't say that I knew that he carried a
10 weapon because I didn't know him like that.

11 Q Okay. But you did know that he was best friends
12 with Richard?

13 A I did know that.

14 Q Okay. All right, so tell us what happened in the
15 Fall of 2009 with Richard.

16 A Are you speaking about the incident that occurred
17 at the gas station?

18 Q Yes.

19 A Well, how it transpired was I got the call from
20 Lauren Banks' brother, which is Kenneth. He was
21 calling me telling me that Richard was riding
22 through Falls Mills looking for my little friend,
23 which was Derrick Randolph.

24 Q Riding through where?

25 A Falls Mills, another subdivision right after

1 Vineyards Crossing. So he is riding through the
2 neighborhood and he drew a pistol on Kenneth Banks
3 asking where Derrick was. So being that that was
4 my little friend, and I looked at him like a little
5 brother, I called Richard to see what that was
6 about.

7 So once --- soon as I got on the phone with
8 Richard, he already started engaging in a verbal
9 altercation. He told me to meet him at the gas
10 station, which was the Murphy Express on Clemson
11 Road. So I go to the Murphy Express and it was
12 Richard, him, Lay Lay, which is Eliasias, and
13 another dude driving a truck, which was a white
14 truck with a blue stripe on it.

15 But I had left. I had left the gas station
16 because I ain't want to get in no physical
17 altercation at no gas station. So I left.

18 And then one day I seen him at the AM-PM. Me
19 and my friend, Raymond Asberry, we had pulled up to
20 the gas station and I seen him. So I rode on.
21 When I rode on, he had jumped in the car.

22 Q He had jumped into your car?

23 A In his car, which was an Explorer at the time. But
24 as I approached the vehicle, he hopped back out the
25 car. So I hit him. We got into a -- we got into a

1 fight. And one of my friends jumped in. We in the
2 vehicle now fighting. And he pulls off with me in
3 the back of the truck.

4 So when he pulls off, Raymond fell out of the
5 truck, so I'm still in the truck. I'm telling him
6 to stop.

7 Q So you are in Richard's truck?

8 A Right. In the back seat of the truck, the
9 Explorer. So he didn't stop. And I did have a
10 pistol on me. And I hit him with it because I
11 wanted him to stop, and he did stop. And I got out
12 the car.

13 Q So how many times did you hit him with the pistol?

14 A I believe twice.

15 Q And why didn't you go ahead and shoot Richard then?

16 A Why didn't I shoot him? I mean, because I didn't
17 want to shoot him. That wasn't my intention to
18 shoot him.

19 Q Okay. So you and Richard were generally on bad
20 terms?

21 A Yes, we was.

22 Q And he was angry that you had hit him with the
23 pistol?

24 A He was angry that I hit him with the pistol, and I
25 was angry that he put a pistol on my little friend,

1 which I considered my little brother.

2 Q All right, let's go on to January 16th, 2010, the
3 day of this incident. Why were you at Lauren's
4 house?

5 A That was my girlfriend at the time. So that night
6 I had stayed the night at her house.

7 Q Did she invite you there?

8 A Yes, ma'am.

9 Q Okay. And did you go over there to pick a fight
10 with Richard or with Anthony?

11 A Ma'am, I didn't even know Richard or Amp or Lay Lay
12 stayed there until that morning when she gave me
13 the car.

14 Q So what happened that morning?

15 A Well, in the morning I had a couple of missed
16 calls. I mean, I was selling marijuana out of
17 there, which everybody knows. So I had a couple of
18 missed calls. So I called them back. And I asked
19 Lauren if I could hold the truck so I can go make
20 them transactions.

21 So she let me hold the car, but the brakes ran
22 out on me, so I had to use the emergency brake just
23 to stop. But I pulled into the Murphy Express to
24 see what was wrong with it. That's when I ran into
25 Devan. He had said he had wanted some marijuana,

1 some weed. But I didn't want to make no
2 transaction at the gas station because that is hot.
3 So I told him to follow me back to Lauren's house.
4 He stated he had to get something out the store.
5 And so I told him just to call me when he turned in
6 Vineyards Crossing.

7 So I pulls up -- I pulls up to Lauren's house,
8 and I don't -- I don't see -- I pulled back up to
9 Lauren's house, but before --

10 Q You are in Lauren's truck at this point?

11 A Yes, ma'am. But before I hopped into the car on my
12 way out, that is when I knew that Amp and Richard
13 was there because we had got into a verbal
14 altercation.

15 Q Okay, tell me about that discussion with Richard
16 and Anthony.

17 A I don't really recall the words that we was saying
18 towards each other, but I can say that we was
19 threatening each other, though.

20 Q Okay. So -- all right. So at some point -- how
21 did you end up in Quinton's truck?

22 A When Devan called me back and say he was turning in
23 Vineyards Crossing, I told him when he get to the
24 stop sign just make a right and I'll be walking up
25 the street for him to pick me up.

1 So when they pulled up, I told him to take me
2 to my house. I told him that I was going to get my
3 marijuana, but really I was going to go get my
4 pistol.

5 Q And why did you go get your pistol?

6 A Because me and Richard had -- we made verbal
7 threats to each other, so therefore I was scared of
8 what he might try to do to me. So I went and armed
9 myself for self-defense towards Richard.

10 Q And the last physical altercation you had with
11 Richard was when you had hit him with the pistol?

12 A Yes, ma'am, the last physical altercation, yes,
13 ma'am, at the AM-PM.

14 Q All right. And Richard is known for carrying a
15 pistol?

16 A Yes, ma'am.

17 Q All right. Now, after Quinton dropped you off,
18 what did you do then?

19 A Well, before he dropped me off we had stopped by
20 the Mobile gas station right before Vineyards
21 Crossing. I had got some cigars. So I had got him
22 to drop me off at that -- at Lauren's house. So I
23 go inside Lauren's house. I'm chilling with her.
24 And we rolling up -- we rolling weed.

25 So I get another call, which is from Devan.

1 He tells me he needs a cigar. At the time he was
2 either 16 or 17, so I didn't want to have him -- I
3 didn't want to have him going out the truck trying
4 to find somebody to give him a cigar, so I told him
5 just to come back.

6 Now, he didn't know what house I was at
7 because on his way to come I was walking up the
8 street, but he could get an idea because I was
9 driving a red Jimmy truck, which was a Trailblazer.
10 So I just told him to call me. He knew where I was
11 at. I told him to call me when he is outside. So
12 he calls me. And I go out there. And I see him
13 parked in front of Anthony Salley's house.

14 Q Okay. Let me stop you there. Did you say anything
15 to Devan about -- that day did you and Devan have
16 any discussion at all about Anthony and Richard?

17 A No, ma'am. In fact, I don't even think he knew
18 Richard or Amp.

19 Q So did you tell Devan to park in front of Anthony's
20 house?

21 A No, ma'am.

22 Q Okay. Go ahead, if you would. Tell them about
23 what happened after he pulled up.

24 A All right. So when he calls me and told me that he
25 wanted -- when he called me and told me he was

1 outside, I walked outside. But now I notice him
2 parked in front of Anthony's house and I notice
3 Anthony was at the car talking to him.

4 So I walk -- so I walks up there. And soon as
5 Anthony seen me, he took off his jacket and he ran
6 towards me talking about do I have a problem.

7 So me, not wanting to fight him because he was
8 bigger than me and I ain't really want to lose no
9 fight in front of my home boys, I pulled the pistol
10 to scare him, but he wasn't scared. He walked up
11 on the pistol closer and he told me to shoot him.

12 Q And did you shoot him?

13 A No, ma'am. I didn't say nothing. But I still had
14 the pistol pointed at him, though.

15 Q And why didn't you shoot him?

16 A Because I ain't want to shoot him. I didn't even
17 want to fight him, so why would I shoot him?

18 Q Okay. Did you dislike Anthony?

19 A I mean, really I didn't even know him to dislike
20 him.

21 Q Okay. All right. So he wasn't scared off by the
22 weapon?

23 A No, ma'am.

24 Q Okay. And so then what did you do?

25 A He walked up on the pistol and told me to shoot

1 him.

2 Q Okay. And then after that?

3 A After that I didn't say nothing. He kind of pulled
4 my card, which was called my bluff. So he punched
5 me in the face. I stumbled a little bit, so he
6 punched me again. And I had dropped -- I had
7 dropped the pistol on the ground. So we get to
8 fighting. And it turned --

9 Q And you are fist-fighting?

10 A Yes, ma'am, fist-fighting.

11 Q Okay. Tell me about the fist-fight. Well, let me
12 ask you this. Have you ever been in a fist-fight
13 before?

14 A Yes, ma'am, I been in a lot of them.

15 Q Okay. So, go ahead and tell me about this
16 fist-fight.

17 A Well, it turns out that I got the best of him, you
18 know, like I was beating him real bad. And --

19 Q This is after he had already punched you twice?

20 A Yes, ma'am. And I was beating him real bad. Then
21 after I was beating him to the point where he
22 stopped defending himself so I felt like the fight
23 was over with because it wasn't no -- it wasn't no
24 need to keep fighting him when he wasn't even
25 fighting back. So --

1 Q So why didn't you just punch him and punch him
2 until he was --

3 A Why would I do that? He is not even defending
4 himself. And I thought I had already won the fight
5 anyway.

6 Q All right. So what happened?

7 A I got up. But when I got up, that is when I
8 noticed -- I heard some commotion going on the
9 whole time, but when I got up, that is when I
10 noticed that Andina, which was Anthony Salley's
11 girlfriend, had had my pistol the whole time
12 pointed at Devan, or me, I don't know. But when I
13 got up, she had threw the pistol on the ground.
14 And I left Anthony Salley on the ground, so I --

15 Q Let me interrupt you for a moment.

16 A Yes, ma'am.

17 Q Did -- so you said you saw Andina with the gun.
18 And how did you feel when you saw her with the gun?
19 Did you --

20 A It kind of -- it kind of took me by shock because
21 I'm thinking it was still on the ground. So when I
22 seen her with it, I'm like, she could have shot me
23 the whole time.

24 Q Okay. All right. So the fight ended and you
25 got -- what did you do then?

1 A I got up. And that is when I noticed Andina had
2 the pistol. And she threw it on the ground right
3 beside her. So I goes to pick the pistol up
4 because -- well, let me tell you -- let me tell you
5 like this. Now that they know my whereabouts,
6 which was at Lauren Banks' house, I didn't want to
7 go back to Lauren Banks' house because now they
8 know where I'm at. And I just beat this man up,
9 which was Anthony Salley. And my beef is with
10 Richard. So who is to say that he won't call
11 Richard and let him know where I'm at. So I goes
12 to pick the pistol up.

13 Q Well, why didn't you just leave the pistol there on
14 the ground?

15 A Because I just beat this man up, so why would I
16 turn my back to him and leave for Andina to shoot
17 me or to give the pistol to Amp where he can shoot
18 me?

19 Q So you were afraid for your life at that point?

20 A Yes, ma'am, I was afraid for my life, that I would
21 get shot, especially in my back.

22 Q Okay. So then you went and picked up the pistol?

23 A Yes, ma'am.

24 Q And what happened?

25 A Well, when I picked up the pistol -- when I picked

1 up the pistol and I turned around and Anthony was
2 walking towards me, and I left him on the ground, I
3 thought he was still on the ground, so when I
4 turned around and seen him walking towards me, it
5 kind of scared me and I flinched. And I
6 accidentally pulled the trigger. And then he was
7 hit. I got scared and I ran.

8 Q You thought he was coming back after you?

9 A You talking about after I picked the pistol up?

10 Q Yes. When you realized he was no longer on the
11 ground.

12 A I mean, I don't know what I thought at the time,
13 but it scared me to turn around and see him right
14 there.

15 Q Okay. And you have asthma?

16 A Yes, ma'am, I do.

17 Q Okay. Tell me how you were feeling right after the
18 fight ended.

19 A I mean, I was tired. I was amped up. I couldn't
20 breathe. I was out of breath. And I felt like --
21 and I felt like I wanted to leave that scenery
22 because of what just happened, and then I had
23 possession of this pistol and of weed, now that
24 gave me more reason to want to leave because I
25 wasn't trying to go to jail for no pistol charge or

1 the marijuana charge.

2 Q Okay. So I know that you -- those things happened
3 fast when this happened, but how far away do you
4 think you were from Anthony when you shot him?

5 A Probably a couple of feet.

6 Q Okay. All right, so then you went to go run out of
7 the subdivision?

8 A Yes, ma'am.

9 Q Okay. And where were you headed?

10 A I ain't know where I was headed. I just -- I just
11 ran.

12 Q Okay. And then you -- what happened then?

13 A Well, I seen Demario's car, I believe his last name
14 is Evans, which was one of my chauffeurs. I call
15 him, he takes me where I need to go, then I let him
16 smoke for free, I fill his tank up. So I seen his
17 car, so I knew that he was at that house.

18 Q Okay. But before this incident, did you know that
19 Demario was going to be there at Jarrod Crudup's
20 house?

21 A No, ma'am. I don't even know Jarrod Crudup.

22 Q Okay. But as you were running away from the scene
23 you saw Demario's car?

24 A Yes, ma'am.

25 Q You knew he was a friend and he could help you get

1 out?

2 A Yes, ma'am. And I seen Devan walking in the house
3 also as I was approaching.

4 Q Okay. And then eventually -- all right. And where
5 did you end up at?

6 A After I seen the car?

7 Q Yes.

8 A I had walked in the house with them. I told them
9 to hold up. And he asked me what had happened. I
10 ain't said nothing. And I had walked in the house.
11 I had walked in the house with them.

12 I had approached Demario. And Devan was
13 already asking Demario for a ride, and he was
14 telling him no.

15 I was like, Demario, I need you. I was like,
16 please -- I was like, please take me away from
17 here.

18 He was like, why?

19 I said, man, I just got in a fight and I'm
20 trying to leave.

21 Q Okay. So you eventually ended up at another
22 friend's house, is that correct?

23 A Yes, ma'am. In Demario's statement he told me --
24 he wrote that he dropped me off at the AM-PM, which
25 was a gas station, but I believe that he was trying

1 to help me out because he didn't drop me off at the
2 gas station, he dropped me off at one of my
3 friend's house on Hardscrabble right past the
4 AM-PM.

5 Q Okay. So you are at the friend's house. And why
6 didn't you call the police and tell them what had
7 happened, that this was an accident?

8 A I mean, because I never shot nobody before, so
9 being even though it was an accident, I still shot
10 somebody. And I was afraid to go to jail.

11 And then -- and then when I did talk to my
12 friends about turning myself in, they encouraged me
13 not to.

14 Q What did they say?

15 A They was like, turn yourself in? Why would you do
16 that? Hell, don't turn yourself in. So being that
17 I was vulnerable at the time and didn't know what
18 to do and being that these are my older home boys,
19 I guess I just took heed to that and listened to
20 them.

21 Q And what were you thinking about Richard at this
22 time?

23 A I was thinking -- I was thinking like -- at the
24 time I didn't know Anthony Salley -- I didn't know
25 his -- I didn't know his stability, so --

1 Q You didn't know whether Anthony was -- had passed
2 away or not?

3 A Right. So I figured Amp would probably call
4 Richard and tell him what happened, and now I have
5 more issues on my hands. That is why I didn't want
6 to go back to Lauren's house.

7 Q Okay. And why did you run to Atlanta?

8 A Really I wanted to get out of the environment I was
9 in. And actually I called the warrant division and
10 I told them I was going to turn myself in, but the
11 reason why I didn't at the time is because I was
12 supposed to go to court that next week for a
13 trafficking marijuana charge, so most of that money
14 that I had went to my lawyer, so I didn't really
15 have no money but a couple of hundreds to my name.

16 Q And did you think a couple of hundred dollars would
17 enable you to hire an attorney to represent you on
18 a murder charge?

19 A No, ma'am.

20 Q All right. And what about clothes? Did you have a
21 bag packed?

22 A When I left I only had the clothes on my back.

23 Q Okay. And you said you had a couple of hundred
24 dollars?

25 A Yes, ma'am, about \$400.

1 Q Okay. And then in Atlanta is when you met Richard
2 Johnson?

3 A Well, I was sent to Atlanta to be with Du-Wop. I
4 don't -- I don't remember his real name. I think
5 he got the same name as mine. But I went to go
6 meet with Du-Wop, but when I got up with Du-Wop I
7 was introduced to Richard, which was introduced to
8 me as his cousin, so that is how I met Richard.

9 Q Okay. And you spent two weeks with Richard?

10 A Well --

11 Q Almost two weeks?

12 A The first -- the first week -- the first week that
13 I was in A, which was Atlanta, I didn't see
14 Richard. I was -- I was on the east side of
15 Atlanta with somebody else that I knew by the --
16 well, somebody else that I knew. Du-Wop was
17 telling me that he had to get some things in
18 perspective before he come pick me up.

19 Q Okay. But at some point you and Richard were
20 living in motels together?

21 A Motels, hotels, female houses.

22 Q Okay. So when you first met Richard, did you
23 immediately tell him that you were wanted for
24 murder?

25 A Well, I only had the clothes on my back and I

1 didn't really have no money, so he was asking me
2 questions. And then he was telling me, what about
3 go to South Carolina. I told him, I can't go, I'm
4 on -- on parole, I'm on a YOA parole, so I told him
5 I couldn't go there.

6 Q So you didn't tell him about the murder at first?

7 A No, not at first I didn't.

8 Q All right. So eventually you told him -- what did
9 you tell him?

10 A I mean --

11 Q Related to this shooting?

12 A I mean, like I told you before, I ain't never shot
13 nobody, and it was on my conscience. And I just
14 wanted to talk to somebody about it, you know. And
15 being that he was the person I was with and I felt
16 like I got a -- I had a friend, I told him.

17 Q And how old were you at that time?

18 A I was 19.

19 Q And you thought that Richard was someone you could
20 trust?

21 A Yes, ma'am, I did.

22 Q All right. And did you tell him that you shot the
23 person in front of his girlfriend?

24 A Yes, ma'am. And I inquired of him -- I told him
25 that to inquire of him that it was a witness, and I

1 also told him that being that it was a witness and
2 even though I accidentally shot a man, I still shot
3 a man, so I told him how I think that I missed my
4 life up.

5 Q Okay. Did you ever brag to him about --

6 A No, ma'am, I never bragged about that.

7 Q All right. And, again, did you hate Anthony
8 Salley?

9 A I didn't know Anthony to hate him.

10 Q And, again, you shot Anthony one time. Why didn't
11 you continue to shoot him?

12 A Because, I mean, it was an accident that I shot him
13 the first time. Why would I shoot him again
14 intentionally?

15 Q So did you kill -- you can tell the jury, did you
16 kill Anthony intentionally?

17 A I did not kill Anthony intentionally. I didn't
18 mean to kill him. I didn't want to kill him. And
19 I'm very sorry that -- I'm very sorry that I killed
20 him. It be on my mind all the time. Like, you
21 know, my mama -- my mama told me that his family go
22 to church with her, so I been wanting to reach out
23 to the family to apologize. I even wrote a letter
24 I still have in my possession at the jail, but my
25 family told me that it was best not to do that

1 being that the situation that is going on because
2 anything could be used against me. So I didn't
3 take that route of giving them the letter.

4 But I do want to apologize to the family, that
5 I apologize. It was an accident. And I also want
6 to apologize to Lay Lay because we went to school
7 together. We went to school together, so we kind
8 of know about each other. And I know how that
9 might feel.

10 Q Please answer any questions.

11 A Yes, ma'am.

12 THE COURT: Please answer any questions Ms.
13 Campbell may have.

14 MS. CAMPBELL: May it please the Court?

15 CROSS-EXAMINATION

16 BY MS. CAMPBELL:

17 Q Let me get a few things straight. You just
18 referred to Lay Lay. That would be Anthony's
19 sister?

20 A Elasias.

21 Q Elasias?

22 A Right.

23 Q So you knew her, even though you are telling this
24 jury today you didn't know her brother?

25 A I didn't even know that they were brothers and

1 sisters at the time. I just -- every time I seen
2 Lay Lay she was by herself or with Richard.

3 Q If you can back up.

4 THE COURT: Hold on one second. The
5 microphone is -- and I don't know -- let's see if
6 you back up and see how it sounds, okay?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: All right. Let's try it again.

9 A Well, can you ask the question again, please?

10 Q You stated that you just -- and throughout your
11 testimony you stated over and over you didn't know
12 Anthony?

13 A I did not know Anthony. I knew of him. I knew
14 that that was Richard's friend.

15 Q You knew of him. You knew where he lived?

16 A No, ma'am, I did not know where he lived until that
17 morning of the incident.

18 Q Until that morning of the incident. And we will
19 get back to that in a minute. But when you went
20 over there that day after you armed yourself having
21 gotten a ride to your house, you knew where he
22 lived?

23 A I knew where he lived then, yes, ma'am.

24 Q Okay. And your claim is is that Lauren Banks is
25 your girlfriend?

1 A Yes, ma'am, she was.

2 Q Who was having your child?

3 A Um, really I had two females pregnant.

4 Q Okay. And neither one of those were Lauren Banks?

5 A No, ma'am.

6 Q And Lauren Banks isn't here today?

7 A I don't know where she is at. She is not here,
8 though.

9 Q And Devan, he's a friend of yours?

10 A Yes, ma'am.

11 Q He looks up to you like a brother?

12 A And I look down at him like a little brother.

13 Q And you look out for him?

14 A Yes, ma'am.

15 Q And you try to take care of him?

16 A Yes, ma'am.

17 Q In fact, you were so concerned that day that your
18 primary concern was getting him that cigar so that
19 he didn't have to go to the trouble of trying --
20 somebody getting one illegally?

21 A Right.

22 Q And Demario, he was your friend?

23 A No. He just somebody that drove me around. And I
24 also looked out for.

25 Q Your chauffeur?

- 1 A Right. Like a favor for a favor.
- 2 Q So your -- you went to Blythewood High School?
- 3 A I did.
- 4 Q Did you graduate?
- 5 A No, ma'am.
- 6 Q Why didn't you graduate?
- 7 A Because in '06 when I caught that burglary second
8 charge, in '07 I had pled guilty and I caught the
9 YOA. I did shock. I came home May the 2nd or 3rd
10 of '08 and I tried to enroll back in school, but
11 they told me I couldn't because I was a threat, and
12 if I did, I had to go to another district, probably
13 District One.
- 14 Q And your testimony is that was based on your
15 burglary charge, not on what you did at the school?
- 16 A That's what they told me.
- 17 Q Okay. But do you remember the things that happened
18 at the school?
- 19 A I do.
- 20 Q That maybe they wouldn't let you back for?
- 21 A I remember a lot of things, but it wasn't from the
22 riot.
- 23 Q It wasn't for the riot?
- 24 A No.
- 25 Q Then what was it for?

1 A I don't know nothing about no riots.

2 Q Do you remember other things?

3 A I do.

4 Q What kind of things?

5 A Well --

6 Q When you said you couldn't go back because of the
7 burglary, that wasn't true?

8 A Well, that was true from what the principal told
9 me. '04 I went to LR. '05 -- '04 I went to LR and
10 at Blythewood. '05, that is when I went to
11 Blythewood. I got kicked out for engaging a sexual
12 altercation with a female. And I went to
13 Blythewood Academy.

14 Q So it is Blythewood Academy that you got kicked out
15 of?

16 A No, I got kicked out of Blythewood High School and
17 went to Blythewood Academy.

18 Q Okay. And your testimony is that Lauren Banks is
19 one of your girlfriends?

20 A She was my girlfriend.

21 Q And your testimony is that there had been a
22 prior -- or you knew Richard to be dangerous? Is
23 that your testimony?

24 A Right.

25 Q And you knew Richard and Amp were together?

1 A When?

2 Q On a prior occasion. You just testified in detail
3 about an altercation that occurred that got so bad,
4 that there was a car involved, you were in the car,
5 then you had to pistol-whip somebody?

6 A Okay.

7 Q Is that right?

8 A All right.

9 Q And Amp was there?

10 A Amp was with him a couple of times when I seen
11 Richard.

12 Q And things got really bad, that you had to pull out
13 your pistol, which you happened to have with you on
14 that occasion too, right?

15 A Are you referring to the event at the store?

16 Q You are the one that told me about the event. I
17 never heard about it.

18 A I was just making sure that is what you were
19 talking about so I don't lie.

20 Q The event at the store?

21 A Right.

22 Q That you had your gun. And at that point you were
23 getting beaten up so badly that you had to pull out
24 your pistol, and I think you said you actually
25 pistol-whipped Richard?

- 1 A No, I did not get beat up. He pulled off with me
2 in the car.
- 3 Q Raymond actually fell out of the car, I think you
4 said?
- 5 A Because when he pulled off.
- 6 Q Did Raymond get hurt?
- 7 A I don't know, I didn't ask him. He is a big boy,
8 he can hold his own.
- 9 Q Did you get hurt?
- 10 A Me?
- 11 Q Yes, you?
- 12 A No, ma'am.
- 13 Q And this was a very terrifying moment because this
14 is the reason you are so scared of Richard, right?
15 That is what you just testified to.
- 16 A That is not the reason why I'm scared of Richard.
- 17 Q Why are you scared of Richard?
- 18 A I'm scared of Richard because he threatened to kill
19 me.
- 20 Q He threatened to kill you?
- 21 A Even though we both gave each other verbal threats,
22 he still threatened me.
- 23 Q Okay.
- 24 A Therefore my life is in danger.
- 25 Q Okay. Therefore your life is in danger. This is

1 in the Fall before all this happens, right? That
2 is what your testimony just was?

3 A '09. All '09.

4 Q And you threatened him back?

5 A I did.

6 Q Then y'all got in a physical altercation?

7 A At AM-PM, yes, ma'am.

8 Q At the gas station. Were there other people out
9 there, people that could have been hurt when you
10 pulled off and the car wrecking, and things like
11 that?

12 A No. See, the AM-PM, it is not like your average
13 store. It is like a hood store or an urban store.
14 It is not really that big. Nobody was in the
15 parking lot but us.

16 Q A hood store? An urban store?

17 A Right.

18 Q And you have been in this courtroom --

19 A A convenience store.

20 Q -- and heard all the testimony over the last two
21 days?

22 A Okay.

23 Q I believe you even referred to Demario's statement.
24 So you have read all the statements in this case,
25 right?

1 A I have.

2 Q Prior to today?

3 A I have.

4 Q When you are testifying today?

5 A I have.

6 Q And when this altercation that put you in fear of
7 your life happened, your friend fell out of the
8 car, you don't know if he was hurt or not, so at
9 that point you called the police to tell them what
10 a threat Richard was?

11 A Both of the things you just said was wrong. I
12 never said that that altercation is why I was
13 afraid of Richard, and I never said that I called
14 the police to say he was a threat.

15 Q Your lawyer asked you about the altercation for a
16 reason, right?

17 A Yes.

18 Q And you just testified two seconds ago that y'all
19 made threats and you were in fear of your life from
20 Richard.

21 A Because of the threats that he made to me.

22 Q Okay.

23 A About a life.

24 Q You called the police and told them that your life
25 was in danger, you needed protection?

- 1 A I never called the police.
- 2 Q Why not?
- 3 A Because, I mean, where I come from, what happens in
4 society you leave in society.
- 5 Q And you were scared because you knew Richard
6 carried a gun, right?
- 7 A Yes, ma'am.
- 8 Q But it seems like on every occasion you have
9 referred to you are the one with the gun.
- 10 A Okay, I am, but he has a gun too.
- 11 Q And legally you can't carry a gun?
- 12 A But legally -- legally I can't carry a gun, but
13 legally I can carry a gun in self-defense.
- 14 Q And you work for a living, right?
- 15 A Not in a corporate committee.
- 16 Q Not in the corporate community?
- 17 A Committee.
- 18 Q What do you do for a living?
- 19 A I sell weed.
- 20 Q Is that all you sell?
- 21 A That's all I sell.
- 22 Q And as part of your job duties, carrying a gun can
23 be important?
- 24 A Yes. Yes, ma'am.
- 25 Q And that morning that this happened, as you have

1 testified to, you were selling weed, I believe --
2 did you say -- and I might have -- I don't want to
3 misquote you -- over at Lauren's house earlier?

4 A I wasn't selling weed at Lauren's house, but -- all
5 right, when I met Devan at the gas station, I told
6 him to meet me back at Lauren's house because I
7 didn't want to sell at the gas station because it
8 was hot. But as he approached me in Vineyards
9 Crossing, I told him to take me to my house so I
10 can get my marijuana, which I already had on me,
11 but I wanted to go get the pistol in self-defense
12 for Richard because he threatened my life.

13 Q Okay. And you don't remember telling them you
14 needed to go get your tool?

15 A No, I don't remember telling them that.

16 Q They are wrong about that?

17 A No, not there. He is the only person that said
18 that.

19 Q Because you reviewed all the statements?

20 A Right. You did too, ma'am.

21 Q And at that point you went to your house and you
22 were riding in the back of the truck?

23 A I was.

24 Q And you had the marijuana to give to Devan, you
25 just didn't want to do it -- you don't deal in

1 public places, is that true?

2 A Well, sometimes dealing in a public place --

3 THE COURT: Back up just a little bit, okay?

4 THE WITNESS: Yes, ma'am.

5 A Sometimes dealing in a public place will be good
6 because it is a lot going on so you are not the
7 person that they are really looking at.

8 Q Why would Devan testify here that you had already
9 given him the marijuana at the gas station?

10 A Well, in his statement he said he bought weed from
11 two different people. From another person at the
12 gas station. He never said he got it from me at
13 the gas station.

14 Q And then you go and you get to your house and you
15 get your gun?

16 A Yes, ma'am.

17 Q Which you had. And one reason you said that you
18 were so scared when all this happened was you had
19 never shot anybody before -- or shot at anybody
20 before?

21 A Right.

22 Q Is that true?

23 A That's true.

24 MS. CAMPBELL: Your Honor, we have a matter of
25 law.

1 THE COURT: All right. Ladies and gentlemen
2 of the jury, I'm going to send you all out for
3 about five minutes.

4 (WHEREUPON, the jury retires to the jury
5 room at 11:03 a.m.)

6 MS. CAMPBELL: Your Honor, out of an abundance
7 of caution, I think we have opened the door now for
8 me go into the prior shooting that he did on June
9 9th of 2009 where he pistol-whipped and shot at a
10 young man named Corey Fulton who was in his home at
11 the time. He then confessed to that pending
12 charge.

13 THE COURT: But he hasn't been convicted of
14 that, has he?

15 MS. CAMPBELL: No, ma'am. And I would not be
16 able to get into it if he had not said the words, I
17 have never shot at anybody.

18 MS. CLEARY: No, I'm sorry, she is
19 mischaracterizing his testimony. He said he had
20 never shot anyone.

21 THE WITNESS: Or shot at anyone.

22 THE COURT: Hold on.

23 MS. CLEARY: Well, you didn't say that. So he
24 didn't say he had never shot at anyone.

25 THE COURT: Don't say anything else, okay?

1 MS. CLEARY: Obviously he denies this event
2 ever happened.

3 THE COURT: What I wrote down was that he
4 said, I never shot anyone before. I can have her
5 replay --

6 MS. CAMPBELL: I asked him specifically if he
7 had ever shot anybody or shot at anybody, and he
8 said no.

9 MS. CLEARY: No, she did not ask him -- I was
10 looking --

11 THE COURT: All right, well, she -- okay.
12 Well, we have the record here, so we can play it
13 back to hear exactly what he said. It is going to
14 probably take -- because Debbie has to listen to
15 it. But those are pending charges?

16 MS. CAMPBELL: Yes, ma'am. And we would not
17 be able to get into them but for the fact that he
18 said he had never shot at anybody before. And I
19 asked him -- I even followed up to make sure. I
20 said, you said you had never shot at anybody, and
21 he said no. And I said, is that the truth. And he
22 said yes.

23 THE COURT: But he hasn't been convicted of
24 it.

25 MS. CAMPBELL: Under -- once he opens the door

1 to it, Your Honor, it is -- I'm not going under
2 609.

3 THE COURT: I understand under impeachment,
4 but --

5 MS. CAMPBELL: He volunteered the information.
6 If he never said the statement, I ran because I had
7 never shot at anybody before or shot anybody
8 before, we wouldn't be able to get into it. I
9 agree.

10 MS. CLEARY: And I would for the record --

11 MS. CAMPBELL: Although there may be another
12 way we can get into it too because he said he went
13 over there to be peaceful with no intention of
14 doing anything, things happened and it was
15 accidental and that it was the victim that was the
16 aggressor. So that would be another way to get
17 into it, as well as the prior proof of final -- and
18 he happened to have the same gun when he did this
19 one.

20 MS. CLEARY: It would be our position that,
21 first of all, anything about this unrelated
22 incident would be probative of nothing and be
23 clearly prejudicial; but also that he did not open
24 the door to it and he has not said he went over
25 there to be peaceful. He said he was going to give

1 a friend a cigar.

2 In addition, we -- you know, the only thing
3 that we know about this case is what the arrest
4 warrant says. I don't -- I mean, he denies it. I
5 don't know the facts of the case. I don't know --
6 I mean, I think if they wanted to be able to bring
7 him up there, I think, or whoever this other guy
8 is, they have to have a proffer of that. They
9 haven't given me anything other than just basic
10 arrest warrants.

11 MS. CAMPBELL: I can ask him about specific
12 instances and limit it to that as far as to whether
13 he admits or denies it, but there is a prior
14 occasion where he shot at somebody.

15 MS. CLEARY: She can ask him and he can --

16 MS. CAMPBELL: I would agree we are limited to
17 that. I don't know that I can bring in extrinsic
18 evidence of it, but I have a right to ask him about
19 it.

20 MS. CLEARY: But he was charged with assault
21 and battery of a high and aggravated nature?

22 THE COURT: You can ask him was he charged
23 with that. I'm not even ruling on it yet. I'm
24 just thinking out loud. I don't know -- if he
25 hasn't been convicted of it, I'm just not sure if

1 you can ask him -- I mean, even with the conviction
2 you can't get into the details.

3 MS. CAMPBELL: It would be a prior bad act at
4 that point, Your Honor. It is not a conviction.
5 We are not proceeding under that.

6 THE COURT: So you are basically saying
7 that --

8 MS. CAMPBELL: It is used for impeachment.

9 THE COURT: -- you can ask him that and he can
10 say, I was charged with it but it is not true.

11 MS. CAMPBELL: Yes.

12 THE COURT: I haven't been convicted of it.

13 MS. CAMPBELL: Yes. I can hand up the case
14 and you can review it. Basically he went over to
15 the kid's house, pistol-whipped him with a gun and
16 then shot at the kid. He did not hit the kid with
17 the bullet. And ultimately confessed to it, but
18 said it was an accident.

19 MS. CLEARY: And I think she can ask him about
20 it only if the record shows that she asked that he
21 denied ever shooting at somebody. And I think --

22 THE COURT: Well, we are going to have to --
23 that is going to be the first thing we have to do
24 is figure out what the record says. And Debbie
25 can't look it up until we all be quiet because she

1 has to continue to type what we say.

2 So the question that she is looking for --
3 well, I guess -- and you are saying that it was on
4 cross that you asked that? Because on direct I
5 wrote down what he said in anticipation of this.
6 And I wrote down that, I never shot anyone before.

7 So we'll stop. She is going to probably need
8 about five minutes or so to pull it back up to see.
9 But you think it is on cross for sure?

10 All right, we will take about five minutes.

11 (WHEREUPON, a break was taken.)

12 THE COURT: She typed it up. You gave them a
13 copy?

14 THE COURT REPORTER: I gave it to them.

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

16 MS. CLEARY: You know, I take from this that
17 she mischaracterized his testimony and said that he
18 had said he had never shot at anybody before. I
19 don't know that he actually understood that, but,
20 in any case, she is obviously goading him. Not
21 going by what was said on direct, but she was
22 goading him. I don't think she should be allowed
23 to ask him if he has ever shot at anybody because
24 she is goading him so she can bring in this
25 unrelated shooting that obviously he hasn't been

1 convicted of, he denies, he hasn't been proven
2 guilty of it. And so she shouldn't even be allowed
3 to ask him if he had shot at anybody. And I
4 think -- I just must not have heard it or I would
5 have objected to that, because that was not what
6 his testimony was. His testimony was that he had
7 never shot anybody.

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

9 MS. CAMPBELL: Your Honor, the facts of the
10 case that we are attempting to elicit this
11 information from is that he goes to Corey Fulton's
12 home in the Blythewood area, that's when he pulled
13 out a gun and starts to pistol-whip him. As the
14 young man is trying to get away from him, he shoots
15 once, then he is confronted by the mother, who he
16 then explains to her that he didn't -- it was an
17 accident that the gun went off.

18 Had he not brought this up first as the reason
19 to try to explain why he was scared to say that he
20 had never shot anyone before, alluding to the fact
21 and basically stating as fact, I mean, that he had
22 never been in the situation before was just simply
23 an untruth and we have a right to impeach him on
24 that.

25 MS. CLEARY: May I be heard? We carefully,

1 you know, made sure that he never said he had never
2 been involved in this sort of situation and that he
3 had never shot anybody before. And that is what --
4 I mean, that is true. They don't have any evidence
5 that he had ever shot anyone.

6 MS. CAMPBELL: We have proved that he dealt
7 drugs and shot at people before.

8 MS. CLEARY: I mean, and he has not been
9 convicted of these crimes. I mean, those are bare
10 allegations at this point. He has not been
11 convicted of it.

12 THE COURT: So let me ask you this. And I'm
13 not ruling, I want to make sure. If I allow her to
14 impeach him as to the, shot at anybody before, what
15 do you intend on asking him?

16 MS. CAMPBELL: I would just ask him, do you
17 know Corey Fulton and didn't you shoot him -- at
18 him on June the 9th of 2009, and he can explain it
19 whatever way he wants.

20 THE COURT: And if he says no, then what are
21 you going to say?

22 MS. CAMPBELL: Then we may have reply
23 witnesses, but that would be down the line. I
24 can't --

25 THE COURT: You may have what now?

1 MS. CAMPBELL: Reply witnesses.

2 THE COURT: Okay. But I'm saying for purposes
3 of his testimony you can't get into the --

4 MS. CAMPBELL: I don't think I can get into
5 all the substantive facts, the fact that he
6 confessed to it, and all that stuff. I think I can
7 just ask him if he knows Corey Fulton and on
8 June the 9th of 2009 did you shoot at him.

9 MS. CLEARY: I believe she has to accept his
10 answer and not bring in extrinsic evidence.

11 MS. CAMPBELL: We can argue that later on down
12 the road.

13 THE COURT: She can -- but she can't get into
14 it, is what you said are saying. What you are
15 saying you are not going to get into it other than
16 him saying no and keep going.

17 MS. CAMPBELL: Oh, yes. Or he may want to
18 explain. I don't know. I mean, that is his right.
19 And then, you know, at that point whether or not I
20 can bring up anything on reply depends on where we
21 go from there.

22 MS. CLEARY: But you are also putting me in a
23 position where I should tell him to plead the
24 Fifth. I mean, and not -- because he did not say
25 he shot -- he never shot at anybody. He did not

1 say that in direct. She twisted his words around
2 and is now putting him in a position where he is
3 going to have to talk about pending charges before
4 there has ever been a trial or anything. I mean,
5 and, you know, he is going to deny it because he
6 always denied it. And she will have gotten what
7 she's been trying to do since the very beginning,
8 is bring in a completely unrelated charge by
9 goading him.

10 MS. CAMPBELL: I'm not goading anyone, Your
11 Honor. And it is not --

12 THE COURT: It is cross-examination. And, I
13 mean, it says here: When all this happened -- and
14 one reason you said that you were so scared when
15 all this happened was you never shot anybody before
16 -- shot at anybody before.

17 And I think you are probably right, that would
18 have been the time to make an objection.

19 MS. CLEARY: I mean, I believe it was, you
20 know, done so subtly, you know, as to trick him.

21 THE COURT: He said, right. And then she goes
22 back again and says, is that true. And he said,
23 that's true.

24 MS. CLEARY: But may I say something else?

25 THE COURT: Yes.

1 MS. CLEARY: I also emphasize that she says:
2 And one reason that you were so scared when all
3 this happened was you never shot anybody before --
4 shot at anybody before.

5 He had never testified to that. She was
6 trying to say that on direct he said shot -- shoot
7 at -- when she asked him that.

8 THE COURT: Well, this is the problem I have,
9 though, is she asked the question. I didn't get --
10 I mean, there is no objection. And I understand
11 you said you just didn't catch it, but there is no
12 objection, and so I can't -- if I was ruling as to
13 your objection, I would have told her to
14 rephrase -- you could have made that argument at
15 that time that the question -- he never said that
16 he didn't -- and I would have said, rephrase the
17 question. But I didn't hear an objection.

18 Now the answer is out there. He said -- I
19 don't know if the jurors heard it. I can only -- I
20 mean, it is in the record, the answer is out there.
21 He is saying that he has not shot at anybody
22 before.

23 MS. CLEARY: But, I mean, I think the fact
24 that it had to get -- the record shows that, you
25 know, very subtle, but the insertion of the word

1 "at" and that she should be allowed to just ask him
2 if he had ever shot anyone before and not.

3 THE COURT: Can I see y'all one second?

4 (WHEREUPON, a bench conference was
5 held.)

6 THE COURT: All right. I am going to -- I
7 guess the best way to phrase this is, part of the
8 problem, as I kind of explained, is the answer
9 is -- the question was asked twice: Right? Is
10 that true? Yes, that's true.

11 Then she says, we're going to -- can we send
12 the jurors out, I have a matter of law. Then I
13 send the jurors out.

14 And during the time that we're discussing it,
15 Ms. Cleary may not have heard it and I may not have
16 heard it, but then the Defendant said, no, I did
17 say shot at anybody before or shot -- shot anybody
18 before or shot at anybody before.

19 Of course, he is on the witness stand. His
20 attorney didn't have an opportunity -- she -- after
21 that I instructed him not to say anything else.

22 But I don't think that there was any
23 misunderstanding with him regarding the question of
24 whether or not it was a misunderstanding as to
25 whether or not when his attorney heard. He clearly

1 stated that -- what his answer was.

2 I am going to allow only testimony regarding,
3 isn't it true, dada-dada-dada-da, 2009. And that
4 is it. He can answer it yes or no, and then we can
5 move on.

6 MS. CAMPBELL: Okay.

7 THE COURT: All right. You can bring them in.
8 (WHEREUPON, the jury came into open
9 court at approximately 11:47 a.m.)

10 THE BAILIFF: The jury is present, Your Honor.

11 THE COURT: All right. You may continue.

12 MS. CAMPBELL: Thank you, your Honor.

13 CROSS-EXAMINATION CONTINUES

14 BY MS. CAMPBELL:

15 Q Mr. Hinson, before the break I asked you about had
16 you ever shot at anybody before. Are you familiar
17 with a young man named Corey Fulton?

18 A Yes, ma'am, I do.

19 Q And do you recall on June the 9th of 2009 when you
20 went to a residence at [REDACTED] and you shot
21 a handgun at him?

22 A No, I did not shoot a handgun at him.

23 Q So you are denying that?

24 A I am denying that.

25 Q Your testimony here today has been that you didn't

- 1 really know Anthony Salley?
- 2 A Right. I didn't know him.
- 3 Q Did you know his nickname?
- 4 A I knew him as Amp.
- 5 Q And you knew he hung out with Richard Thomas,
- 6 right?
- 7 A Right.
- 8 Q And you had bad blood with Richard Thomas
- 9 definitely?
- 10 A Right.
- 11 Q But your testimony here today is that you didn't
- 12 really know who he was -- know him at all?
- 13 A I didn't know him at all.
- 14 Q And the only time had any dealings with him was on
- 15 a prior occasion the Fall before that when he was
- 16 involved in the fight that you have described to
- 17 the jury?
- 18 A Anthony was not involved in that fight in the Fall.
- 19 Q Was he present for that fight in the Fall?
- 20 A He was not.
- 21 Q Okay. I misunderstood when I wrote that down. Was
- 22 there an incident at a gas station where you said
- 23 Richard, Amp and Lay Lay and another person were
- 24 there in a white truck?
- 25 A Ma'am, I tell you, when Richard approached one of

1 my girlfriends, which was Lauren Banks, her
2 brother, when they approached him, he pulled a
3 pistol on Kenneth Banks looking for my little
4 friend.

5 Q And I'm sorry if I messed that it up.

6 A Right.

7 Q It was a different incident where he was present?

8 A Right.

9 Q And were you present when that happened?

10 A Me?

11 Q Yes, you.

12 A I was not present when that happened in Falls
13 Mills.

14 Q But you were aware at the time -- and who actually
15 pulled a gun on Kenny Banks that you are talking
16 about?

17 A Richard did.

18 Q And Amp was present when that happened?

19 A I don't know, but when I called Richard and we had
20 a verbal conversation, he told me to come to the
21 gas station. And when I did, Amp was with him at
22 the gas station.

23 Q Okay. And that is when you saw him?

24 A Right.

25 Q And pulling a gun on somebody is a serious offense?

1 A I mean --

2 Q I mean, you were concerned for your friend Kenny?

3 A No. I was concerned for Derrick, who was the
4 person they were looking for.

5 Q Okay. Who did he pull the gun on? I'm getting
6 mixed up now.

7 A He pulled the gun on Kenny and asked him where was
8 Derrick.

9 Q Asking for Derrick. So he is after one of your
10 people?

11 A Right.

12 Q Is Derrick one of your guys?

13 A He's one of my friends.

14 Q One of your friends, okay. And Kenny is one of
15 your friends?

16 A No. I just -- I just used to mess with his sister.

17 Q Okay. Kenny is not your friend. But you knew he
18 had pulled a gun on Kenny, and this concerned you
19 enough for you to make a phone call to Richard so
20 that you would have a face-to-face confrontation?

21 A It didn't concern me that he pulled the pistol on
22 Kenny. I don't know Kenny to care about him. It
23 concerned me that he was looking for --

24 Q Derrick?

25 A -- my friend, which was Derrick.

1 Q So you knew he was looking for your friend Derrick
2 maybe to do something bad?

3 A Right.

4 Q So did you call the police then?

5 A I called Richard to ask what was going on.

6 Q Why didn't you call the police to protect your
7 friend?

8 A Because, like I told you before, Ms. Campbell, what
9 happens in society you leave it in society.

10 Q You have your own set of rules?

11 A I mean --

12 Q The law doesn't apply to you?

13 A I wouldn't say I have my own set of rules, I would
14 just say that is my thought process.

15 Q The law doesn't apply to you?

16 A (No response.)

17 Q Are you -- do you want to answer?

18 A I have no answer to that.

19 Q Okay. And you didn't know Richland at all and you
20 had no bad blood with him -- I mean, excuse me,
21 I'm sorry -- Amp?

22 A I don't know Anthony at all, correct, but I knew
23 who he was and I knew he hangs out with Richard.

24 Q So there was no reason Andina would think y'all had
25 bad blood between each other?

1 A We didn't have bad blood. He probably had tension
2 against me because of me and Richard and being that
3 is his friend, just like I engaged tension with
4 Richard because of him and Derrick.

5 Q Well, you have had an opportunity to review all the
6 statements in this case, haven't you?

7 A Yes.

8 Q And Lauren Banks, who is no longer around, we can't
9 find her --

10 A All right.

11 Q Do you know why she would say that you referred to
12 Amp as a pussy, you don't like him, you beat him up
13 before?

14 A Me and Anthony never got into a fight. And I
15 didn't say that. I said -- I asked did they -- I
16 said the person hanging that was with Richard, I
17 said that was my enemy.

18 Q But didn't know him but you had fought him before?

19 A I never fought him before.

20 Q Well, why would Lauren say that, do you know?

21 A Who knows? When something like that happens, you
22 never know what is going on through a person's
23 mind. She could be misinterpreting her words. Or
24 the police probably could have, because she didn't
25 write that statement, the police did.

1 Q So the police put that in the statement just
2 randomly?

3 A I mean, they could have.

4 Q They could have. You don't care for the police?

5 A I didn't say that.

6 Q Well, why would the police make up stuff about you?

7 A I didn't say that. I said they --

8 MS. CLEARY: Your Honor --

9 THE COURT: Hold on.

10 MS. CLEARY: I'm sorry. I'd like to object.

11 She's asking him to speculate on what the police
12 are doing and, I mean, I think she needs to move on
13 after asking him about whether he thought --

14 THE COURT: All right. Sustained as to
15 speculation.

16 MS. CLEARY: Thank you.

17 Q Do you of any reason why the police would make up
18 something?

19 A I didn't say that they would make up something, I
20 said they probably misinterpreted her words
21 because, really, nobody wrote their own statement,
22 the police typed it up as they were speaking.

23 Q And then she signed it at the bottom, right?

24 A Okay. But --

25 Q That is what it says.

1 A Okay.

2 Q But you didn't know him? And you didn't have any
3 bad blood with him?

4 A I didn't. And I never fought Anthony ever. I
5 never had no physical contact with Anthony ever. I
6 only had two conversations with him ever.

7 Q Let me ask you this. You said you were over at the
8 Banks earlier that day?

9 A I had stayed the night.

10 Q And you had stayed overnight with Lauren?

11 A Friday night.

12 Q And she was one of girlfriends, right?

13 A That was the only girlfriend I had.

14 Q The only girlfriend, okay. And that next morning
15 you got up -- and you didn't have your gun with you
16 at that point, right?

17 A Right.

18 Q And then you ended up getting a phone call from
19 Devan?

20 A No, I didn't get a phone call from him.

21 Q How did you end up at the gas station?

22 A Because, like I told you before, Ms. Campbell, I
23 had missed calls so I had asked Lauren could I hold
24 her car where I could go make them deliveries and
25 transactions.

1 Q So you were going to the store to make deliveries
2 and transactions?

3 A I pulled -- I pulled into the store because the
4 brakes was not working, I had to use the emergency
5 brake, and that is when I seen Devan.

6 Q But Devan didn't call you before that?

7 A No, ma'am.

8 Q And at that point Devan wanted some weed, right?

9 A Yes, ma'am.

10 Q And he was like a little brother to you so you
11 helped him out sometime?

12 A Yes, ma'am.

13 Q And at that point you didn't give any weed then,
14 you told him you would have to give him weed later?
15 Is that your story?

16 A No, I told him to come to Vineyards Crossing
17 because I didn't want to sell weed at that store
18 because that was hot.

19 Q Hot?

20 A Hot as in -- hot as in me not wanting to do it
21 there because it was people out there to see what I
22 was doing.

23 Q And then at some point he comes to Vineyards
24 Crossing, right? And that is where he picked you
25 up?

- 1 A Right.
- 2 Q And at that point did you give him his marijuana?
- 3 A No, I told him that I had to go to the house and
- 4 get it.
- 5 Q Get some marijuana?
- 6 A Right.
- 7 Q That's what you told him? You never told anybody
- 8 you had to go get your tool?
- 9 A No, but I did go get my pistol, though, but I just
- 10 told him to get marijuana.
- 11 Q Why did you need your pistol?
- 12 A Because, like I told --
- 13 Q You didn't know where Amp lived, did you?
- 14 A No.
- 15 Q You didn't know he was in the neighborhood?
- 16 A I knew he was in the neighborhood from when I left
- 17 Lauren's house that morning, but I never knew he
- 18 stayed there prior before that morning.
- 19 Q Okay. Well, let's back up, because you left that
- 20 part out. How did you know he was in the
- 21 neighborhood from that morning?
- 22 A Because when I came out the house that morning, me
- 23 and Richard had a verbal altercation, which I
- 24 already told you, that we threatened each other.
- 25 Q And that was that morning?

1 A That was that morning.

2 Q Okay. So now there is a fight that morning that
3 happened, and that is the reason you went and got
4 your pistol?

5 A Ma'am, I said a verbal altercation, not no physical
6 altercation.

7 Q Okay. And then what happened?

8 A Then we threatened each other. He threatened my
9 life; I threatened his life back.

10 Q At that point, when he threatened your life, you
11 were scared? Or you felt threatened?

12 A I felt threatened of what he would do to my life.

13 Q So you needed to go get your gun?

14 A Exactly.

15 Q You didn't call the police?

16 A I already answered that question.

17 Q Okay. And then at what point do you give Devan his
18 marijuana? You didn't give it to him when you met
19 up with him at Vineyards Crossing?

20 A After we went to my house and I got the pistol, on
21 the way back to Lauren's house, that's when I gave
22 it to him.

23 Q Well, why didn't you just give him his marijuana
24 and let him go on his merry way? You had another
25 car?

1 A No, I did not.

2 Q Where was the red car you had been driving around?

3 A It was in the driveway because, like I told you,
4 the brakes went out. I had to use the emergency
5 brake just to stop.

6 Q And that is how you got it home?

7 A Yes.

8 Q Okay. And at that point you needed a ride to go
9 get your gun?

10 A Right.

11 Q So you knew Richard was in the neighborhood, you
12 knew he had made threats, you felt threatened from
13 him, and he was in Vineyards Crossing?

14 A Right.

15 Q So you decide to go home -- and you stayed at home?

16 A No, I did not. I was going to go back to Lauren's
17 house.

18 Q Because you weren't planning on doing anything with
19 the pistol, that was just your version of
20 self-defense?

21 A I wasn't planning on doing nothing with the pistol.
22 I was -- I got the pistol in case he tried to take
23 my life for self-defense towards Richard.

24 Q Towards Richard. So you knew when you went back to
25 Vineyards Crossing that you may come into some

1 conflict, but that wasn't going to back you off?

2 You wouldn't just stay at home?

3 A When I came back to Vineyards Crossing, Richard
4 wasn't even there no more.

5 Q So you go back and they drop you off in front of
6 the Banks' house, is that right?

7 A Right.

8 Q And your testimony is you didn't know where Amp
9 lived?

10 A Until that morning when I seen him in the front
11 yard.

12 Q So at that point when you met up with Devan, you
13 did know where Amp lived?

14 A Right. I knew -- I knew that he was there.

15 Q In that house?

16 A Right.

17 Q Two doors down?

18 A Right. Well, really, I thought it was next-door
19 until --

20 Q And you knew Amp was associated with Richard?

21 A Right.

22 Q And instead of just going home and staying there
23 because you perceived this threat -- you just said
24 a threat to your life -- didn't call the police,
25 didn't call for anything else, you just armed

1 yourself and returned to where the threat was?

2 A I went back to Lauren's house, for one, all my
3 belongings are there.

4 Q Really?

5 A Right.

6 Q And have you read Lauren's statement?

7 A Yes, I read it.

8 Q It doesn't say all your belongings were there?

9 A Was she asked that?

10 Q Then what happened? Then you go back and you are
11 armed at this point. And you go into the Banks'
12 house?

13 A Yes, ma'am.

14 Q Once they drop you off?

15 A Yes, ma'am.

16 Q So you get directly out of the truck. Did they
17 drop you off in front of the Banks' house?

18 A I believe so, yes, ma'am.

19 Q So they knew which house you went into?

20 A Yes, ma'am.

21 Q So you went into that house. And they were outside
22 when you did that?

23 A Yes, ma'am.

24 Q And then you go into the house. And how long did
25 you stay in the house?

1 A Well, I bust down two cigars, and by the time I did
2 that, that is when I got the call.

3 Q Wait, wait, you are going to have to help me here.
4 What does bust down two cigars mean?

5 A I opened up two -- see, when you smoke weed, you
6 put it in a cigar. You take the guts out.

7 Q So you were making marijuana cigars, is that a fair
8 characterization? Or were you smoking them?

9 A I was making -- we call it blunts.

10 Q A blunt. Okay. And you made two of those. And
11 then what happened?

12 A I got a call from Devan saying that he wanted a
13 cigar.

14 Q And at that point you went back out the front of
15 the house?

16 A I told him -- I told him to call me when he came in
17 Vineyards Crossing, and when he called me, that's
18 when I went outside.

19 Q So there was more than one phone call?

20 A He called me saying he wanted a cigar.

21 Q Yes, I --

22 A And he called me again and said he was outside.

23 Q Okay. So there were two phone calls?

24 A Right.

25 Q And at that point you went out the front door and

1 waited for him to come up to the front door?

2 A No. When I went out -- when I went in front of the
3 front door, he was already parked in front of
4 Anthony's house. Why --

5 Q Which you knew was Anthony's house? That's what
6 you just said.

7 A I knew that Anthony was there, yes, I did.

8 Q So at this point you armed yourself, you know that
9 your life is being threatened by Richard, who is
10 friends of Amp, who is at a house two doors down,
11 and you come out the front door and you are armed?

12 A Right.

13 Q So then did you wait for him to come down the
14 street to you?

15 A Anthony was yelling at my little homie, which is my
16 little friend. I didn't know what was going on.

17 Q Whoa, whoa, whoa. Anthony was now yelling at your
18 friend?

19 A Yes.

20 Q Who was he yelling at?

21 A Devan.

22 Q Down at the driveway?

23 A Anthony was at the truck talking to Devan.

24 Q So Anthony is now out of the car at the truck
25 talking to Devan in his own driveway, is that

1 correct? And you are two doors down?

2 A Ma'am --

3 Q When you come out of the house --

4 A Devan -- Devan -- they was not parked in the
5 driveway, they was parked on the street in front of
6 the house.

7 Q The gray truck was?

8 A In front of the street -- in the street.

9 Q Where were Devan and Anthony having this
10 conversation where Anthony is yelling at your
11 friend?

12 A Right outside the truck.

13 Q So you go down there to protect him now?

14 A No, I go down there to give him the cigar.

15 Q But you have your gun. And you know Amp is
16 associated with the person who has just threatened
17 your life?

18 A Right. But that don't --

19 Q But you didn't go down there with any intent?

20 A No, because Richard was not even there. No, I
21 don't even know Amp to have a problem with him.

22 Q Well, why did you go down there at all?

23 A Ma'am, because Devan called me back for a cigar.
24 Therefore, if he never called me I would have never
25 came outside. So when he called me for the cigar,

1 why would I not go out there and give him a cigar?

2 Q Well, at the point that you see Amp yelling at him
3 now, didn't you perceive there was going to be some
4 problem, according to you?

5 A No.

6 Q So your testimony now is that you see him yelling.
7 Could you hear what he is saying?

8 A No, ma'am, I couldn't, I was two doors down.

9 Q And was his manner aggressive?

10 A I can't recall.

11 Q Was he raising up a fist?

12 A No, ma'am.

13 Q Was he making any gestures?

14 A No, ma'am.

15 Q And so then you decided at that point that
16 everything was going to be okay and you just needed
17 to go two doors down where Devan happened to tell
18 them to drop him off, not in front of your house --
19 the house where he dropped you?

20 A See, when I had came out the house that morning and
21 seen Devan parked in front of the house, I didn't
22 know why he parked in front of the house, but now
23 come to find out he said he seen a light-skinned
24 person in the car and he thought it was me. That's
25 why he stopped in front of the house.

1 Q Is that what you told Devan to say?

2 A No, ma'am. Devan said he wasn't listening to what
3 I was saying, remember?

4 Q I remember. At that point, then, you go two doors
5 down and confront Anthony Salley?

6 A I didn't confront nobody.

7 Q Well, at what point did you feel it was necessary
8 to pull your gun out -- where did you have it?

9 A It was on my waistband.

10 Q In your waistband -- to pull your gun out and point
11 it point-blank within arm's reach at Anthony
12 Salley?

13 A Yes, ma'am, because when I was approaching Devan,
14 Anthony Salley turned around and saw me and
15 starting taking off his jacket and he ran towards
16 me.

17 Q He ran towards you?

18 A Yes, ma'am.

19 Q Okay. And at that point are you thinking, oh, my
20 gosh, this guy is a threat to me, I better back
21 off, I need to get out of this? Because you didn't
22 see any gun?

23 A I didn't see no gun, but I didn't even want to
24 fight him.

25 Q You didn't even want to fight him?

1 A I didn't want to fight him.

2 Q So at that point did you just pull the gun out to
3 control him?

4 A No, I pulled the gun out to scare him away. I
5 thought he was just going to leave the whole
6 situation alone.

7 Q It was his house. You now say you knew that?

8 A I knew that he was there.

9 Q And at that point when you pulled the gun out, do
10 you remember what you said?

11 A I didn't say nothing.

12 Q So the witnesses are wrong about what you said
13 about wanting that situation to happen?

14 A I mean, I probably said something about, I'm not
15 fighting you, but as far as --

16 Q No, that is not what you said.

17 A I didn't say -- I didn't say nothing verbally
18 threatening or nothing.

19 Q You didn't say anything -- and I don't know the
20 exact words, they can remember -- about how you
21 wanted that to happen this way?

22 A To my knowledge nobody said that but Andina, and,
23 no, ma'am, I didn't say that.

24 Q So Andina is not credible?

25 A I mean, that is her -- I'm not saying she -- I'm

1 not saying she is not credible, I'm just saying she
2 could have said anything.

3 Q Okay. Then the fight starts, right?

4 A Right.

5 Q But you admit, prior to Anthony Salley laying one
6 hand on you, you had the gun out and you were
7 pointing it at him?

8 A Yes, ma'am.

9 Q And how close was he, as close as you and me?

10 A Yes, ma'am, just like that.

11 Q How far?

12 A Like that right there.

13 Q Right there?

14 A (Nods affirmatively.)

15 Q And then he goes to punch you and the gun goes
16 tumbling?

17 A No. He walked up on me and said, shoot me.

18 Q He walked up on you. And he said, shoot me?

19 A He walked up to the pistol and said, if you are
20 going to shoot me, then shoot me.

21 Q And that is when he hit you?

22 A He said -- he walked up on the pistol. He said, if
23 you are going to shoot me, then shoot me.

24 And I didn't say nothing. But I still have --
25 I do still have the pistol pointed at him.

1 Q And that is the part I want to make sure we are
2 right on. You still had the pistol pointed at him?

3 A Right.

4 Q And it was loaded?

5 A Right.

6 Q And it worked?

7 A I didn't know; I had never shot it before.

8 MS. CAMPBELL: Your Honor, we have another
9 matter of law.

10 THE COURT: All right, ladies and gentlemen of
11 the jury, I'm going to send you all out for
12 hopefully another five minutes.

13 (WHEREUPON, the jury retires to the jury
14 room at 12:03 p.m.)

15 MS. CAMPBELL: Your Honor, at this time, I was
16 not going to go any further than that, but on the
17 day that he shot Corey, he also had a .40-caliber
18 pistol which matched the description of the one --
19 this one that he said he had never shot before.

20 MS. CLEARY: I don't know anything about it,
21 but I know -- I mean, they can't say that it was
22 the same pistol.

23 THE COURT: Yes. I mean, if there are any --
24 if there are matching serial numbers or anything to
25 be able to say it is the same pistol.

1 MS. CLEARY: There are a lot of .40 --

2 MS. CAMPBELL: Did he say he had never shot it
3 before or he had never shot a gun before, I can't
4 remember which.

5 THE COURT: He said he never shot that gun.
6 You asked him did that gun work. And he said, I
7 don't know, I never shot it before.

8 MS. CAMPBELL: Our contention would be we
9 would then be able to ask him if this was the same
10 gun he used on that day, where he shot it before.

11 THE COURT: He said -- he denied it earlier.

12 MS. CLEARY: He denied the shooting earlier.

13 THE COURT: He denied the question earlier
14 about Corey whatever --

15 MS. CAMPBELL: I will just go back and clarify
16 if he had ever shot that gun before. Okay.

17 THE COURT: All right. You can bring them
18 back in.

19 (WHEREUPON, the jury came into open
20 court at approximately 12:09 p.m.)

21 THE BAILIFF: The jurors are all present, Your
22 Honor.

23 THE COURT: All right. Yes, ma'am, you may
24 continue.

25 BY MS. CAMPBELL:

1 Q For clarification, your testimony here today is
2 that you had never shot that gun before?

3 A Right, I never shot that pistol before -- before
4 that situation.

5 Q So you are down -- or y'all are fighting. Are you
6 fighting standing up?

7 A Are you speaking about the day of the 16th?

8 Q Yes, back to where we were, on January 16th, on
9 that fight.

10 A Yes, ma'am, we were fighting standing up and on the
11 ground.

12 Q And on that day it is right there in the front yard
13 of the Salley household?

14 A It could have been.

15 Q And at that point are y'all standing up, you go
16 down, or what happened?

17 A Well, after he punched me I stumbled a little bit.
18 He hit me again. That's when I dropped the pistol.
19 So we get to fighting. And I'm getting the best of
20 him. And I got -- and I got him on the ground.

21 Q You got him on the ground?

22 A And I got him on the ground.

23 Q And you are punching him?

24 A Right.

25 Q In the face?

- 1 A Right.
- 2 Q In the chest?
- 3 A Right.
- 4 Q In the head?
- 5 A Everywhere.
- 6 Q As hard as you can?
- 7 A Right.
- 8 Q You are a pretty good fighter?
- 9 A I am.
- 10 Q Yes. And at that point you are getting the best of
- 11 him, right?
- 12 A Right.
- 13 Q At some point you testified earlier that you look
- 14 up and you see his girlfriend with the gun?
- 15 A When I finished fighting him and got up, that's
- 16 when I noticed that she did have the pistol. And
- 17 she threw it down.
- 18 Q And at that point where was Devan?
- 19 A Devan was to my right.
- 20 Q Okay. And did Devan go towards her with the gun?
- 21 Do you remember that part?
- 22 A Um, I don't recall that because I was fighting, but
- 23 I do remember it was some commotion going on, but I
- 24 didn't know what was going on until I got up and
- 25 seen Andina throw the pistol down.

1 Q Okay. So you saw Andina with the pistol and then
2 you saw her throw it down. Did you see Devan going
3 towards her right before she threw the pistol to
4 get it out of the way?

5 A I was in a fight, ma'am.

6 Q So at what point did you tell Devan, bust him?

7 A I never told Devan to bust him. And how could I
8 tell Devan to bust him if Andina had the pistol?

9 Q Well, wasn't that why Devan was going towards
10 Andina, to get the pistol?

11 A I don't know about that.

12 Q What does "bust him" mean?

13 A It means shoot him. But how could he shoot him
14 with no pistol?

15 Q If you were telling someone to shoot him, that
16 would show your intent?

17 A True. But I didn't tell him to shoot him. I
18 wouldn't tell nobody to shoot somebody if they
19 didn't have no pistol.

20 Q Ultimately Andina throws the gun down, right?

21 A Right.

22 Q Where is Anthony at this point?

23 A When I seen -- when I seen her throw the pistol
24 down, that's when I was getting off Amp, so he was
25 on the ground.

1 Q Where was Devan?

2 A To my right.

3 Q And at what point did Devan run off?

4 A I believe he ran off when I went and got the pistol
5 from off the ground.

6 Q Did he run off right after you told him to bust
7 him?

8 A I never told him to bust him.

9 Q At that point when he ran off, you went and got the
10 pistol off the ground?

11 A Right.

12 Q And what was your story about what happened then?

13 A After I picked the pistol up?

14 Q Yes.

15 A After I picked the pistol up, I left -- I left
16 Anthony Salley on the ground, we was fighting.
17 And after I picked the pistol up and turned around
18 he was right there. And being that he was right
19 there, it kind of scared me and I flinched. And
20 then I accidentally fired the pistol. And I got
21 scared and I ran.

22 Q And you flinched and you fired the pistol, so when
23 you picked it up you put your finger on the
24 trigger?

25 A I mean, that is how I always pick up a gun.

1 Q And you are aware of gun safety, you always handle
2 your gun that way?

3 A I mean, that is how I pick up the pistol, by the
4 handle.

5 Q And it just happened that when you picked up the
6 pistol and he came around -- I believe -- was he
7 behind you? Because you didn't see him, right at
8 first, right?

9 A He was -- he was behind me when I picked the pistol
10 up. When I turned around and --

11 Q When you turned around he was in front of you?

12 A From like -- a little -- from me to you.

13 Q And at that point you just happened to have the
14 pistol pointed at him?

15 A When I picked the pistol up and turned around to go
16 put it on my waist -- back on my waistband before I
17 can leave, that's -- that's when I seen him. And
18 that is when I accidentally flinched.

19 Q Let me get this straight. You picked the pistol
20 up?

21 A Right.

22 Q And you are going to put it in your waistband?

23 A Right.

24 Q And you are turning around at the same time?

25 A Right.

1 Q And somehow the pistol ended up pointed at him and
2 shot and killed him?

3 A Right.

4 Q And at that point you ran?

5 A Yes, ma'am.

6 Q Did you know you shot him?

7 A I knew I shot him because he fell.

8 Q And, oh, my God, it is going through your head, oh,
9 my God, I didn't mean to, I accidentally shot him.
10 He is hurt, right?

11 A Right.

12 Q So then you run to a house and you just happen to
13 see Demario's car parked in the driveway?

14 A Right.

15 Q And what is going through your mind at this point
16 is, oh, my gosh, I accidentally shot someone?

17 A Yes. I was scared, so, I mean, I ran.

18 Q Scared. So you ran. And you ran to the house
19 where the Crudups were?

20 A Right.

21 Q And at that point you run in and you tell them, oh,
22 my God, call 9-1-1, I have accidentally shot
23 somebody?

24 A No, I did not.

25 Q You still got the gun?

- 1 A I don't.
- 2 Q What happened to the gun?
- 3 A When I was running I threw it.
- 4 Q You threw it?
- 5 A (Nods affirmatively.)
- 6 Q And this is a neighborhood?
- 7 A Yes, ma'am.
- 8 Q With small children?
- 9 A I was running through back yards.
- 10 Q You were running through back yards?
- 11 A Yes, ma'am.
- 12 Q And you accidentally shot this poor person. You are
- 13 the victim here?
- 14 A I mean, both of us could be symbolized as the
- 15 victim.
- 16 Q Okay. You are one of the victims here. Why did
- 17 you throw the gun away if it was just an accident?
- 18 A Because -- okay, say -- say I would have gone to
- 19 jail that day. Not only I would have got that
- 20 charge, I would have got a pistol charge too.
- 21 Q You have just shot and killed someone and you are
- 22 worried about getting a pistol charge? That's your
- 23 testimony to this jury?
- 24 A I was scared about going to jail period.
- 25 Q Did you tell your friends where you threw the gun

1 so they could go get it to make sure nobody
2 accidentally found it, caused harm to other people?

3 A Yes, I did.

4 Q Who did you tell?

5 A I told a couple of people.

6 Q Who?

7 A I told a couple of people. I told T.K.

8 Q And who is T.K.?

9 A One of my friends that I met.

10 Q Where did you meet -- I never heard of T.K.

11 A I mean, I have a lot of friends you have never
12 heard of.

13 Q Yes, sir, I know. And at what point did you tell
14 T.K., go back, get the gun and make sure that
15 nobody in that neighborhood comes across it and
16 somebody gets hurt?

17 A I just told him to go get the pistol.

18 Q When?

19 A When Demario dropped me off on Hardscrabble.

20 Q At T.K.'s house?

21 A No, it was somebody else house.

22 Q At some girl's house?

23 A No. One of my friends.

24 Q What friend?

25 A Kizzell.

1 Q Kizzell?

2 A Yes, ma'am.

3 Q How do you know Kizzell?

4 A I met him a couple of years ago.

5 Q So did T.K. go back and get the gun?

6 A Either T.K. did or somebody -- somebody did that I
7 told.

8 Q So you got the gun back?

9 A I never seen it after that day. I never seen him
10 after that incident.

11 Q So as you run from the house to the house where you
12 accidentally shot -- from the house where you
13 accidentally shot someone to another house. You
14 then walk in, and you don't say you just shot
15 someone accidently, you don't tell anybody that,
16 all you say is, oh, I have been in a fight?

17 A I mean, I didn't want to -- I didn't want to
18 discourage everybody in the house by saying I
19 accidentally shot somebody.

20 Q You didn't want to discourage them?

21 A I didn't want -- I didn't want to amp their
22 emotions up as far as scaring them.

23 Q And at that point, the only thing you are asking
24 for is a ride because you are getting out of there,
25 right?

1 A Yes, ma'am. I was scared, so I ran.

2 Q And then you ran to a house on Hardscrabble
3 somewhere with Kizzell and T.K., right?

4 A Right.

5 Q And at that point -- first you were scared, you
6 said. You thought things through. So at that
7 point you do the right thing and call the police?

8 A The only time I called the police is when I called
9 the warrant division and told them that I was about
10 to come to turn myself in.

11 Q Which you didn't do?

12 A Because I didn't obtain money for my lawyer.

13 Q I'll get back to that in a minute. We're almost
14 through. At that point you run to T.K.'s house and
15 somehow miraculously you end up in Atlanta,
16 Georgia. How did that happen?

17 A Well, a good friend of mine told me that he was
18 going to send me to Charlotte at first. And I told
19 him, all right. But then when the ride got there,
20 he said I was going to go to Atlanta.

21 Q So you have friends that just can provide you rides
22 to different cities?

23 A I mean, I have friends that know people all over.

24 Q Did you tell them why you had to go?

25 A Ma'am?

- 1 Q Did you tell them why you had to leave town?
- 2 A Yes, ma'am, I did.
- 3 Q And are T.K. or Kizzell here today?
- 4 A No, ma'am.
- 5 Q Is the person who gave you the ride to Atlanta here
- 6 today?
- 7 A No, ma'am. I don't know who that was.
- 8 Q When you got to Atlanta you meet up with Du-Wop?
- 9 A Yes, ma'am.
- 10 Q Did you remember, though, prior to going to Atlanta
- 11 going to catch up with Devan again that day?
- 12 A I seen Devan again a couple of times after that
- 13 incident.
- 14 Q On the same day, right?
- 15 A Yes, ma'am.
- 16 Q And why was it important for you to meet up with
- 17 Devan that day and talk to him to make sure you
- 18 talked to him?
- 19 A Because -- well, I had -- he was in Spring Valley
- 20 Apartments. I called him and asked where he was
- 21 at. So I went to Spring Valley Apartments.
- 22 Q Who took you there?
- 23 A A female that I know.
- 24 Q A female? What is her name?
- 25 A By the name of Quonesha.

1 Q Quonesha.

2 A Quonesha.

3 Q When -- nevermind. So Quonesha takes you there. #
4 And at that point you want to make sure you get to
5 see Devan face-to-face?

6 A Yes, ma'am.

7 Q And why is that so important for you to see Devan
8 face-to-face?

9 A Because I want -- I told him to call the police and
10 tell them that it was an accident, but I still
11 didn't -- honestly, I didn't want to go to jail, so
12 I didn't call myself.

13 Q Do you remember telling Devan y'all need to get
14 your story straight?

15 A Yes. Yes, ma'am.

16 Q If it was an accident, there is no story to get
17 straight, is there?

18 A I mean, it is all -- it is all a story because it
19 is what happened. Just like a book, you call it a
20 story.

21 Q No, there is the truth and then there is a story.

22 A No, you got the truth and you got a lie.

23 Q So you told Devan you needed to get your story
24 straight. Did you tell him what to say if the
25 police contacted him?

1 A I told him to call the police. I ain't say what to
2 do if the police contact him. He called the police
3 while I was right there beside him.

4 Q That wasn't his testimony. But, okay, you called
5 the police while you were beside him. And did you
6 tell him what to say to the police and what not to
7 say?

8 A Yes, ma'am -- no, I didn't tell him what not to
9 say, but I told him what to say. But the police
10 said he had to come in and give a verbal statement,
11 so they got off the phone.

12 Q Did you tell him to go talk to the police about
13 what had happened?

14 A I mean, I told him -- I told him -- they act like
15 they didn't want to talk to him on the phone, so I
16 just told him, don't worry about it, and I left.
17 And later that day he called me and he said he had
18 wanted to smoke weed. I told him to come to
19 Hunters Green because that is where I was at, and I
20 gave it to him for free.

21 Q So you just accidentally killed someone who is a
22 victim that you admit in this case, and you are
23 still dealing drugs that afternoon?

24 A See, what you are failing to realize, Ms. Campbell,
25 is I didn't know that Anthony had died. I just

1 thought that he was shot.

2 Q That's not bad enough?

3 A I mean, it is bad. Yes, it is bad.

4 Q So at what point did you get to Atlanta?

5 A I got to Atlanta -- I got to Atlanta like 12:00
6 o'clock in the morning, a.m.

7 Q And at that point you said you had three to four
8 hundred dollars?

9 A Yes, ma'am.

10 Q Did you have your weed with you to sell?

11 A Yes, ma'am.

12 Q And at that point when you get to Atlanta, you meet
13 up with Du-Wop?

14 A Yes, ma'am.

15 Q And somehow you mentioned you stayed somewhere just
16 randomly for a week?

17 A Yes, ma'am.

18 Q Is that in hotels and motels too?

19 A No, the house that I stayed in for a week, I was in
20 an apartment complex.

21 Q And who were you staying with there?

22 A Somebody by the name of N.O.

23 Q Who?

24 A N.O. He is from New Orleans so we call him N.O.

25 Q Is N.O. here today?

- 1 A No, ma'am, he stay in Atlanta.
- 2 Q And then you meet up with Richard Johnson?
- 3 A Yes, ma'am. I met -- I met up with Du-Wop, and
4 then I met Richard Johnson through Du-Wop.
- 5 Q And you told Richard Johnson about what happened to
6 you as you became friends?
- 7 A Yes, ma'am.
- 8 Q At no point did you ever tell Richard Johnson it
9 was an accident?
- 10 A I told him that -- I told him that I shot somebody
11 and I might have messed my life up because it was a
12 witness. I told him -- he asked me why I ran. I
13 told him because I was scared.
- 14 Q So you told him you had messed your life up because
15 there was a witness. And then you confided in
16 Richard Johnson?
- 17 A What that mean, trusted him?
- 18 Q Yes?
- 19 A I did.
- 20 Q And you never thought he would betray you?
- 21 A I mean, I never thought about him betraying me or
22 not.
- 23 Q And your testimony here today is this was an
24 accident?
- 25 A Yes, ma'am, it was.

1 Q Do you remember once you were arrested in Atlanta?

2 A Yes, ma'am.

3 Q And they extradited you back to South Carolina?

4 A Yes, ma'am.

5 Q And you met with Investigator Lindler and

6 Investigator --

7 A Yes, ma'am.

8 Q -- Ellis?

9 A Yes, ma'am, I do.

10 Q And I think they advised you of your rights?

11 A Yes, ma'am.

12 Q And then they got you some crackers, I think, and a
13 coke?

14 A Yes, ma'am.

15 Q And once they advised you of your rights, they
16 didn't even ask you any questions because you said
17 you --

18 A No, ma'am.

19 Q They didn't ask you any questions?

20 A No, ma'am.

21 Q But you started talking to them?

22 A I did.

23 Q And do you remember what you said to them?

24 A Yes, ma'am. I told them that I just wanted -- I
25 just wanted to give my friend a cigar. And the

1 person started -- he started a problem -- he
2 started a problem with me. And then he hit me.
3 And I dropped -- and I dropped the pistol.

4 Q Let me ask you this. Do you remember saying, I had
5 problems with that guy earlier in the day?

6 A Speaking about Richard?

7 Q No, you were speaking about Amp.

8 A I mean, Amp was there with Richard.

9 Q Okay. He just came up and hit me. The tool hit
10 the ground. Do you remember telling him that?

11 A Right.

12 Q Then you said, what was I supposed to do? I got a
13 kid on the way. I didn't want to die.

14 A I mean, what was I --

15 Q Every time I saw him he always wanted to start
16 something.

17 A I mean, every time I -- every time I seen him -- I
18 could feel the tension, but because it was between
19 me and Richard so I could feel the tension, just
20 how it was always tension between me and Richard
21 because of what he had going on with Derrick, one
22 of my little friends, you know. And when -- I
23 didn't even want to fight him. That is why I
24 pulled the pistol to begin with. And then when the
25 pistol fell, I mean, what was I supposed to do? I

1 ain't got no choice but to fight now.

2 Q And do you remember telling him that this guy hit
3 him in the face with a tool? The tool would be a
4 gun, right?

5 A Right. But I didn't say he hit him in the face
6 with the tool.

7 Q Do you remember saying, what was I supposed to do?
8 I just picked it up. And then saying, he was
9 always wanting to fight and shit? That's what you
10 wanted to tell the police back in February 2nd
11 before you read all the statements, right?

12 A I mean, I don't recall saying that, but I didn't
13 write no written statement either.

14 Q No, you didn't.

15 A So, they could have -- they could have misconstrued
16 my words also.

17 Q It is the police's fault again?

18 A I didn't say -- I didn't say it is their fault.
19 I'm saying, you know, they could have
20 misconceived(sic) my words.

21 Q You told them you had to do it, you never told them
22 it was an accident?

23 A I never said I had to do it.

24 Q What was I supposed to do?

25 A The pistol fell. I didn't want to fight him.

1 Q He always wanted to fight?

2 A I had no choice but to fight him.

3 MS. CAMPBELL: Beg the Court's indulgence.

4 (Pause.)

5 MS. CAMPBELL: Thank you. I have nothing
6 further.

7 THE COURT: All right. Anything else, Ms.
8 Cleary?

9 MS. CLEARY: Beg the Court's indulgence.

10 THE COURT: Yes, ma'am.

11 (Pause.)

12 MS. CLEARY: May it please the Court?

13 THE COURT: Yes, ma'am.

14 REDIRECT EXAMINATION

15 BY MS. CLEARY:

16 Q Now, Jamaal, when Ms. Campbell was cross-examining
17 you, she continually said, now you are testifying
18 to this. Did you hear her say that?

19 A Yes, ma'am.

20 Q Okay. But do you confirm everything that you said
21 on direct when we were talking?

22 A I confirmed everything I said --

23 Q You didn't change your story when you were on
24 cross-examination?

25 A I never did.

1 Q Okay. So let me ask you a couple of questions.

2 You have never shot and injured a person?

3 A I ain't never shot nobody in my life before that
4 day.

5 Q Okay. And so when you hit -- in the earlier
6 incident in the Fall of 2009 when you hit
7 Richard --

8 A Yes, ma'am.

9 Q -- with the pistol, so why didn't you call the
10 police after that?

11 A I mean, I didn't call the police because -- I guess
12 because that was my wrongdoing. So why would I
13 call the police and say I just did this?

14 Q Okay. So you felt it was a mutual fight between
15 you and Richard and why --

16 MS. CAMPBELL: Object, Your Honor, to the
17 leading. If she can just let him answer the
18 questions.

19 THE COURT: All right. Please rephrase the
20 question. Thank you.

21 Q Let me move on. Now, you have testified on direct
22 that you were not friends -- you were not very
23 familiar with Amp, but you knew that Amp hung
24 around with Richard?

25 A Right. I knew -- I knew -- I knew exactly who he

1 was, but I didn't know him like that.

2 Q And you weren't -- you testified on direct that you
3 were afraid of Richard?

4 A Yes. I was afraid of what he might do to me.

5 Q And before -- before Anthony had punched you in the
6 face twice and engaged in an altercation, at that
7 point you didn't have a fear of Amp, but you had a
8 fear of Richard?

9 A Ma'am, when he -- when he hit me in my face, it is
10 like I ain't know what to do because --

11 Q No, I mean -- I'm sorry. All right. Okay. So any
12 fear that you had of Amp was by his association
13 with Richard, prior to the actual fight?

14 A I mean, in the fight, I didn't want to engage into
15 that altercation, that physical altercation,
16 because he was bigger than me, so I ain't want
17 him -- I ain't want to fight him period. That is
18 why I pulled the gun thinking I was going to scare
19 him and he was going to leave everything alone.

20 Q Okay. All right. Now, when you had dealings with
21 Richard at the gas station.

22 A Yes, ma'am.

23 Q Did you shoot him?

24 A No, ma'am, I didn't.

25 Q Okay. Could you have shot him?

1 A I could have.

2 Q You had a gun?

3 A Yes, ma'am.

4 Q All right. Now, you testified on direct that you
5 knew that Amp lived there in that house or had been
6 at that house after you had seen him earlier in the
7 day, is that correct?

8 A Yes, ma'am.

9 Q You haven't changed your story about that?

10 A No, ma'am.

11 Q All right. Now, about Lauren, you read Lauren's
12 statement. Did she ever say that you weren't
13 invited --

14 MS. CAMPBELL: Objection, Your Honor. I don't
15 think she can ask him to review her statement when
16 he is testifying.

17 THE COURT: I'm sorry, I couldn't hear you.

18 MS. CLEARY: She asked him about Lauren's
19 statement and what it said.

20 THE COURT: What did you ask him about?

21 MS. CAMPBELL: I asked him about what he told
22 Lauren that was in her statement, but I didn't --
23 she can't then try to elicit -- may we approach?

24 (WHEREUPON, a bench conference was held
25 in the presence of the jury but out of

1 the hearing of the jury.)

2 THE COURT: All right. The objection is
3 overruled.

4 Q You have read Lauren's statement, is that correct?

5 A Yes, ma'am, I did.

6 Q Okay. And then Ms. Campbell just showed it to you?

7 A Right.

8 Q Do you -- was there anywhere in that statement
9 where she said you weren't invited to the house?

10 A No, ma'am.

11 Q And you were invited?

12 A Yes, ma'am. Actually, I wasn't going to go to her
13 house. I had wanted to go to the club, you know
14 what I'm saying, with my friend. But in order to
15 do both of them, I lied to her and told her I was
16 going to bond at my home boy's house, which is
17 sitting right there.

18 Q Okay. All right. You -- did Lauren want you to
19 come over to the house?

20 A Yes, ma'am.

21 Q Did Lauren ever ask you to leave?

22 A No, ma'am.

23 Q Did Kenneth ever ask you to leave?

24 A No, ma'am.

25 Q Okay. So, now when you go to the actual fight, you

1 were heading towards the driveway and the sidewalk
2 area?

3 A Right. Are you talking about when I was
4 approaching Devan?

5 Q Right. To give Devan a cigar?

6 A Yes, ma'am.

7 Q Okay. So did you ever -- other than when you are
8 fist-fighting on the ground -- and I know you
9 probably don't know exactly where you were going at
10 that point, but other than that, did you ever walk
11 into their yard up towards the house?

12 A I didn't -- I didn't walk -- I didn't walk towards
13 the yard till we started fighting. Like when he
14 was talking to Devan, I didn't know what his
15 intentions could have been. Because like I told
16 y'all before, like me and him -- I only had one
17 conversation with him before this incident ever
18 occurred, so --

19 Q Okay. So did you walk up towards his house?

20 A I walked up towards the street where Devan was
21 parked at.

22 Q Okay. All right. Now, when you were on the ground
23 fist-fighting with him, did you try to get your gun
24 back at any point?

25 A While I was fighting him?

1 Q Right, while you were fighting?

2 A No, ma'am.

3 Q And then you got the best of him. Did you keep
4 pommeling until he was unconscious?

5 A No, ma'am. I mean, it was to the point where he
6 wasn't even fighting back, so --

7 Q So you could have killed him right then?

8 A If that is what I wanted to do, I could have.

9 Q Let me ask you something. Have you ever heard
10 of -- before this trial, have you ever heard of an
11 iliac vessel?

12 A No, ma'am. I just heard when I think a policeman
13 was explaining that. So I still don't have a full
14 understanding of what that is, so --

15 Q Okay. Did you -- based on watching TV and life
16 experiences, if you were going to kill someone,
17 where would you shoot them?

18 A If I wanted to kill them -- I mean, I would most
19 likely shoot them in the head.

20 Q Okay. And how many times -- would you keep
21 shooting?

22 A I mean, I don't know. I never been in that
23 situation.

24 Q Okay. That's fair. All right. Now, you testified
25 you had never been in that situation. Did you --

1 did you know what to do after this happened?

2 A I ain't know what to do. Like everybody was
3 directing my path for me. Like I was just like
4 a -- I was like a broken vessel. Like that whole
5 week after that happened I was sick, throwing up.
6 I got asthma, so, you know --

7 Q And you testified on direct that you felt really
8 bad about what had happened?

9 A Yes.

10 Q Taking this man's life?

11 A Yes. I felt bad. Like I still think about it to
12 this day, you know. And like I told you, I even
13 tried to contact the family and let them know that
14 I apologize. I even wrote them a letter that I've
15 still got.

16 MS. CAMPBELL: Objection, Your Honor. Outside
17 the scope of redirect.

18 Q Did --

19 THE COURT: Hold on. You said it was outside
20 the scope?

21 MS. CAMPBELL: Of redirect.

22 MS. CLEARY: I'll move on.

23 THE COURT: All right.

24 Q Okay. You -- after you were arrested you
25 volunteered to talk to Investigator Lindler? You

1 tried to talk to him?

2 A Yes, ma'am, I did.

3 Q And you -- but he didn't take a written statement?

4 A No, ma'am, I ain't write no written statement.

5 MS. CAMPBELL: Objection, Your Honor. We have
6 another matter of law.

7 THE COURT: All right, let me see y'all.

8 (WHEREUPON, a bench conference was held
9 in the presence of the jury but out of
10 the hearing of the jury.)

11 THE COURT: All right. Sustained.

12 MS. CAMPBELL: Thank you.

13 THE COURT: Please rephrase the question.

14 BY MS. CLEARY:

15 Q Okay. I'm going to ask you a question. I want you
16 to listen to it and just really say yes or no in
17 this case, okay?

18 A Yes, ma'am.

19 Q Did you -- when you were arrested in Atlanta, at
20 some point did you have an attorney?

21 A No, ma'am.

22 Q Advising you?

23 A No, ma'am.

24 Q Okay. Did you sign a form --

25 A No, ma'am.

1 THE COURT: Let her finish asking the question
2 before you answer, okay?

3 MS. CLEARY: All right.

4 Q Is it possible that you signed a form saying that
5 you wanted to be able to talk to an attorney before
6 talking to the police?

7 A Oh, yes, ma'am, I did do that.

8 Q Okay. That is exactly -- I'm sorry. Okay. So
9 that is why we don't have a written statement, the
10 police couldn't question you, but you tried to talk
11 to them anyway?

12 A Yes, ma'am.

13 Q Okay. And you told Investigator Lindler, you said
14 that your little buddy just wanted a cigar?

15 A Yes, ma'am.

16 Q And that was who?

17 A Devan Bailey.

18 Q Okay. And you said, I have had problems with that
19 guy earlier in the day. And who were you referring
20 to?

21 A I was referring to --

22 Q Or did you say that -- I'm sorry, did you say that?

23 A I did have a problem with him earlier in that day.

24 Q Okay. But did you say to Lindler that you had
25 problems earlier in the day?

1 A Yes, ma'am.

2 Q Or possibly? I know that you may not remember
3 exactly what you said.

4 A But I believe I did tell him that I had problems
5 with him, though.

6 Q Okay. And did you say something similar to, I came
7 out to give him a cigar and he was parked behind
8 that guy?

9 A If -- he was parked behind him.

10 Q Okay. But answer my question. Do you remember,
11 did you say that to the police?

12 A I don't recall. But he was parked on the street
13 behind him, though.

14 Q Okay. That's fine. And did you say, he just came
15 up and hit me?

16 MS. CAMPBELL: Objection, Your Honor, to
17 leading. I think she can ask him what he said, but
18 not lead him through it.

19 THE COURT: All right. Just rephrase the
20 question.

21 MS. CLEARY: Okay.

22 Q Okay. On cross-examination Ms. Campbell asked you
23 about, did you say the tool hit the ground, he then
24 looked at me and said, what was I supposed to do, I
25 got a kid on the way, every time I saw him he

1 always wanted to start something.

2 When you were -- when you said, he always
3 wanted to start something, who were you referring
4 to? Or do you remember saying that?

5 A I don't recall saying that, but with Amp, every
6 time I seen him I could feel the tension, like we
7 never had -- we never spoke no words to each other,
8 but I could feel the vibe. But with Richard it was
9 always -- it was always a verbal -- always a verbal
10 confront or physical confront, every time I seen
11 Richard.

12 Q Okay. And did you tell the police anything about
13 pictures?

14 A Yes, ma'am. I had -- I had a couple of pictures in
15 my phone that they took from me when I was in
16 Atlanta.

17 Q Okay. And what were the pictures of?

18 A Of my face.

19 Q And what did they show about your face?

20 A I had -- I had a bruise right here from when
21 Anthony had punched me.

22 Q Okay. And to your knowledge did the police ever
23 get those pictures?

24 A I don't know if they got the pictures in the phone,
25 but when I got arrested -- when I told him, he did

1 take pictures hisself of my face, though.

2 Q Okay. Why would you -- or who took the pictures of
3 your face? Did you do it yourself or somebody
4 else?

5 A I don't know which one, Lindler or the other one,
6 but the one to my right.

7 Q No, no, I'm sorry, with the cell phone?

8 A Who took them? I took them.

9 Q Okay. And you turned your cell phone around and
10 took the pictures like that?

11 A Yes, ma'am, in the mirror.

12 Q Okay. And so why did you take those pictures?

13 A I took the pictures because the female that I was
14 talking to, I had -- I did tell her about it, and
15 she asked me to send her a picture of my face
16 because I told her my face had been beaten up bad.

17 Q Okay. Now, let me ask you about a couple of things
18 that Ms. Campbell asked you about. Does the fact
19 that you had several girlfriends, does that -- does
20 that make you a cold-blooded murderer?

21 A No, it doesn't.

22 Q And what about the fact that you sell some
23 marijuana? Does that make you a cold-blooded
24 murderer?

25 A No.

1 Q What about the fact that Demario drives you around
2 sometimes? Does that make you a cold-blooded
3 murderer?

4 A No, ma'am, it doesn't.

5 Q And what about the fact that you got into some
6 trouble in high school and have a prior burglary?
7 Does that make you a cold-blooded murderer?

8 A No, ma'am, it doesn't.

9 Q And did you want to kill Anthony that day?

10 A No, ma'am, I didn't want to kill him. I didn't
11 even mean to shoot him, you know. Like -- like I
12 said before, I think about it all the time, you
13 know. And then I look at my mom. I see her pain.
14 I look at them. I see their pain. I just -- I
15 don't know, I wish this thing never happened.

16 Q Thank you.

17 MS. CAMPBELL: Just a couple, Your Honor.

18 THE COURT: Yes, ma'am.

19 RE CROSS-EXAMINATION

20 BY MS. CAMPBELL:

21 Q She asked you about how to kill people. So your
22 testimony here before this jury is if you had
23 wanted to you could have killed him with your bare
24 hands?

25 A I believe she asked me would I -- could I have took

1 the pistol and killed him at the time.

2 Q She asked you could you have beaten him to death.

3 A I don't remember that.

4 Q When you had him down and he wasn't resisting.

5 A She asked me could I --

6 MS. CLEARY: Object.

7 THE COURT: Hold on. What is your objection?

8 MS. CLEARY: She is mischaracterizing the
9 testimony. I asked why he didn't punch him until
10 he was unconscious, not dead. I did not assert he
11 could kill him with his bare hand.

12 THE COURT: All right.

13 MS. CAMPBELL: I can play --

14 THE COURT: Objection --

15 MS. CAMPBELL: If we play back the testimony,
16 she asked him could he have killed him there.

17 MS. CLEARY: No, I --

18 THE COURT: I think she said, could you have
19 picked the gun up and shot him while he was down.
20 I think that is -- the objection is sustained.
21 Please rephrase the question.

22 Q Is it easier to kill somebody with your fist or
23 with a gun?

24 A I mean, I would say a gun.

25 Q Then she asked you about whether or not if you were

1 going to kill somebody where the best place would
2 be to shoot them.

3 A And I said, most likely the head.

4 Q And you are aware, because you are familiar with
5 guns, that shooting somebody in the gut or in the
6 body can kill them?

7 A I don't know, because my friend -- my friend just
8 got shot in the stomach. He is still here. I
9 mean, I never shot nobody before, you know. I
10 mean, I don't know.

11 Q And that day you shot Anthony Salley?

12 A Unintentionally.

13 Q Thank you.

14 THE COURT: All right. Ladies and gentlemen
15 of the jury, at this time -- this might be a good
16 time -- is their lunch here?

17 THE CLERK: I'll check, Your Honor.

18 THE COURT: This may be a good time for y'all
19 to have lunch.

20 I am going to send you all back into the jury
21 room, and if your lunch is back there you can go
22 ahead and eat your lunch. Remember you are not to
23 discuss this case. And you cannot begin
24 deliberating until we tell you to begin to
25 deliberate. All right? Enjoy your lunch.

1 (WHEREUPON, the jury retires to the jury
2 room.)

3 THE COURT: He can step down. Where is the
4 officer? He can step down now. I just had to get
5 them out of here.

6 (The Defendant steps down.)

7 THE COURT: Do you have any other witnesses?

8 MS. CLEARY: No, we don't.

9 THE COURT: Are you resting?

10 MS. CLEARY: Yes. Do you want me to rest now?

11 THE COURT: Ma'am?

12 MS. CLEARY: Do you want me to rest now or do
13 I need to wait?

14 THE COURT: You can wait. I just had to get
15 him off the stand, and I couldn't do it with them
16 sitting there.

17 So their lunch is probably back there, so I
18 just went ahead and let them -- we can -- I'll let
19 you formally rest on the record in front of them.

20 Anything on reply?

21 MS. CAMPBELL: We are talking about it, Your
22 Honor. It would be very limited, if any.

23 THE COURT: All right. Do y'all want to go
24 ahead and take lunch now?

25 MS. CAMPBELL: Yes, Your Honor.

1 their case, the Defense has presented theirs, and
2 they have rested, there is no reply.

3 So at this time there are some matters of law
4 that I must take up with the parties outside of
5 your presence. I have arranged for the bailiff and
6 one of the officers to -- for those of you -- I
7 don't know if any of you smoke, but for those of
8 you who would love to have some fresh air -- to
9 take you outside for a little -- for a break. It
10 may take about 30 to 45 minutes. And then we'll
11 have you back in.

12 All right. Thank you.

13 (WHEREUPON, the jury retires to the jury
14 room at 2:06 p.m.)

15 THE COURT: All right. I have the requests to
16 charge for both sides. I'll start with the State's
17 requests to charge. And they are not numbered, but
18 I will go in the order that they are in -- have
19 been handed up to me. Do you have a copy of those,
20 Ms. Cleary?

21 MS. CLEARY: Yes.

22 THE COURT: All right. Well, let's first -- I
23 guess the easiest way to do this is, do you have
24 any objections to their charge?

25 MS. CLEARY: Yes.

1 THE COURT: All right. Which ones? The
2 first -- well, let's go through the first one. The
3 first one is already in my general charge about the
4 different types of evidence.

5 I was just looking for you earlier, but I
6 don't need you now.

7 THE CLERK: All right.

8 THE COURT: Number Two, any objection to the
9 second one, which is the State v. Lowery?

10 MS. CLEARY: I don't have any objection to
11 that being read, as long as it is read in
12 conjunction with the law that says that even if you
13 are in unlawful possession of a weapon you can
14 still lawfully arm yourself in self-defense.

15 THE COURT: Well, the self-defense stuff is
16 going to kind of be all -- it is the way we have it
17 in here. It is all -- there is a -- I think you
18 have a charge to that that says that, right?

19 MS. CAMPBELL: Your Honor, we will withdraw
20 that charge.

21 THE COURT: You are going to withdraw it?

22 MS. CAMPBELL: Yes.

23 THE COURT: That one is withdrawn.

24 All right, and the third one is the reasonable
25 doubt, proof beyond a reasonable doubt. I think

1 that is the --

2 MS. CAMPBELL: It is in your charge already.

3 THE COURT: And then the fourth one, any
4 objection?

5 MS. CLEARY: Yes. Okay, no, I don't have any
6 objection. Sorry.

7 THE COURT: The next one?

8 MS. CLEARY: Yes, I have objection to that
9 one. And this is from The State versus Mouzon.
10 This was a killing someone in a car case. It is
11 not relevant to the facts. There are other malice
12 charges that are more appropriate. I don't -- I
13 think that general malignant recklessness is not
14 murder under our current law. Extreme
15 recklessness, as long as it is combined with the
16 language about, you know, social duty and fatally
17 bent on mischief, but to just say that it signifies
18 rather a general malignant recklessness, that is
19 lowering the burden for murder considerably. That
20 is almost an involuntary manslaughter.

21 And, I mean, in all the malice charges that I
22 could find, that specific language was not
23 included, and I don't think it is still good law,
24 even though it has not technically been overturned.

25 THE COURT: I can tell you what is in the desk

1 book. It might -- it says malice aforethought does
2 not require that malice is there for any particular
3 time before the act is committed, but malice must
4 exist in the mind of the Defendant just before and
5 at the time of the act is committed. That is what
6 the desk book says. I don't know --

7 MS. CAMPBELL: I think this is a different --
8 I think this is the Mouzon charge that she has
9 objected to.

10 THE COURT: Okay, I'm reading the wrong one.
11 I'm sorry. Okay.

12 Yes, ma'am?

13 MS. CAMPBELL: This is still good law, Your
14 Honor. It has been overturned a lot during the
15 past 20 years. I think State versus Israel Wilds
16 is the most recent case I can think of off the top
17 of my head where this language was used. This is
18 appropriate I think in conjunction with your normal
19 malice charge, which at some point, Your Honor, I
20 would like to see just what your general charge is.
21 I don't know, the language may already be in your
22 charge.

23 THE COURT: He is printing it right now. He
24 is supposed to be making some changes. But --

25 MS. CAMPBELL: But this is a correct statement

1 of the law. And, of course, this would be in
2 conjunction with your other charge -- your regular
3 charge on malice. And this may already be in your
4 language. This is in some of the judges, it isn't
5 in some of the other judges.

6 THE COURT: Malice may be -- I'm going to read
7 to you what it says in here. Malice may be
8 inferred by conduct showing a total disregard for
9 human life. Inferred malice may also arise when
10 the deed is done with a deadly weapon. A deadly
11 weapon is any article which is likely to cause
12 death or great bodily harm. And then it describes
13 what a deadly weapon is.

14 MS. CAMPBELL: If I could actually pull the
15 cases on this, I can show you that it is still good
16 law. We would respectfully request that this be
17 added to your malice charge. As I said before,
18 some of the judges have this charge and some just
19 don't.

20 MS. CLEARY: I mean, I think that this charge
21 makes it look like it is indistinguishable from
22 involuntary manslaughter, just a general
23 recklessness. I agree that extreme recklessness --

24 MS. CAMPBELL: I understand her opinion, but
25 this is good law. And this is the definition of

1 malice from that case and its progeny.

2 THE COURT: I'll come back to that one.

3 MS. CLEARY: And also you had just mentioned
4 about the inference of malice on the use of a
5 deadly weapon. In State versus Belcher, the
6 Supreme Court issued a new ruling.

7 MS. CAMPBELL: We have no problem striking
8 that language if she wants to.

9 MS. CLEARY: I'm sorry, do you want the cite?

10 THE COURT: Yes, the date.

11 MS. CLEARY: October 12th, 2009. And in that
12 case the Court specifically said that you cannot
13 charge that there is an inference of malice from
14 the use of a weapon where the Defendant has raised
15 accident or self-defense.

16 MS. CAMPBELL: We have no problem striking
17 that language, the use of deadly weapon language.

18 THE COURT: That was taken out of our desk
19 book. That is why I asked what was the date.

20 All right. All right, I'll come back to that
21 one. The next one?

22 MS. CLEARY: The next two I believe are about
23 voluntary intoxication, and I do object to that
24 because I think he testified that he and Lauren
25 were maybe getting ready to smoke a blunt. I think

1 that is to just confuse the jury and, you know,
2 remind them that he smokes pot. I mean --

3 MS. CAMPBELL: I think they are abundantly
4 clear that there is pot involved in this case.

5 THE COURT: Yes, but I don't think there is
6 any testimony that he actually was intoxicated or
7 he -- I mean, I think they said the victim smoked
8 some marijuana, but I don't think there was any
9 testimony that the Defendant --

10 MS. CAMPBELL: I thought he testified that --

11 MS. CLEARY: He and Lauren were getting
12 ready --

13 THE COURT: He said they were rolling it up or
14 getting -- but they didn't -- I think -- because
15 you even asked him was he smoking, and he said, no,
16 he was rolling the cigars up or something.

17 MS. CLEARY: And then he got a phone call and
18 interrupted.

19 MS. CAMPBELL: No problem, Your Honor. If you
20 don't want to do it, that's fine. It is just that
21 there has been so much mention of drugs in this
22 case, I don't want the jury to get confused. And
23 they can get confused sometimes on whether or not
24 that relieves them from responsibility. And in
25 this case of course it does not.

1 THE COURT: And she is not going to argue that
2 either, I'm guessing.

3 MS. CLEARY: Certainly not.

4 THE COURT: But I don't think that there was
5 anything that ever came in regarding -- and we can
6 always check -- I don't recall anything about him
7 actually smoking it. Selling it, rolling it, and
8 whatever else, but he never said that he -- I don't
9 think he ever said that he smoked any marijuana.

10 MS. CAMPBELL: I just think the inference
11 would clearly be there, Your Honor, and then his
12 actions are reckless.

13 THE COURT: All right. Well, I am not going
14 to charge the last two. I will get you a decision
15 on the fourth one.

16 MS. CAMPBELL: And, Your Honor, I didn't know
17 if it would be appropriate if I could just look at
18 your murder charge at some point. It doesn't have
19 to be right now.

20 THE COURT: Okay. Well, do you have a copy of
21 this she can have? We have to change it. It is a
22 rough, rough draft, but you can take a look at what
23 he has. And I can tell you that --

24 MS. CAMPBELL: Thank you.

25 THE COURT: He did this before we got into a

1 whole lot.

2 Request to Charge Number 4, the one about
3 ill-will towards individuals, you think it goes to
4 involuntary manslaughter?

5 MS. CLEARY: Well, the Mouzon charge, which
6 is, you know, not in the general malice charges
7 that I could find, and that is from a car case
8 where someone killed someone with a car, so -- and
9 that is of course not used any more. And of course
10 this case was decided when none of the lawyers or
11 the judge could even sit on a jury in this state,
12 1957. So it is about 20 years old or 50 something
13 years old. But it has a lower standard to -- for
14 the jury to find malice. General malignant
15 recklessness is not the current standard that is
16 used.

17 MS. CAMPBELL: Respectfully, Your Honor, this
18 is a correct statement of the law and is still good
19 law and it has been quoted in recent cases, which I
20 will be glad to get, I will just go back to the
21 Mouzon case and refer to as the Mouzon charge.

22 THE COURT: Do you have cites for the recent
23 case?

24 MS. CAMPBELL: Israel Wilds is one I can think
25 of off the top of my head, and it has been charged

1 in multiple cases that have gone up on appeal, but
2 I can go check and see if it has ever been
3 addressed.

4 MS. CLEARY: I cannot find it in more recent,
5 so I'd like to see the cases. But I don't have my
6 computer.

7 THE COURT: Israel Wilds?

8 MS. CAMPBELL: W-I-L-D-S. It is an actual
9 ABIK case. I believe the language is similar. And
10 this is off the top of my head, Your Honor. I
11 would have to check.

12 THE COURT: Okay. No, he is just going to put
13 the name in the computer and see if he can find it.

14 MS. CAMPBELL: No, that was a murder case too,
15 I'm sorry. Let me think. I tried it. Israel
16 Wilds. W-I-L-D-S. I think his name was Israel.
17 It had extensive discussion of malice, if I'm
18 recalling the correct case, Your Honor. Let me go
19 see if I can pull it.

20 THE COURT: While they are doing that, go
21 ahead and look at Ms. Cleary's requests to charge.

22 MS. CAMPBELL: I believe that is also in
23 Black's Law Dictionary, Your Honor.

24 THE COURT: I'm sorry?

25 MS. CAMPBELL: The language that I was

1 referring to the malice charge is also in the
2 Black's Law Dictionary and it talks about the areas
3 of malice.

4 THE COURT: All right.

5 MS. CAMPBELL: And State versus Gondolin,
6 which is a 1996 case -- oh, excuse me, that is the
7 wrong cite.

8 Your Honor, the cases I got was State versus
9 Wilds, which 584 S.E.2d 138; State versus Elmore,
10 308 S.E.2d 781; State versus Johnson, which is 352
11 S.E.2d 480. And specifically quoted out of Black's
12 Law Dictionary from 1999. So those would be the
13 cases we rely on. And of course State versus
14 Mouzon is still good law and has been charged.
15 Your Honor, State versus Wilds is an exact quote
16 from Mouzon.

17 THE COURT: Because I'm looking at Elmore.

18 MS. CAMPBELL: State versus Wilds. In its
19 legal sense it does not necessarily import ill-will
20 toward the individual injured, but signifies rather
21 a general malignant recklessness of the lives and
22 safety of others, or a condition of the mind which
23 shows a heart regardless of social duty fatally
24 bent on mischief. And then it quotes Mouzon that
25 we quoted earlier.

1 In fact, we would re-submit this entire
2 paragraph for a request to charge from Wilds.

3 THE COURT: Wilds, they are robbing a
4 convenience store and the store owner or the
5 cashier is coming after the robbers, and it appears
6 that they -- somehow somebody jumps in a car to
7 make them pay for gas. And it sounds like they --
8 the victims were in the car. They said the
9 Defendant sped off and ran over the cashier and
10 drug the cashier under the car about 300 feet.

11 I'm just trying to figure out how this case --
12 how that case is similar to this one.

13 MS. CAMPBELL: Actually it doesn't have to be
14 similar, Your Honor. Malice would apply whatever
15 it is, in any case. In this case he goes out there
16 with a gun and acts recklessly, is our position.
17 And it would apply in this case. That is the
18 definition of malice. They don't just limit it to
19 these facts in the Wilds case or any of the cases.
20 Basically it says that this is the definition of
21 malice. It doesn't say this is the definition of
22 malice only if there is an automobile involved. So
23 therefore it is the law and can be applied to any
24 act that would be sufficient.

25 THE COURT: I know, but I'm just trying to

1 figure out how it applies in this case, because
2 this -- in this case, the -- are you saying that
3 the Defendant -- and of course I know -- you aren't
4 saying that the Defendant --

5 MS. CAMPBELL: You may not need those if you
6 aren't charging self-defense and accident, which
7 I'm assuming you are going to give the Defense
8 those charges, but maybe I'm being -- jumping
9 ahead.

10 THE COURT: Okay. And maybe we need to take
11 this one up after I make a decision regarding that.
12 But I'm just trying to get -- you are saying
13 because he went there with malice aforethought --

14 MS. CAMPBELL: He goes there --

15 THE COURT: Regardless.

16 MS. CAMPBELL: Regardless. Then whatever
17 culminates he is responsible under the law, as the
18 law is defined, if they find that he -- because we
19 don't have to prove -- and there is very specific
20 language that I didn't submit -- that there has to
21 be a specific intent to kill. I think that is --
22 well, I think she'll concede it is part of the law,
23 we don't have to prove a specific intent to kill
24 for murder to have malice.

25 THE COURT: All right.

1 MS. CAMPBELL: So that would be --

2 THE COURT: Ms. Cleary? And it is -- I mean,
3 I have looked the cases up since 1956. It is in
4 the Wilds case. I didn't see it in the Elmore
5 case, and I didn't look at -- but that was a 2003
6 case where the Court is citing --

7 MS. CLEARY: And I'm trying to think back to
8 my research because I don't have it all in front of
9 me, but I think maybe what I was thinking is I had
10 not seen it used in a case that didn't involve a
11 car, use of a vehicle.

12 THE COURT: Well, I think the issue is not so
13 much the car, but the accident. And if he is
14 saying that it was an accident, then I think that
15 is why she is asking for it to be charged.

16 Now, she is saying if he is not -- if I don't
17 charge accident, which --

18 MS. CLEARY: Well, I mean --

19 THE COURT: Okay, we'll come back to that.

20 MS. CAMPBELL: Thanks, Judge.

21 THE COURT: As to Number 1, as to the
22 Defendant's Request to Charge Number 1, any
23 objection to that? Any objection to the first one?

24 MS. CAMPBELL: I'm sorry, Your Honor, I've
25 been chatting.

1 THE COURT: Oh, that's okay. I'm guessing
2 from -- are y'all -- well, guessing from your
3 earlier comments that y'all are objecting to any
4 charge on self-defense? Is that --

5 MS. CAMPBELL: Yes, ma'am. I think -- and we
6 may need to do an analysis on where she thinks she
7 has met the four prongs that it would make it -- I
8 guess you have to base it on his testimony. And I
9 just -- based on -- and correct me, because I think
10 you have got better notes than I do about what he
11 said, but he said that when he went out there that
12 day that he had the gun because he was scared of
13 another person that was supposedly in the
14 neighborhood. He vacillated on whether or not he
15 knew the Defendant got there. He then goes out the
16 front door that -- and you -- I was doing cross-
17 examination, I wasn't making notes what he
18 ultimately said about whether or not he was afraid
19 or not. And ultimately his own testimony is it was
20 just an accident.

21 And I don't know in this case at what point
22 that he arms himself, because in order to get an
23 accident charge, he has got to have the four
24 elements of self-defense, is my understanding of
25 the law.

1 THE COURT: Yes, ma'am, that is correct. And
2 I think Ms. Cleary agrees with that. She stated
3 that on yesterday.

4 MS. CAMPBELL: At what point does he meet the
5 elements of the duty to retreat. And really three
6 out of the four elements I don't know how he meets,
7 the first one, the third one, and the last one. He
8 goes there. He goes where the victim is. It
9 happens on the victim's property. He says that he
10 then walks towards him, but that he pulls out the
11 gun. At that point he admits there has been no
12 blows, there has been no gun. He admits that the
13 victim wasn't armed. And at that point is when the
14 altercation starts based on his provocation it is
15 stated without fault at that point and that he
16 hasn't had a duty to retreat if he perceives the
17 threat. I don't know how she gets past those two
18 or that a reasonable man would think the same thing
19 he did.

20 And he went back and forth on whether or not
21 he had fears or knew or whatever this victim, that
22 his fears were of someone else that may have been
23 associated with the victim, is my recollection of
24 the testimony generally.

25 THE COURT: All right. Yes, ma'am? I guess,

1 Ms. Cleary, if you could state, you know, under the
2 four elements of self-defense what evidence has
3 been presented to agree with that. That he was
4 without fault, that he didn't bring on any
5 difficulty I think is the first one.

6 MS. CLEARY: Okay.

7 MS. CAMPBELL: She is requesting accident and
8 self-defense, correct?

9 THE COURT: She is.

10 MS. CLEARY: Okay.

11 MS. CAMPBELL: Your Honor, in order to keep
12 the record clean, I'm not saying I am conceding to
13 her version of what those are, but I don't think we
14 would object to a self-defense and accident charge
15 with the appropriate listing.

16 THE COURT: All right. And then there is
17 one -- well, there is one that is a self-defense
18 charge and accident charge that is in the bench
19 book.

20 MS. CAMPBELL: And are you going into
21 contemptuous language and mutual combat and all
22 these subsections?

23 THE COURT: He just pulled the self-defense
24 charge out of there.

25 MS. CAMPBELL: Can we use a general one so we

1 can go through and eliminate the ones that don't
2 apply?

3 THE COURT: All right. So she is not -- so
4 you are not objecting to a self-defense and an
5 accident charge, but you are asking that your
6 Number 4 be charged also?

7 MS. CAMPBELL: Yes.

8 THE COURT: The one we just talked about?

9 MS. CLEARY: Okay.

10 MS. CAMPBELL: I think that is fair.

11 MS. CLEARY: Okay.

12 THE COURT: Any objection to her Number 4
13 being charged?

14 MS. CLEARY: I still object to her Number 4.

15 THE COURT: All right. Well, I will charge --
16 if we are going to charge self-defense and
17 accident -- well, more so the accident than the
18 self-defense -- then I will charge her Number 4.

19 MS. CAMPBELL: Your Honor, the only language I
20 would -- and yours is just broken down into three
21 parts rather than what I have seen in cases as four
22 parts as far as self-defense.

23 THE COURT: Oh, is it --

24 MS. CAMPBELL: Number one, without fault; the
25 Defendant was or believed himself to be in actual

1 imminent danger. And if it is based on that
2 danger, then a reasonable and prudent person of
3 ordinary firmness and courage would have
4 entertained the same belief. And there is a duty
5 to retreat.

6 THE COURT: Okay, hold on one second.

7 MS. CAMPBELL: And I would just hand up, Your
8 Honor, and I just got these, two -- one on accident
9 and one on self-defense. I haven't looked, the
10 elements may all be in yours. Did you give me --
11 does she have a copy, Ms. Cleary?

12 MS. CAMPBELL: No, ma'am. I'll give her this
13 copy.

14 THE COURT: Oh, you only had one? Okay.

15 MS. CAMPBELL: I'll give her this one. I
16 think she'll agree these are the elements.

17 (Pause.)

18 THE COURT: All right. Do you object to her
19 request to charge, her accident request to charge?

20 MS. CAMPBELL: Which one?

21 THE COURT: Number 2 and 3. Page 2 and 3.

22 MS. CAMPBELL: Your Honor, I think -- yes,
23 Your Honor, I object to some of the language. Some
24 of it is incomplete.

25 THE COURT: All right, which one?

1 MS. CAMPBELL: I think under State versus
2 Brown, 205 S.C. 514, the second paragraph there is
3 the right to arm himself versus the right --

4 THE COURT: Which one are you on now? I'm
5 confused.

6 MS. CAMPBELL: I thought you were on Request
7 Number 2. Oh, she has two Number 2's? Oh, no
8 wonder. I'm on the wrong one, Judge. I apologize.
9 How does it start?

10 THE COURT: Mine is the second page. It just
11 has accident, State v. Chapman.

12 MS. CAMPBELL: Yes, ma'am, I'm on that one.

13 THE COURT: Now, which parts of that do you --
14 because I don't think -- what part are you
15 objecting to?

16 MS. CAMPBELL: The part where it says, the
17 Defendant's handling of a dangerous instrumentality
18 or by the unlawful activity by the Defendant
19 doesn't have to be caused by that, I believe he
20 just needs to be engaged in unlawful activity at
21 the time of the incident.

22 And then when it gets down to one, two and
23 three, down where the Defendant acts unlawfully, it
24 has got to be at the time of the incident.

25 And under the theory of the right to arm one's

1 self, I think there needs to be some type of
2 instruction that the Defendant must meet all the
3 requirements of self-defense in order to have the
4 right to arm himself, which I believe is one that
5 was used earlier, Judge. And I don't know if that
6 is in your charge.

7 THE COURT: On her next page she says, I
8 charge you that a person can be acting lawfully
9 even if he is in unlawful possession of a weapon if
10 he was entitled to arm himself in self-defense at
11 the time of the shooting.

12 MS. CAMPBELL: There is no evidence in this
13 case that he armed himself in self-defense. His
14 own testimony says he just armed himself.

15 MS. CLEARY: I think the case law is clear,
16 certainly with Burris and McCaskill and maybe
17 others, that you look at the time just before the
18 shooting when he armed himself, so it is our
19 assertion that certainly when he picked up the gun
20 off the ground he was not obligated to leave it
21 there and get shot in the back as he ran away.

22 And in Burris, obviously that person brought
23 the gun with him. He had the gun and was --

24 MS. CAMPBELL: But in Burris I believe he was
25 armed lawfully.

1 MS. CLEARY: No, no, no.

2 THE COURT: Well, the one that is in the --
3 have you read the accident charge that comes out of
4 the bench book? It just says that the Defendant
5 has raised the defense of accident and acts may be
6 excused on the ground of accident if it is shown
7 that the act was unintentional, that the Defendant
8 was acting lawfully, and that reasonable care was
9 used by the Defendant in the handling of the
10 weapon. For example, if a person is lawfully armed
11 in self-defense and a gun accidentally discharged,
12 the defense of accident would apply. The burden is
13 on the State to prove beyond a reasonable doubt
14 that the act was not an accident but was caused by
15 the negligence or carelessness on the part of the
16 Defendant in handling of the dangerous
17 instrumentality or by unlawful activity by the
18 Defendant.

19 I'm inclined to charge the one from the bench
20 book.

21 MS. CLEARY: And I don't have any objection to
22 that in terms of the accident, but in Burris the
23 Court specifically says that, McCaskill stands for
24 the proposition that a person can be acting
25 lawfully even if he is in unlawful possession of a

1 weapon if he was entitled to arm himself in
2 self-defense at the time of the shooting. Thus, if
3 the circumstances of this case show appellant was
4 entitled to arm himself in self-defense when the
5 gun went off, he would be entitled to a charge of
6 accident.

7 THE COURT: All right. So you are saying you
8 don't have a problem with me charging the one that
9 is from the bench book, but you would also like the
10 charge Number 2, which is I think Charge Number
11 3 -- Number 2 too -- Number 2 that is on Page 3?

12 MS. CLEARY: Yes. I'm sorry. Yes.

13 THE COURT: Any objection? I mean, it is what
14 the law says. I think we looked it up yesterday
15 and talked about it on yesterday.

16 MS. CAMPBELL: Beg the Court's indulgence.

17 (Pause.)

18 MS. CAMPBELL: I think from the Burris case, I
19 think that they still must find there is no
20 negligence or recklessness to find it was accident.
21 If we just add that language, I have no problem.

22 THE COURT: You want me to add the language
23 that --

24 MS. CAMPBELL: It must be shown that --

25 MS. CLEARY: That's in your --

1 THE COURT: Yes, it is in there. It says the
2 burden is on the State to prove beyond a reasonable
3 doubt that the act was not an accident but was
4 caused by the negligence or carelessness on the
5 part of the Defendant in handling the dangerous
6 instrumentality or by unlawful activity by the
7 Defendant.

8 He can reprint it and e-mail it to y'all;
9 however y'all want him to do it.

10 MS. CAMPBELL: The only other -- the example
11 that you use in your charge that just happens to be
12 eerily similar to this case, I would say if we can
13 come up with some other example because it would be
14 a comment on the facts.

15 For example, a person who lawfully arms
16 himself in self-defense then the gun accidentally
17 discharges.

18 THE COURT: Any other suggestions? I don't
19 even have to give an example. I mean, I don't have
20 to give an example.

21 MS. CAMPBELL: That's okay. I'll go with it.

22 THE COURT: Leave it in?

23 MS. CAMPBELL: (Nods affirmatively.)

24 THE COURT: All right. And as to her other
25 charges, the next one is just a self-defense -- it

1 appears to be self-defense. And I'm just going to
2 charge the one from the bench book. Aaron is going
3 to break it up into four different -- and we'll get
4 that. Anything else on that?

5 MS. CAMPBELL: No.

6 THE COURT: All right. What about Number --
7 Request to Charge Number 4 about him not actually
8 having -- if he reasonably believes --

9 MS. CAMPBELL: I believe that is part of your
10 charge already, if I read it correctly. I think
11 the language is already in there, to act on
12 appearances.

13 THE COURT: Ms. Cleary, one that I have --

14 MS. CLEARY: Yes. I'm sorry, I'm trying to
15 read.

16 THE COURT: All right. And then Number 6 -- I
17 mean, Number 5. Any objection to that one?

18 MS. CAMPBELL: I think that is also included.
19 That is the same language again, the right to act
20 upon appearances.

21 MS. CLEARY: I'm not -- okay.

22 MS. CAMPBELL: We certainly don't want to tell
23 the jury to view the situation from the Defendant's
24 standpoint. No reasonable person. I believe this
25 language is already included in your charge, Your

1 Honor.

2 THE COURT: Any part of this not in there?

3 MS. CLEARY: Beg the Court's indulgence.

4 (Pause.)

5 THE COURT: Yes, ma'am?

6 MS. CLEARY: Your charge is sufficient.

7 THE COURT: Okay.

8 MS. CLEARY: Judge, I am just now looking at
9 this.

10 THE COURT: I am going to give y'all a second.

11 MS. CLEARY: Okay.

12 THE COURT: What I'm going to do is, Aaron is
13 going to redo it and then I'll give it back, since
14 I will probably ask you all if you have a problem
15 with me sending it back with the jury.

16 MS. CLEARY: Right. But I was wondering if
17 there is going to be an opportunity for me to kind
18 of regroup and make sure I don't saying anything in
19 my closing.

20 THE COURT: Oh, yes. I'm going to give
21 y'all -- he's going to do a clean copy once we
22 finish, give it back to you all, I'll give you five
23 or ten minutes to look through it, and then we'll
24 do the closing arguments.

25 MS. CLEARY: Okay.

1 THE COURT: All right. And as to -- because
2 there still may be some stuff in the one that I
3 have here that y'all may want to take out.

4 As to Request to Charge Number 6, prior
5 difficulty, I think we already have that. That is
6 in mine. But there has not been any testimony
7 regarding the victim's violent reputation, so we'll
8 take that out.

9 MS. CAMPBELL: No prior violence by the
10 victim.

11 THE COURT: No prior violence by the victim.
12 If I'm wrong, correct me. I'm just trying to move
13 through them. I don't remember any testimony
14 regarding that.

15 Threats by the victim. He said that the other
16 guy threatened him, but I don't believe he said
17 that the victim threatened him.

18 MS. CAMPBELL: He did not ever say that he was
19 threatened by the victim.

20 THE COURT: Yes, he didn't say he was
21 threatened by the victim.

22 Intoxication of the victim. I mean,
23 everything says he had marijuana in him.

24 MS. CAMPBELL: But there is no indication he
25 thought he was intoxicated.

1 MS. CLEARY: I don't think that matters. I
2 think if there is any evidence that he could have
3 been intoxicated that is a reasonable charge.

4 MS. CAMPBELL: She doesn't want us to be able
5 to charge voluntary intoxication of her Defendant,
6 but she wants to bring in intoxication of -- the
7 alleged intoxication, which he never said he was
8 aware of.

9 MS. CLEARY: Well, that is true. But I don't
10 think that there is anything that he has to have
11 been aware of it.

12 THE COURT: Well, its says that
13 intoxication -- that he would have had -- it says
14 intoxication of the victim may be considered in
15 deciding whether Mr. Hinson's fear of death or
16 bodily harm was reasonable. Basically saying that
17 if the Defendant -- I mean, if the victim was
18 waving a gun around and was drunk or something like
19 that, then he would say, you know, he is going to
20 shoot me because he is drunk. But I don't think --

21 MS. CLEARY: Okay, I withdraw this.

22 THE COURT: All right. What about Number 7?

23 MS. CAMPBELL: And I gave away your charge on
24 duty --

25 THE COURT: Duty to retreat.

1 MS. CAMPBELL: -- to retreat. I believe that
2 language is in duty to retreat.

3 THE COURT: I think -- it talks about -- it
4 actually goes into a little bit more than yours
5 does, Ms. Cleary, about him not having to use any
6 calculation as to the degree or amount of force
7 which may be needed.

8 MS. CLEARY: What page is that on?

9 THE COURT: It is on Page 10 of my charge.
10 Actually it is pretty close to what you have,
11 increased risk of harm. I think it was the same
12 language. It is the same language.

13 MS. CLEARY: I see. I'm sorry.

14 THE COURT: And Number 8?

15 MS. CAMPBELL: That would be a comment on the
16 facts.

17 THE COURT: The first part definitely is.

18 MS. CAMPBELL: And I'm not sure what words
19 accompanied by hostile act.

20 THE COURT: Yes, ma'am? And I have that one
21 also.

22 MS. CAMPBELL: I believe the only testimony in
23 the record of any words were, shoot me. I don't
24 know if those are hostile.

25 MS. CLEARY: Well, I think he said when he

1 first came up to him that he was like --

2 MS. CAMPBELL: No, he didn't. I just don't
3 know how the words, shoot me, would be hostile
4 towards the Defendant.

5 MS. CLEARY: I believe the testimony was he
6 said something like --

7 THE COURT: I'm going to charge it. I mean,
8 the words -- if he told the victim, shoot me, go
9 ahead and shoot me -- it may not be --

10 MS. CAMPBELL: But that is not the moment.
11 Then -- but he even separates that from the moment
12 of which he arms himself to do the shooting.

13 THE COURT: Well, it says, words accompanied
14 by hostile acts may, depending on the
15 circumstances, establish self-defense.

16 And there was testimony that the victim
17 charged at him or something like that and --

18 MS. CAMPBELL: So you are going to charge
19 words plus hostile acts equal self-defense?

20 THE COURT: I'm sorry?

21 MS. CLEARY: I'm sorry. That is not what I
22 meant to ask you to charge.

23 THE COURT: Okay.

24 MS. CLEARY: I mean, the law says, State v.
25 Harvey, that -- well, I suppose, yes, you would

1 have to add in the other elements are met.

2 MS. CAMPBELL: I mean, words plus hostile acts
3 may be a consideration in whether we have met all
4 the elements of self-defense, but in every case it
5 has got to go back to all four elements of
6 self-defense.

7 THE COURT: Oh, yes, yes, but that is part
8 of -- that comes under --

9 MS. CAMPBELL: Close in time with this
10 statement because I think for you to say that words
11 accompanied by hostile acts equal self-defense is
12 really problematic for me. Because, I mean, no
13 matter what, as to whether or not it meets any of
14 the four prongs of self-defense, because they still
15 have to meet all four prongs of the self-defense in
16 order for it to be self-defense, and I'm sure that
17 is in your charge. I don't have it in front of me.

18 THE COURT: Well, you know, the part that
19 talks about words accompanied by hostile acts goes
20 into the acts on appearances. It is --

21 MS. CAMPBELL: And the only thing I'm saying
22 if you were going to use the terminology of words
23 with hostile acts may be self-defense, that alone
24 is not true because it only can be considered as to
25 one prong on whether he acted on appearances. And

1 I would just want --

2 THE COURT: Well, we just need to reword it.

3 MS. CAMPBELL: Reword it.

4 MS. CLEARY: And I think that is included in
5 your charge on Page 9 in the middle. I mean, that
6 is basically what -- the law that I was quoting.

7 THE COURT: She says, you may consider whether
8 Mr. Hinson's belief of being attacked was a
9 reasonable belief when the words were accompanied
10 by a hostile act. You may consider. That is
11 coming from your request to charge.

12 MS. CLEARY: I know. But I'm just saying I
13 don't have any objection to this words accompanied
14 by hostile acts charged on yours on Page 9.

15 THE COURT: But it needs to say, you may
16 consider whether -- is that your -- your objection
17 is it just needs to say, you may consider?

18 MS. CAMPBELL: You may consider and also that
19 it doesn't equal self-defense. That one thing.
20 Words of hostile acts. The way this language reads
21 is that words plus hostile acts equal self-defense,
22 that is not true. That is only the consideration
23 as to one prong that she has to meet four of in
24 considering whether or not there is self-defense.
25 And that is my concern.

1 MS. CLEARY: And that actual case says words
2 accompanied by hostile acts may, depending on the
3 circumstances, establish self-defense. I mean,
4 that --

5 THE COURT: What I will charge is, you may
6 consider whether Mr. Hinson's belief of being
7 attacked was reasonable belief when there were
8 words accompanied by hostile acts.

9 I took that one straight from your charge, Ms.
10 Cleary.

11 MS. CAMPBELL: And you are going to put that
12 in Prong 3.

13 THE COURT: It is under right to act on
14 appearances.

15 MS. CAMPBELL: Okay. I just didn't want the
16 language in there that that equals self-defense.

17 THE COURT: She has a malice.

18 MS. CAMPBELL: I like her malice. You can add
19 that on too.

20 THE COURT: You want it?

21 MS. CAMPBELL: Yes, ma'am.

22 THE COURT: All right. Ms. Cleary, you still
23 want it?

24 MS. CLEARY: I should be scared to. Yes. You
25 know, not anticipating the general recklessness

1 charge to go along with that.

2 MS. CAMPBELL: This can go along with it too,
3 but our general recklessness charge. We have no
4 problem doing both of them.

5 THE COURT: Well, they pretty much say the
6 same thing, don't they?

7 MS. CAMPBELL: I like them.

8 THE COURT: This one says the same thing as
9 yours.

10 MS. CAMPBELL: It is ironic that she objected
11 to mine.

12 MS. CLEARY: Well, I object -- the only
13 language that I object is general recklessness
14 makes it sound like, you know, if I turn around and
15 hit him I'm going to -- and kill him, then, you
16 know, I'm a murderer. So that is the Mouzon
17 language that I object to.

18 THE COURT: The only reason that one is I
19 think applicable to this case is because of the
20 accident charge, because I'm giving the accident
21 charge, but I'll give both of them. I'll give
22 yours, I'll give yours, and the general one.

23 And then involuntary manslaughter.

24 MS. CAMPBELL: States versus Willie Reese.
25 The facts in that case, Your Honor, was the

1 Defendant was the estranged husband of the victim
2 in the case. He went over to her house in her
3 front yard, he had already pulled out a gun. He
4 said he just had it out and was waving it around
5 and it went off accidentally.

6 In that case the judge refused to charge
7 involuntary manslaughter based on the fact that
8 that would be a pointing and presenting, which is
9 the very least we have here.

10 The Court of Appeals reversed it on those
11 grounds and they went up to the Supreme Court and
12 they held that it was proper to not charge
13 involuntarily manslaughter although they still
14 overturned the case on a closing argument by a
15 prosecutor.

16 MS. CLEARY: My turn?

17 THE COURT: Yes, ma'am.

18 MS. CLEARY: In that case there was no
19 evidence of self-defense, so the Defendant, when he
20 pointed and presented the firearm, he was just
21 simply saying that it didn't accidentally
22 discharge, she didn't do any -- there was nothing
23 about self-defense, and that is what distinguishes
24 it because it is a self-defense that makes it a
25 lawful arming, so if we can prove self-defense,

1 then pointing and presenting does not preclude an
2 involuntary manslaughter charge. And that is
3 specifically included in State versus Burris where
4 he did get -- it was an accident and involuntary
5 manslaughter. And that -- and those two are
6 clearly not contradictory, but also, again, one is
7 entitled -- one is entitled to arm themselves in
8 self-defense.

9 So in this -- in State versus Burris that
10 we're relying on, it says, to warrant the Court in
11 eliminating the offense of manslaughter, it should
12 very clearly appear that there is no evidence
13 whatsoever.

14 So the pivotal issue was whether appellant was
15 engaged in unlawful activity at the time of the
16 killing. For the same reasons discussed above --
17 when they were talking about accident -- we find
18 the evidence in the record supports appellant's
19 claim was acting lawfully when the gun fired
20 killing tenant.

21 And, again, this is a case where the guy was
22 not allowed to -- I believe he was under age and
23 was not allowed to possess a pistol.

24 The same -- it is on four corners with this
25 case, with Jamaal's case.

1 The Court went on to say, Goodson only
2 specifically dealt with whether unlawful possession
3 of a weapon would preclude an accident then it
4 would be incongruous not to apply the same
5 reasoning and context of involuntary manslaughter.

6 Oh --

7 THE COURT: Yes, ma'am, you can continue.

8 MS. CLEARY: In addition, the evidence, or at
9 least our part of the evidence, is that pointing
10 and presenting actually occurred before the fight.
11 And the Court emphasizes that you look at the
12 moments before the shooting, that there is a
13 difference in arming one's self in self-defense and
14 acting in self-defense.

15 And in this case he is alleging he did not
16 point it, you know, when the shooting actually
17 occurred, that he had picked it up and then
18 accidentally shot it when he was turning towards --
19 when Amp came up on him. So that would be a
20 distinction as well.

21 So I think clearly we would be entitled to it
22 in any case under State versus Burris.

23 THE COURT: You are saying the difference
24 between State versus Reese and this case is the
25 fact that the Defendant was acting in self-defense

1 and then thus lawfully acting?

2 MS. CLEARY: Yes. So the Defendant in Reese,
3 since he was not claiming any kind of self-defense,
4 he couldn't lawfully arm himself in self-defense.
5 His was just straight up pointing and presenting
6 without the allegation that he grabbed the gun and
7 that it accidentally or recklessly fired.

8 THE COURT: Yes, ma'am?

9 MS. CAMPBELL: Your Honor, we would also quote
10 State versus Chapman.

11 THE COURT: Is it Chapman or Chatman?

12 MS. CAMPBELL: Chap. In that case -- and I
13 understand she's trying to -- well, Number One, we
14 submit she hasn't met the elements of self-defense.
15 And I understand we are charging that out of an
16 abundance of caution. But, Number Two, there is
17 nothing in this record to say he was acting
18 lawfully at the time. Basically he, Number One, is
19 involved in a pointing and presenting. Then he is
20 involved in a fist-fight or an assault, which he,
21 by his own testimony, he said he got the better of
22 him and beat him. And, Number Two, at that point
23 he says he then goes and arms himself and that it
24 is just an accident.

25 But there is nothing lawful about any of the

1 conduct that day. I don't know how she can get
2 around that fact and the cases.

3 THE COURT: In State v. Chapman it says -- it
4 talks about excusable or justifiable homicide, but
5 it talks about due care was exercised in handling
6 of a weapon which led to -- in this case the Court
7 did say he was entitled to an involuntary
8 manslaughter charge.

9 MS. CAMPBELL: State versus Smith, a 2011
10 case.

11 THE COURT: The cite?

12 MS. CAMPBELL: The cite is 706 S.E.2d 12.

13 MS. CLEARY: Your Honor, in that case the
14 Defendant was engaged in a drug deal. And we don't
15 have any evidence of that. And that is what made
16 it an involuntary manslaughter.

17 THE COURT: I have the wrong cite. What is
18 it, 706 --

19 MS. CAMPBELL: I can hand it up, Your Honor.
20 I believe we are also quoting the Crosby case.

21 MS. CLEARY: And in that case they found they
22 hadn't met the elements of self-defense.

23 MS. CAMPBELL: Your Honor, I think we are
24 going out on a limb to give her the
25 self-defense/accident she has requested. That

1 doesn't mean she has met them by law.

2 THE COURT: All right. I have these cases.
3 You cited State versus Burris and what was the
4 other one, Ms. Cleary?

5 MS. CLEARY: Me?

6 THE COURT: Yes, ma'am? What was the other
7 case you cited?

8 MS. CLEARY: State v. Burris and State v.
9 Wright.

10 THE COURT: Do you have a cite for that one?

11 MS. CLEARY: Yes. 378 S.C. 641, 664 S.E.2d
12 465.

13 THE COURT: 465?

14 MS. CLEARY: Uh-huh. And also in Mekkler.
15 M-E-K-K-L-E-R. Do you have that one?

16 THE COURT: No. I need a cite for that one,
17 unless it is cited somewhere else.

18 MS. CLEARY: 379 S.C. 12, 664 S.E.2d 477.

19 MS. CAMPBELL: Judge, if I could be heard? We
20 conceded as far as accident and self-defense. That
21 does not mean we concede she has met the elements,
22 that she should get either one of those charges.
23 And if this is something that is going to be -- I
24 mean, if she is going to get this involuntary
25 manslaughter it is bootstrapping us because we have

1 conceded that we are allowing that charge just
2 because there has been so much talk about it. We
3 would want to be reheard on whether or not
4 self-defense and/or accident are even proper in
5 this case.

6 THE COURT: Well, this case says they are not
7 mutually exclusive, so I don't think I have to give
8 involuntary manslaughter just because he gets
9 self-defense.

10 MS. CLEARY: Right.

11 THE COURT: That is what State v. Mekkler, the
12 case I was just reading, says.

13 MS. CLEARY: Well, yes, it says that you can
14 have both or you cannot have both. But our
15 position is that in that case the lady, Mekkler,
16 was, you know -- I think she had a cocked weapon in
17 that case. I mean, I think the law is clear. And
18 obviously we've got to, you know, present our
19 evidence of self-defense, but the law is clear if
20 there is any evidence at all of self-defense, then
21 he has to have the involuntary charge because then
22 he is lawfully armed and possibly reckless.

23 MS. CAMPBELL: No, ma'am, that is incorrect.

24 MS. CLEARY: Well, I mean, the cases are, you
25 know, particularly Burris, is very clear on it.

1 MS. CAMPBELL: That was the fact that -- you
2 don't get one and then get the other. Your Honor,
3 we would want to be heard on whether or not she has
4 met the elements to get even a self-defense or
5 accident charge.

6 MS. CLEARY: Well, the case law does not say
7 you either get one and not the other.

8 THE COURT: I'm sorry?

9 MS. CLEARY: The case law does not say you can
10 have one and not the other. The case law simply
11 says that they are not mutually exclusive, that you
12 can have both. If there is any evidence to support
13 either an accident or involuntary manslaughter,
14 then the jury is charged both.

15 Burris says that, without me making any -- you
16 know, I'm not twisting the words at all.

17 THE COURT: So, Ms. Cleary, your position is
18 if I charge accident and self-defense, that I have
19 to charge involuntary manslaughter?

20 MS. CLEARY: No, I am saying that because we
21 presented evidence that would support our position
22 on each of the elements that they want to be able
23 to disprove it beyond a reasonable doubt the
24 elements of self-defense at the time of the
25 shooting that he lawfully armed himself in

1 self-defense, not that he acted in self-defense,
2 that that requires both the accident charge and
3 involuntary manslaughter.

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

5 MS. CAMPBELL: Your Honor, then we would like
6 to be heard on self-defense and accident charge to
7 be submitted to the jury. We do not feel like she
8 has met the elements. We feel like even from his
9 own testimony, which is the best thing he has got
10 going for him, that he concedes that he just went
11 over to pick up the gun. He didn't say he was
12 acting in self-defense at that point. And then he
13 makes into an accident.

14 And we would surely say that he has not met
15 three out of at least four of the prongs. Even if
16 you are giving him the one prong where he was
17 acting reasonably, that he had the duty to retreat,
18 he had many duties that he did not meet that day,
19 and we would like to respectfully be heard on that
20 if you are going to entertain the involuntary
21 manslaughter.

22 THE COURT: What is your position if I charge
23 those two that I have to give involuntary
24 manslaughter?

25 MS. CAMPBELL: There is no case law that says

1 those have to be charged or that they all run
2 together. I don't know where she is getting that
3 from. I believe you quoted the law correctly
4 earlier, Your Honor, about it depends on the case,
5 the facts of the case and what it is.

6 Our position is that just because we're
7 conceding and don't object to her having an
8 accident and a self-defense charge, there is
9 nothing in this case that allows this to be an
10 involuntary manslaughter.

11 THE COURT: All right. All right. I think I
12 have heard enough. Aaron is going to bring back
13 the -- he is going to bring back a draft of the
14 jury charge and the verdict form.

15 Based on my reading of I guess the cases
16 cited, I don't believe if I charge accident and
17 self-defense, which y'all aren't claiming -- well,
18 I guess you are claiming self-defense to get to the
19 accident -- I don't -- in my reading of the case
20 law, it doesn't state that I have to charge the
21 involuntary manslaughter.

22 MS. CLEARY: Can I clarify my position on
23 that, just real briefly? I am not saying that you
24 have to charge it because you are charging accident
25 and self-defense, but what I'm saying is that there

1 is some evidence that this was an accidental
2 killing and that -- the elements are: Killing of
3 another without malice and unintentionally while
4 acting lawfully with reckless disregard for safety.
5 So there is certainly some evidence that he was
6 not -- I mean, he was reckless with the gun. So --
7 because there is some evidence to support that
8 charge, that is why I think you have to charge it,
9 not because you are going to do accident and
10 self-defense, but because it meets -- there is some
11 evidence of each of these elements. That is my
12 position.

13 THE COURT: Yes, ma'am?

14 MS. CAMPBELL: You don't really want to hear
15 from me. I mean, she has to meet the elements of
16 self-defense, Your Honor. Respectfully, she has
17 not. In order for her to make it into this lawful
18 activity, because by his own admission on the stand
19 he was acting unlawfully that day, he had no right
20 to carry a gun, he had no right to be taking the
21 gun out there, he had no right to be dealing drugs
22 or doing whatever else he was doing out there that
23 day.

24 I find it somewhat ironic that she then
25 incorporates it in like she has met the elements of

1 self-defense under these facts.

2 And this case, with these facts, simply is not
3 an involuntary manslaughter.

4 MS. CLEARY: Do you want me to argue
5 self-defense?

6 THE COURT: No, they conceded to charge it.
7 They are not saying it is self-defense, but they
8 are agreeing to let the law be charged. I'm not
9 going to charge on a lesser included of involuntary
10 manslaughter. I think that the jury can decide if
11 it is self-defense or if it was an accident, but
12 I'm not going to get into the involuntary.

13 MS. CLEARY: And I just do want to make sure
14 the record is clear that I strenuously object to
15 that.

16 THE COURT: Oh, I think so.

17 (WHEREUPON, a bench conference was held
18 in the presence of the jury but out of
19 the hearing of the jury.)

20 THE COURT: We are going to take about ten
21 minutes. Aaron is going to bring -- I'll have him
22 bring the jury charge out, and then y'all take
23 about five or ten minutes. So we will take about
24 15 minutes.

25 (WHEREUPON, a break was taken.)

1 THE COURT: She said we were supposed to have
2 a note coming out, but it never came out, as to,
3 what in the world are they doing in there, is what
4 the note is going to say. I am going to bring --
5 y'all have to bring your client back in. It is 20
6 till 4:00. I'm guessing it is going to take two
7 hours to do -- two hours at least to do closing
8 arguments, plus the charge on the law is going to
9 probably put us close to 6:00 o'clock. So we'll --
10 I think we are just going to argue and charge in
11 the morning with everybody fresh. So we'll start
12 at 9:00. I am just going to bring the jurors back
13 in and tell them that.

14 They went to get the Defendant.

15 (Pause.)

16 (WHEREUPON, the jury came into open
17 court at approximately 3:45 p.m.)

18 THE BAILIFF: The jury is present, Your Honor.

19 THE COURT: Thank you, ladies and gentlemen of
20 the jury, for your patience this afternoon. I
21 assure you that we were in here hard at work and
22 not -- and being good stewards and mindful of your
23 time. And for that reason -- I considered doing
24 closing arguments tonight and charge on the law,
25 which means you all probably wouldn't get it until

1 maybe after 6:00 o'clock. And I did not ask you
2 all about staying late, so I don't want you to stay
3 late. I'm going to bring you back in the morning
4 at 9:00 o'clock in the morning. And at that time
5 we will be prepared to go forward with the closing
6 arguments and the charge on the law. It could take
7 almost up to three hours just to do that. And it
8 is almost 4:00 o'clock now.

9 So I am going to bring you all back in the
10 morning at 9:00 o'clock. Remember that you are not
11 to discuss this case with anyone, no independent
12 research regarding the case. And if anyone tries
13 to speak with you regarding the case, just let me
14 know in the morning. I will have one of the
15 deputies escort you to your car this afternoon.

16 All right. Thank you.

17 (WHEREUPON, the jury is excused for the
18 day at 3:48 p.m.)

19 THE COURT: I think some of them wanted to
20 stay, which is odd.

21 All right. We will -- Aaron should be back
22 around here in a second with the jury charge.

23 Do you have one other matter?

24 MS. CLEARY: I just wanted to put one more
25 thing about the involuntary manslaughter.

1 I would just emphasize that giving us a choice
2 of all or nothing and obviously we are anticipating
3 the involuntary manslaughter charge, and I want to
4 say that one of the things the involuntary
5 manslaughter charge says, reckless disregard for
6 the safety of others, you know, is one of the
7 elements, and reckless disregard for safety of
8 others means that you are not interested in the
9 consequences of your acts or the rights and safety
10 of others.

11 And she specifically asked him on
12 cross-examination, why were you holding the gun by
13 the pistol. She talked about him negligently
14 holding it. And I'm afraid that not having this
15 and combined with the Mouzon charge, if they find
16 he is negligent, then he's going to be guilty of
17 murder.

18 So that is why -- and, you know, I mean, as
19 you know, it is always error not to charge when
20 there are any facts to support it. And since, you
21 know, I believe that there are facts in the record
22 to support it, I just need to re-emphasize and ask
23 for you to look at the cases tonight and maybe
24 think about it a little bit harder, because it is
25 essential -- I mean, it is an integral part of our

1 defense. And it is going to kind of eviscerate it.

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

3 MS. CAMPBELL: Respectfully, Your Honor, we
4 ask that with the facts of this case involuntary
5 manslaughter is not a proper charge. You are
6 charging self-defense and accident, which is what
7 she said in her opening statement this was.

8 And my understanding is that in any case, no
9 matter what you are going to charge the jury, that
10 in order to find guilty of murder, they must first
11 find malice exists.

12 THE COURT: All right. He should have the
13 jury charge here and the verdict form. I am going
14 to stick with my original ruling and charge -- and
15 not charge involuntary.

16 MS. CAMPBELL: Thank you, Your Honor. Your
17 Honor, this is the redacted version of the 9-1-1
18 tape. Remember we had that one part on it that
19 wasn't supposed to be on it? We can substitute
20 this, with the Defense's permission, for the actual
21 one we put in.

22 THE COURT: Yes, ma'am. And y'all have, if
23 they ask for it, y'all have the laptop.

24 MS. CAMPBELL: Laptop. Feel free to review it
25 to make sure that the one we use in court is clean

1 to make sure that nothing improper goes back.

2 THE COURT: All right. And if we can start
3 promptly, promptly at 9:00 o'clock.

4 MS. CAMPBELL: We will be here early.

5 THE COURT: Because I think they are ready to
6 go. They are ready to get it over with. I don't
7 know if they are ready to go, but they are
8 definitely ready to get it over with.

9 MS. CAMPBELL: Your Honor, I will just
10 substitute that in the same case it was in.

11 MS. CLEARY: Okay.

12 THE COURT: Let me go check on my law clerk.

13 (Pause.)

14 THE COURT: He didn't do the verdict form
15 because he didn't know -- I guess I need, for the
16 purposes of the record and making a decision, Ms.
17 Cleary, what is the evidence that you are
18 presenting that would lead to an involuntary
19 manslaughter charge?

20 MS. CLEARY: Okay. The killing of another.
21 We have that okay. Without malice. And
22 unintentionally. And that has been basically our
23 defense.

24 THE COURT REPORTER: I'm sorry, I didn't hear
25 you.

1 MS. CLEARY: Oh, I'm sorry. Without malice
2 and unintentional, the second element. And then
3 while acting lawfully, State versus Burris and
4 State v. Wright and State versus Mekkler make it
5 clear that if -- and obviously, you know, that
6 something she is going to argue vigorously -- but
7 if there is any evidence to support self-defense,
8 then that is lawful arming of one's self. The law
9 doesn't --

10 THE COURT: And she is saying by not conceding
11 to the self-defense that -- by conceding to it that
12 she is not conceding that involuntary manslaughter
13 necessarily has to be charged. And -- but what
14 evidence -- are you referring to him just saying he
15 accidentally pulled the trigger? Is that the
16 evidence that you are referring to?

17 MS. CLEARY: Well, I'm -- okay. Well, that --
18 I mean, that would be the unintentional element,
19 that it has to be unintentional. Okay. So he says
20 it was an accident. So that is the evidence of
21 unintentional. But I thought what was kind of
22 holding us up is while acting lawfully. And I
23 think the case law is clear that, you know, just
24 because you are a drug dealer does not mean that
25 you can't ever pick up a gun and defend yourself.

1 That is clear from various cases.

2 And then the fourth element, with reckless
3 disregard for safety, examples are negligent
4 handling of a loaded gun, handled a gun recklessly,
5 in the Wright case, and if you admit it was
6 intentional you can't get the charge. And of
7 course we haven't admitted it was intentional. And
8 also intentionally pulling the hammer back on a
9 shotgun, it could still be involuntary manslaughter
10 if the person unintentionally pulls the trigger.

11 And, you know, the fact that, I don't know, is
12 selling weed or the other things that she said she
13 thinks shows that he brought the danger of that
14 situation upon himself, that does not mean that he
15 could never arm himself in self-defense. The law
16 doesn't say, you know, if you are a drug dealer and
17 you are not allowed to possess a weapon. It is
18 pretty clear that there are times when you can
19 lawfully possess a weapon.

20 And case law speaks specifically to that in
21 some detail, particularly in the Burris case and in
22 the McCaskill case, about how there is a difference
23 between one acting in self-defense and one arming
24 one's self in self-defense. And that, you know,
25 despite bad behavior that might have been going on,

1 if at the moment of the arming one's self you are
2 entitled to do so because you are not -- you don't
3 have to leave yourself vulnerable to getting shot
4 in the back, which is what his testimony was, that
5 the reason he picked up the gun at that point was
6 because it had already been pointed at him by
7 Andina, he had been punched in the face a couple of
8 times, so obviously he has got a reasonable fear at
9 that point to think, I'm not -- I can't leave that
10 gun and go run because I don't want to get shot in
11 the back.

12 And he is entitled to do that, no matter what
13 kind of bad character they have been able to bring
14 up against him. You don't have to leave yourself
15 to get shot in the back. And that is the whole
16 basis of our self-defense claim.

17 THE COURT: So the cases you are relying on is
18 Burris and McCaskill?

19 MS. CLEARY: And also Mekkler.

20 THE COURT: And Mekkler. All right. And the
21 cases you are relying on are?

22 MS. CAMPBELL: The rest of the cases on
23 voluntarily manslaughter: Reid, Chapman -- there
24 is a whole progeny of them -- Crosby is one.

25 Your Honor, in addition to that, I would just

1 point that the facts in the case that she keeps
2 talking about, Burris, are very distinguishable
3 from this one. In that case the appellant, who is
4 ultimately charged, was attacked unprovoked by the
5 two alleged victims in the case. They initiated
6 the fight. They initiated the attack.

7 In this case at hand, the Defendant is the one
8 that first drew on the victim. That is un -- I
9 mean, by everyone's testimony. So that
10 distinguishes it as far as lawfully, you know,
11 arming himself at that point in this case.

12 Furthermore, his own testimony says that at
13 the time he then went and de-armed himself because
14 he had become unarmed in self-defense, if he wants
15 to go self-defense, he goes and re-arms himself.
16 And his own testimony said at that point he had
17 beaten the victim so badly that he is no longer
18 moving and that he is going to pick up the gun.
19 And at that point he turns around and tries to make
20 it into -- our position under the elements of the
21 facts of this case, if you apply the self-defense
22 element, under no theory of the defense can it
23 reach self-defense, not the four prongs. And I can
24 go through them again, but I have already put them
25 on the record, I don't want to bore you. And even

1 beyond that, by his own version of the chain of
2 events that occurred and his own demonstration
3 using me the accident quote/unquote could not
4 happen the way he said it did. I simply think in
5 this case with these unique facts and relying on
6 the case law we have handed up that involuntary
7 manslaughter is not appropriate.

8 THE COURT: Well, since I have the cases, I
9 will take tonight and read over them for myself.
10 And we'll get the verdict form. Right now I'm not
11 inclined to do it, but I will read over all the
12 cases. That's why I'm asking you which cases you
13 want me to consider.

14 MS. CAMPBELL: And in this case, in Burris
15 that she keeps talking about, that person armed
16 himself after he had been attacked.

17 MS. CLEARY: Well, it is our --

18 MS. CAMPBELL: Can I finish? And then at that
19 point the people leave and then they come back
20 towards him, and that is when she shoots -- the gun
21 goes off accidentally, according to the testimony.

22 MS. CLEARY: But it is our assertion that
23 there is evidence in the record that Amp came up on
24 him. One of their witnesses says Anthony stormed
25 at Jamaal. And we admit that he pulled the gun.

1 And his testimony was that he did that to scare him
2 away, but then he was punched a couple of times
3 anyway. So it is not --

4 THE COURT: But then he says he won the fight.

5 MS. CLEARY: Right.

6 THE COURT: And then he had the opportunity at
7 that point to retreat?

8 MS. CAMPBELL: Retreat.

9 MS. CLEARY: Well, he doesn't have to leave
10 the gun -- he did not say that he knocked the man
11 unconscious. He said that he could tell the fight
12 was over because he was not fighting back. Okay?
13 Not that he was unconscious.

14 But what our point is is that he doesn't have
15 to leave the gun there for either Andina, who had
16 previously pointed it, or Amp to pick it up and
17 shoot him in the back while he is running from the
18 scene. That is what we're saying. The law does
19 not require that.

20 THE COURT: All right. So I have written down
21 all the cases, the names, and I'll take a look at
22 those again, read them thoroughly, and I'll get
23 y'all a verdict form in the morning.

24 MS. CAMPBELL: Thank you, Your Honor. Your
25 Honor, the only other thing we would have, in your

1 without-fault prong of self-defense, you have
2 mutual combat. I don't know that that would apply.

3 THE COURT: That was already in it.

4 MS. CAMPBELL: It was in your standard form,
5 but I don't think it applies in this case.

6 MS. CLEARY: I agree with her.

7 THE COURT: Okay. If y'all like we can -- do
8 y'all want to take ten minutes to go through it and
9 then I can come back and we'll -- I can come back
10 and see what else is in there.

11 And the desk book has prior record of the
12 Defendant limited for impeachment and prior -- and
13 I think that is in there. And prior record of
14 Defendant limited for Lyle. I think -- but that is
15 not his record, but it just talks about bad acts
16 under that one. But there is nothing else about
17 prior bad acts in here.

18 And I guess what I am thinking about, Ms.
19 Campbell, is the questions you asked about the
20 pending charges?

21 MS. CAMPBELL: Oh, yes, ma'am.

22 THE COURT: Where it talks about --

23 MS. CLEARY: Oh, okay. Isn't there a charge
24 about --

25 THE COURT: Well, there is a Lyle charge, but

1 it talks about a conviction.

2 MS. CLEARY: But isn't there a charge that
3 talks acts prior bad acts can't be used to show he
4 was acting in conformity thereof? Can I -- do you
5 know what I'm saying? That it can only be shown to
6 prove the Lyle exceptions, not to show that he's a
7 bad person. It can't be used as propensity
8 evidence, I guess call it propensity evidence.

9 THE COURT: Were you using it for impeachment
10 or for --

11 MS. CAMPBELL: I was using it for impeachment,
12 limited to that.

13 THE COURT: Yes, it was for impeachment. Is
14 that in there?

15 Okay. All right, we'll take about ten minutes
16 for y'all to look and see if there is anything else
17 that needs to be changed so that we can start at
18 9:00 in the morning.

19 All right, we'll take about ten minutes.

20 (WHEREUPON, a break was taken.)

21 MS. CAMPBELL: There is only one section of
22 self-defense -- I'm sorry -- the mutual combat
23 language. Mutual combat only applies if both
24 people --

25 THE COURT: Oh, we are going to take that out.

1 MS. CAMPBELL: Okay.

2 THE COURT: I think y'all both agreed to that.

3 MS. CAMPBELL: Right. And then, Your Honor,
4 on the right to act on appearances.

5 THE COURT: Will you give me a page number?

6 MS. CAMPBELL: Fourteen.

7 THE COURT: Okay. Fourteen. Yes, ma'am?

8 MS. CAMPBELL: Under size and age, I don't
9 know that that was an issue in this case. And I'm
10 not quite sure I followed the language. It looks
11 like something might have been left out or
12 something. Actual need and duty to retreat. And
13 then the next line says, for force and self-defense
14 the amount of force needed. I think maybe that
15 line just needs to be taken out.

16 THE COURT: Yes.

17 MS. CAMPBELL: Or I'm not sure that size and
18 age are even appropriate in this case. I don't
19 really care, but --

20 THE COURT: Ms. Cleary?

21 MS. CLEARY: With regard to size and age, I
22 mean, I don't think it is all that important, but
23 there is some evidence in the record that he
24 testified that he was afraid of him because he was
25 bigger.

1 THE COURT: He said he was bigger than him.

2 MS. CAMPBELL: He also said that he beat him
3 up and it wasn't a fight. But it is just that one
4 line for force and self-defense that I think should
5 just be deleted.

6 THE COURT: All right, we'll take that part
7 out. It is probably an error. It should read, the
8 relative size, age and weight of the Defendant and
9 the victim, may be considered in deciding the
10 apparent or actual need for force and self-defense
11 and the amount of force needed.

12 So that part about duty to retreat needs to
13 come out.

14 MS. CAMPBELL: Okay.

15 THE COURT: That's all you see?

16 MS. CAMPBELL: That is pretty much all I see
17 right now, Your Honor.

18 THE COURT: Okay. Y'all can e-mail Aaron if
19 there is something else. He normally works late.

20 MS. CLEARY: The only thing I have is on Page
21 9; there is a statement -- and, I mean, I think it
22 is a statement about that malice can be formed, you
23 know, right before the act, and then that charge --
24 you know, obviously it is not my favorite charge --
25 is then repeated again on Page 10, and I think that

1 was probably just a mistake.

2 MS. CAMPBELL: That was my request to charge
3 which you agreed to.

4 MS. CLEARY: Well, I just don't want the part
5 about, that malice can be formed, can be conceived
6 at the very moment the fatal blow was given. I
7 don't want that charge twice.

8 THE COURT: You know, y'all both had one and
9 y'all both agreed to just put both of each other's
10 in there, and I think that is why it is in there
11 twice.

12 MS. CLEARY: Oh, I know, but I --

13 THE COURT: Where is it?

14 MS. CLEARY: It is on Page 9 and 10.

15 THE COURT: About the fatal blow?

16 MS. CLEARY: No, that malice aforethought does
17 not require that malice exist for any particular
18 time before the act is committed, but malice must
19 exist in the mind of the Defendant just before and
20 at the time the act is committed.

21 Okay, so there is that, which is the -- you
22 know, malice can be formed just before charge. And
23 then on Page 10 you would be telling the jury
24 again, malice does not need to exist for any
25 appreciable amount of time before the admission of

1 the act of killing occurs. Malice can be conceived
2 at the very moment the fatal blow is given. And
3 for obvious reasons, I don't want them to hear that
4 twice. I don't see any need for it. And I think
5 it was just kind of combining our two charges that
6 that happened, or combining our charge with your
7 charges.

8 THE COURT: I don't see it. Where is fatal
9 blow on Page 9?

10 MS. CLEARY: I mean, they are worded
11 differently, it is just they are the same charge
12 about the time that, you know, that malice can be
13 formed immediately before the act. One of them
14 used the term fatal blow and one of them says, just
15 before and at the time of the act is committed.
16 And I'm not saying I care which of these charges is
17 used.

18 THE COURT: Just one?

19 MS. CLEARY: Yes, just one.

20 THE COURT: Any response?

21 MS. CAMPBELL: Your Honor, I don't think it is
22 any way -- it is not like you are going on and on
23 about either one of them. It is just a different
24 way of saying the same thing. And she did agree to
25 let it in. Now she is objecting to it.

1 THE COURT: I think that is part of the charge
2 that was given by Ms. Campbell, is that right?

3 MS. CAMPBELL: There was charge that I handed
4 up, yes, ma'am.

5 THE COURT: Yes, those were two separate ones,
6 and I think that is one you agreed to.

7 MS. CLEARY: I mean, I didn't --

8 THE COURT: It was her request to charge. It
9 was the --

10 MS. CLEARY: Right. But I didn't agree, I
11 mean, for it to be charged twice. I understand
12 that that is a correct statement of the law, but
13 what I'm saying is I don't want it to be charged
14 twice.

15 THE COURT: I don't understand why you are
16 saying it is being charged twice because there is
17 nothing on Page 9 that talks about malice may be
18 conceived at the very moment the fatal blow was
19 given.

20 MS. CLEARY: Okay. But let me -- the specific
21 part I'm talking about on Page 9 says that, malice
22 aforethought does not require that malice exist for
23 any particular time before the act is committed,
24 but malice must exist in the mind of the Defendant
25 just before and at the time of the act is

1 committed.

2 Okay, so that is basically saying that, you
3 know, because obviously a lot of people think if it
4 is murder that it has to be premeditated. So this
5 clarifies for South Carolina jurors that malice can
6 be formed immediately.

7 And then this -- the one on Page 10 says,
8 malice need not exist for any appreciable period of
9 time before the admission of the act or killing
10 occurs. Malice may be conceived at the very moment
11 the fatal blow was given. It is the same charge in
12 substance.

13 THE COURT: Except for the last sentence.

14 MS. CLEARY: And, as I said, it is not that I
15 object -- I don't object to that sentence if that
16 is something they feel like they --

17 THE COURT: Well, I'll move that sentence
18 behind, therefore, there must be a combination of
19 previous evil intent and the act, and then malice
20 may be conceived at the very moment -- well, maybe
21 it needs to go before that. Malice aforethought
22 does not require that malice exist for any
23 particular time before the act is committed, but
24 malice must exist in the mind of the Defendant just
25 before and at the time of the act at the time the

1 act is committed, malice may be conceived the very
2 moment the fatal blow is given.

3 MS. CAMPBELL: That's good, Your Honor.

4 MS. CLEARY: So embody it all in one place.

5 THE COURT: Yes.

6 MS. CLEARY: Yes, that's fine. I just didn't
7 want them thinking it was extra important because
8 it is in two places.

9 THE COURT: And then go into, malice does not
10 necessarily impart ill-will towards the individual.

11 MS. CAMPBELL: Thank you, Your Honor.

12 THE COURT: All right. Is that it?

13 MS. CLEARY: That's it, yes.

14 THE COURT: All right. So we will be ready to
15 start at 9:00 sharp in the morning. If y'all have
16 something that y'all need, I'll try to get here by
17 quarter till or 8:30 if somebody needs anything,
18 but I'd like to start at 9:00 if we can.

19 All right, 9:00 o'clock in the morning.

20 (WHEREUPON, court adjourned for the
21 evening.)

22 NOVEMBER 18, 2011

23 THE COURT: Just quickly, Aaron received a
24 request, an additional request to charge.

25 MS. CAMPBELL: The line about in order for it

1 to meet accident.

2 THE COURT: Okay. And I'm not sure if Ms.
3 Cleary got it. He forwarded it on to you, but she
4 may not have checked her e-mail in the process. So
5 if you have a copy of it, can you give her a copy?

6 MS. CAMPBELL: I can go get it, Your Honor.

7 THE COURT: They want me to charge from State
8 v. Chapman, if you find that the Defendant was not
9 acting in self-defense then he was not acting
10 lawfully at the time of the incident then he cannot
11 claim the shooting was accidental.

12 MS. CAMPBELL: Judge, the only other thing I
13 did notice last night late, because we took out all
14 the language about the inference of malice from the
15 use of a gun, and then so your inference, you talk
16 about express malice in a whole paragraph and then
17 you don't really -- in your charge you don't really
18 talk about inferred malice. If you can just say
19 malice can be inferred from the facts and
20 circumstances surrounding the case. I think that
21 would cover it. Just as a general, you know, just
22 to say, because there is a long definition of
23 express malice, lying in wait, and all that, but
24 then there is only like one line about inferred
25 malice. It would just be a general just to --

1 THE COURT: We took out the part about the
2 deadly weapon.

3 MS. CAMPBELL: And I think the additional
4 language in general.

5 THE COURT: And what is the additional
6 language?

7 MS. CAMPBELL: Just malice may be inferred
8 from the facts and circumstances surrounding the
9 case.

10 THE COURT: Ms. Cleary, any response regarding
11 adding that, malice may be inferred from the facts
12 and circumstances surrounding the case?

13 MS. CLEARY: No, I don't have any objection to
14 that. But in terms of the additional accident, I
15 think your accident charge covers it sufficiently
16 and that would just be overemphasizing one part of
17 accident.

18 THE COURT: Your objection again, I'm sorry,
19 for the record?

20 MS. CLEARY: I believe that your accident
21 charge covers the fact that he has to be acting
22 lawfully.

23 MS. CAMPBELL: I agree.

24 MS. CLEARY: Their charge just serves to
25 emphasize that part further when it says several

1 times the Defendant must be acting lawfully in
2 order for them to find it was an accident.

3 THE COURT: Anything else? You just think --

4 MS. CAMPBELL: The part about to be accident
5 it has to meet the elements of self-defense.

6 THE COURT: To be accident?

7 MS. CAMPBELL: Yes.

8 THE COURT: Is that your -- because you are
9 not arguing self-defense, you are arguing accident,
10 but you are arguing that self-defense has to be --
11 you have to argue as to self-defense in order to
12 get to the accident. Is that --

13 MS. CLEARY: Right. And the law says that
14 there is a distinction between acting in
15 self-defense and arming one's self in self-defense,
16 and we're arguing that the armed himself in
17 self-defense under State v. Burris where it talks
18 about at the time of the shooting was it lawful to
19 arm himself in self-defense. So I don't think that
20 is an accurate statement based on Burris.

21 THE COURT: So if it said, if you find the
22 Defendant did not arm himself in self-defense, then
23 he was not acting lawfully at the time of the
24 incident, then he cannot claim the shooting was
25 accidental?

1 MS. CLEARY: Well, I think you have to say, he
2 did not arm himself at the time of the shooting,
3 because the Burris case makes it very clear that
4 that is the point that you have to look at, to not
5 arm himself at the time of the shooting.

6 MS. CAMPBELL: Your Honor, I think we'll
7 withdraw that. I apologize.

8 THE COURT: All right. And as to the -- just
9 to make sure, since this accident and self-defense
10 and all that is -- we talked in great detail about
11 it, I just want to make sure I'm clear. And I know
12 Ms. Cleary wanted to make sure she is clear on all
13 my rulings. And then also the ruling as to
14 involuntary manslaughter charge.

15 And our discussion yesterday regarding
16 self-defense charges and accident charges would be,
17 it is my understanding it would be included in my
18 instructions to the jury. I did not rule as to the
19 elements of self-defense or the elements of the
20 accident because the State did not object to the
21 instruction. For that reason they will be included
22 in the jury instruction and it was not necessary
23 for me to make a ruling as to whether each element
24 of self-defense was proven with respect to the
25 Defendant being lawfully armed. I just wanted to

1 make sure that the record was clear as to that.

2 With that being said, I still need to make a
3 ruling regarding the Defendant's involuntary
4 manslaughter request to charge and also I guess you
5 requested it be included as a lesser included
6 offense on the jury charge since that was objected
7 to by the State.

8 After careful review of the case law, I
9 decided not to charge the involuntary manslaughter
10 charge in this case. And I will just, for purposes
11 of the record, involuntary manslaughter is the
12 killing of another without malice and
13 unintentionally while engaged in either an unlawful
14 act not amounting to a felony and not naturally
15 tending to cause death or great bodily harm or a
16 lawful act with reckless disregard for the safety
17 of others. And that is from State v. Reese.

18 I find that all the evidence in this case
19 indicates the Defendant was acting unlawfully at
20 the time of the killing, and that as a result he is
21 precluded from any instruction as to involuntary
22 manslaughter.

23 The evidence before the Court based on the
24 Defendant's testimony was that he was engaged in
25 the distribution or selling drugs in the community

1 at the time of the incident, that he was unlawfully
2 in possession of a firearm because he is not
3 allowed to carry a firearm, first and foremost,
4 because he is a felon.

5 All the testimony indicates that at the time
6 of the shooting the Defendant was on the ground --
7 the victim was on the ground and was defeated, and
8 that was the words of the Defendant, and also the
9 witnesses, and that the victim was -- I believe the
10 Defendant stated that he won the fight and that the
11 victim, as far as he knows, that he had no reason
12 to think at that time the victim was armed.

13 Ms. Cleary has indicated that their defense is
14 not self-defense, but rather accident. My ruling
15 is that at the time of the actual shooting the
16 Defendant was unlawfully armed and at the time of
17 the shooting clearly pointing and presenting a
18 firearm or unlawfully possessing a firearm.
19 Moreover, any claim that he was acting lawfully in
20 self-defense is clearly negated by the Defendant's
21 own testimony because he indicated that he was not
22 aware that Anthony carried a weapon. He also
23 indicated in his testimony that he won the
24 altercation.

25 Without any testimony that the victim actually

1 pointed a gun at the Defendant or the Defendant saw
2 the victim with a gun during or around the time of
3 the altercation clearly means that the Defendant
4 would have not been justified in arming himself
5 with a deadly weapon at the time the gun
6 discharged, especially since the Defendant
7 testified that he won the fight and that the victim
8 was on the ground when he got up.

9 I believe in the Mekkler case the Defendant
10 was -- the difference in that case is that the
11 Defendant was arguably lawfully armed because there
12 was testimony that the victim had a weapon at the
13 time of the incident and was acting in a
14 threatening manner.

15 This case was different because at the time of
16 the shooting all the evidence indicates that that
17 Defendant was armed -- that that victim was armed.
18 In this case there is no evidence that the victim
19 was armed.

20 In Burris, evidence showed that two men
21 attacked the Defendant knocking him down and
22 attempted to rob him. Burris drew a gun from his
23 pocket and shot it twice into the ground causing
24 both men to back away from him. While he was
25 attempting to get off the ground, one of the

1 attackers reappeared and came towards him and as he
2 picked up the gun, the gun went off.

3 I think the facts in those cases are clearly
4 different. This case, in relying on Reese, which
5 states that in that case, the Court, the Supreme
6 Court held that when the Defendant was waving the
7 gun around that he was unlawfully pointing and
8 presenting a firearm, which is a felony, which
9 precluded an involuntary manslaughter charge.

10 So that will be my ruling. I have prepared a
11 verdict form to that effect, and I will give you
12 all a copy of that to take a look at before we get
13 started.

14 MS. CLEARY: Your Honor, may I say one thing?
15 I feel like if you are essentially saying as a
16 matter of law that he hasn't proved -- that he
17 hasn't met self-defense, I feel like since we
18 didn't argue it in our charge conference that I
19 need to go through and state on the record why we
20 believe that he does meet the elements of
21 self-defense.

22 MS. CAMPBELL: She has done that over and
23 over.

24 THE COURT: I think you did. And I didn't
25 rule on that. I didn't rule on that. That is why

1 I'm going to charge it, because they didn't object
2 and you offered it.

3 MS. CLEARY: Self-defense is the whole basis
4 of the involuntary manslaughter.

5 THE COURT: Okay. Well, I am going to let you
6 make your record. You can go ahead and make your
7 record as to how -- but you need to go through each
8 element and how he --

9 MS. CLEARY: Okay.

10 THE COURT: But my ruling is based on -- is
11 not -- I am not ruling on the self-defense because
12 y'all agreed to it.

13 MS. CLEARY: Right. And but --

14 THE COURT: Which kind of put me in a curious
15 situation as to involuntary manslaughter.

16 MS. CLEARY: The first element, the Defendant
17 was without difficulty -- without fault in bringing
18 on the difficulty. The cases where this is applied
19 has been like a case where somebody goes up and
20 tries to rob somebody and then that person decides
21 to defend themselves.

22 You know, of course you can't use self-defense
23 in those circumstances, but the law does not
24 require that you not be -- it doesn't require that
25 he, you know, never goes into this neighborhood

1 where he knows that somebody doesn't like him
2 lived. It doesn't require that he stay holed up in
3 Lauren's house or anything like that.

4 The -- and, you know, clearly he can be acting
5 lawfully even though he is in unlawful possession
6 of a firearm.

7 The fact that he is dealing drugs and that
8 sort of thing does not mean that he has to leave
9 himself open by -- and allow himself to be shot in
10 the back if he were to just leave that gun on the
11 ground. And acting lawfully doesn't mean that you
12 are a model citizen.

13 His innocent act, according to his testimony,
14 is he is just walking over there to give Devan a
15 cigar. Devan supports that. Nobody else can
16 refute that. That is not acting wrongfully.

17 He did not say he wanted to fight Amp. And I
18 think that is what you said.

19 THE COURT: No, I didn't say that. I said he
20 said he won the fight. He may not have said, I won
21 it, but he said --

22 MS. CLEARY: Oh, won it. Won it. I'm sorry.
23 I thought you said wanted it.

24 THE COURT: No, that he won.

25 MS. CLEARY: Exactly, yes. Now, you know,

1 they characterize it as he storms over onto his
2 property, but Jamaal's testimony is he was going
3 over the street to give Devan a -- the cigar. He
4 may have accidentally walked on the property, but
5 that is not -- that doesn't mean he is acting
6 unlawfully.

7 And then as far as, you know, if he had gone
8 over there looking for a fight, which is what I
9 thought -- if he had gone over there looking to
10 fight, that would be unlawful, but that is not what
11 any of the testimony says, except for Andina. Only
12 Andina, not any of the other people that were
13 there. And so there is some evidence, and that is
14 the standard. I don't have to prove self-defense,
15 I have to show some evidence of self-defense in
16 order to get the involuntary manslaughter charge.

17 THE COURT: What about the duty to retreat?

18 MS. CLEARY: I was going to imminent danger.

19 THE COURT: I'm sorry. Oh, yes, go to
20 imminent danger, threat to harm.

21 MS. CLEARY: Okay. He must show he is in
22 actual imminent danger or actual belief of imminent
23 danger. He does not have to show that Amp had a
24 gun, obviously, but he testified that he was afraid
25 of Amp because he knew that Amp was friends with

1 Richard, a guy who bragged about killing people and
2 had a teardrop tattoo and that he had bad blood
3 with.

4 And then he testified that Amp storms up on
5 him. He pulls out the gun to try to scare him off
6 but he is not scared. That is scary. That is a
7 reasonable fear that this guy is dangerous.

8 The prior encounter with Richard, knowing
9 Richard is friends with Amp, the fact that Amp was
10 angry and storming towards him, that Amp would not
11 be scared away by the gun, and he didn't know
12 whether Amp had a gun or not, that goes to whether
13 he believed he was in imminent danger.

14 And then acting on appearances, he
15 testified -- I mean, and I think all that sort of
16 goes to the circumstances that he was in. And then
17 I think you also have to look at the point that he
18 picked up that gun the second time. The law does
19 not require him to leave that gun on the ground and
20 let Andina, who has already picked up the gun and
21 shown it, she has pointed it and threatened people,
22 or Amp, who has already shown he is not afraid of
23 the gun, the law does not require him to leave that
24 gun on the ground and run and get shot in the back.
25 No matter how, you know, unsavory of a character he

1 is, it is not open season on felons.

2 So at that point, when he picks up the gun off
3 the ground, he clearly has a reason to fear for his
4 life. He is just -- our point about him beating
5 Amp is now Amp has a motive -- has a reason to want
6 to kill him, not -- he doesn't have a reason to
7 want to kill Amp, he has won the fight, but Amp has
8 a reason to want to come up and kill him. So he
9 better get that gun and get out of there or he is
10 going to get shot in the back. And Andina's
11 actions go to that as well..

12 As far as no other way to avoid, when he arms
13 himself at that point, there was no other way to
14 avoid it. I mean, he can run, but the law doesn't
15 require that he leave the gun there, as I said.

16 And the law doesn't require that, you know, he
17 has to avoid any potential bad situation that if he
18 has bad blood with somebody he can't, you know, go
19 to that neighborhood. That is just not what the
20 law requires. That is not -- I mean, so I believe
21 that he in this situation, at the time of the
22 shooting particularly, that there was no way to
23 avoid.

24 And so those are the elements of self-defense
25 that we believe we presented some evidence to

1 support. And that is why we're entitled to the
2 involuntary manslaughter charge.

3 The Reese case does not apply because they are
4 not trying to do self-defense. He was in unlawful
5 possession pointing and presenting and could not
6 possibly -- they didn't even claim self-defense.
7 So it is self-defense that makes the possession,
8 the illegal possession lawful. And that is what
9 Burris makes clear. This guy Burris had no right
10 to have a gun.

11 THE COURT: Okay.

12 MS. CLEARY: Thank you.

13 THE COURT: All right, thank you. Anything in
14 response?

15 MS. CAMPBELL: No, ma'am.

16 THE COURT: All right. Let's bring them in.
17 Have y'all had a chance to look at the verdict
18 form? I'll probably take, depending on how long
19 y'all are, I will probably take a break in between
20 the charge conference -- I mean, before the charge.
21 I'll take a break after y'all close and let them
22 stretch or something.

23 MS. CAMPBELL: Okay.

24 THE COURT: And Aaron will get -- just one
25 quick question. I just want to be clear on

1 something.

2 On Page 15, the part about accident.

3 Yesterday I think there was some objection to using
4 that example from the State because it was so
5 similar. For example, if a person is lawfully
6 armed in self-defense and a gun accidentally
7 discharged the defense of accident would apply.

8 I think at one point y'all said y'all
9 objected, and then Aaron seemed to think that y'all
10 said, no, that is okay. I thought we took it out.
11 It is okay?

12 MS. CAMPBELL: (Nods affirmatively.)

13 THE COURT: All right. You can bring them in.
14 (WHEREUPON, the jury came into open
15 court at approximately 9:34 a.m.)

16 THE BAILIFF: The jury is seated, Your Honor.

17 THE COURT: All right, good morning, ladies
18 and gentlemen of the jury.

19 At this time we will have closing arguments
20 from the parties in this case. First you will hear
21 from Ms. Campbell, on behalf of the State; then you
22 will hear from Ms. Cleary, on behalf of the
23 Defendant; and then you will hear final closing
24 arguments from Ms. Simpson, on behalf of the State.

25 Thank you.

1 Your lunch may be back there also, but before
2 we eat, before you start eating, let me just make
3 sure I don't have to bring you all back in here.

4 All right. Thank you.

5 (WHEREUPON, the jury retires to the jury
6 room at 1:08 p.m.)

7 THE COURT: Any exceptions or objections to
8 the jury charge?

9 MS. CAMPBELL: No, Your Honor.

10 MS. CLEARY: No, other than my previous ones,
11 which I hope you won't make me reargue.

12 THE COURT: And they have been noted for the
13 record, your earlier objections, and I'm not sure
14 if Ms. Campbell had any earlier objections, but any
15 earlier objections are noted and preserved for the
16 record.

17 All right. If you all want to get with Debbie
18 and make sure we have everything to go back, we'll
19 go ahead and let them deliberate. And I don't have
20 a problem with them eating while they deliberate.
21 I don't know if y'all have a problem.

22 (WHEREUPON, the jury began deliberations
23 at 1:16 p.m.)

24 THE COURT: They sent a note saying they have
25 a verdict. I will go ahead and we'll bring them in

1 in a second, but before they come in, I want to let
2 everyone know that is in the audience that if, for
3 whatever reason, you cannot control your emotions,
4 I am going to give you an opportunity to leave at
5 this time. And there will be no outbursts, no
6 yelling or screaming. And if you feel that you
7 won't be able to control your emotions, I am going
8 to ask that you leave out of the courtroom at this
9 time.

10 Once the jurors come back with a verdict, I
11 will -- once they come back with a verdict we will
12 dismiss them first. No one is to leave the
13 courtroom before they leave the courtroom. And
14 then I will dismiss you all after they leave out of
15 the courtroom.

16 All right. Anything else before I bring them
17 in?

18 You can bring them in.

19 (WHEREUPON, the jury came into open
20 court at approximately 4:34 p.m.)

21 THE BAILIFF: The jury is seated, Your Honor.

22 THE COURT: All right. Mr. Foreman, it is my
23 understanding that the jury has reached a verdict,
24 is that correct?

25 THE FOREMAN: That's correct.

1 THE COURT: All right. And will you pass it
2 up to the bailiff?

3 (Court views verdict.)

4 THE COURT: All right, I am going to ask the
5 clerk to publish the verdict.

6 VERDICT

7 THE CLERK: Indictment Number 2010-GS-40-829.
8 The State of South Carolina versus Jamaal Hinson.
9 It is an indictment for murder.

10 As to charge of murder, we, the jury,
11 unanimously find the Defendant guilty.

12 This is signed, Foreperson, Juror Number 284.

13 Mr. Foreman, is this your verdict and the
14 verdict of the entire jury?

15 THE FOREMAN: Yes, it is.

16 THE COURT: All right. Anything else before I
17 release the jury? Ms. Campbell?

18 MS. CAMPBELL: No, ma'am.

19 THE CLERK: Ms. Cleary?

20 MS. CLEARY: No.

21 THE CLERK: All right. Ladies and gentlemen
22 of the jury, I would like to thank you all for your
23 service on the jury this week. I know it has been
24 a very, very long week, and I appreciate you all
25 being patient and attentive during the course of

1 offenses. He did have pending in our office at the
2 time a PWID I believe marijuana and the assault
3 charge, which was referred to as well.

4 Your Honor, I think the victim's family would
5 like to address the Court at the appropriate time
6 whenever you feel it would be appropriate.

7 THE COURT: All right. And I guess I need,
8 Ms. Cleary, do you have any motions?

9 MS. CLEARY: Oh, yes. I would just like to
10 renew my motions for directed verdict and all the
11 other motions previously made in the trial.

12 THE COURT: All right. I think you did a good
13 job of preserving them earlier, your other motions.

14 As to the motion for -- you said directed
15 verdict and a new trial?

16 MS. CLEARY: Yes.

17 THE COURT: You wanted to go into your motion
18 for a new trial?

19 MS. CLEARY: My motion would just be based on
20 the other objections that I made during the trial.
21 Do you want me to go into all those?

22 THE COURT: It is up to you.

23 MS. CLEARY: I think and hope the record is
24 preserved.

25 THE COURT: You are going to rely on your

1 arguments?

2 MS. CLEARY: Yes.

3 THE COURT: Thank you. The motion for
4 directed verdict and motion for new trial would be
5 denied. Thank you.

6 Yes, ma'am?

7 MS. CAMPBELL: Is it time for the victims to
8 address the Court?

9 THE COURT: Yes, ma'am, I will be glad to hear
10 from her.

11 MS. CAMPBELL: This is the victim's mother,
12 Your Honor. She also has handed up some
13 photographs of the victim she wanted me to show you
14 so you can know that he was a real person. I don't
15 know if you think that is appropriate or not.

16 THE CLERK: Any objection? Do you want to see
17 them?

18 MS. CLEARY: I have no -- without objection.

19 THE COURT: Yes, ma'am, I'll be glad to hear
20 from you.

21 VICTIM'S MOTHER: Your Honor, on
22 November 24th, 1986, we were blessed to have a
23 beautiful baby boy, and we named him Anthony.

24 Anthony is the oldest out of seven children
25 out of our seven children. Anthony was a joy to

1 to be. So I just beg for your mercy.

2 THE COURT: All right, thank you.

3 Anything else from the State?

4 MS. CAMPBELL: No, ma'am.

5 THE COURT: All right. To the Salley family,
6 I extend my condolences to you and your family for
7 your loss. And I'm not going to give any long
8 remarks, but I think it is always unfortunate when
9 a young person loses their life. And maybe more so
10 I guess to the other young people that are in the
11 audience.

12 Something Jamaal said yesterday was that when
13 he shot Anthony he had no idea that he was going to
14 die because somebody else had gotten shot in the
15 stomach and they got up and they were able to walk
16 again. It is not a video game. It is not TV. It
17 is not a movie. It is real. Guns are real. And
18 guns kill people. And you all need to understand
19 that, if you have not understood that from being
20 here today.

21 With that being said, as to Indictment
22 2010-GS-40-829, sir, I am going to sentence you to
23 the State Department of Corrections for 40 years.
24 I'm sure your attorney will be able to explain to
25 you the amount of time that you'll have to serve.

WITNESSES

(S) Lindler - RCSD

ARREST WARRANT NUMBER

M237686

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

APR 14 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-40-

829

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

April TERM 2010

154

THE STATE
vs.

Jamaal Hinson

Indictment for

MURDER

SC Code: 16-3-10

CDR Code: 0116

Class FEL/EXM(V)

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

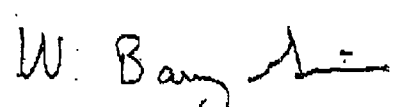
INDICTMENT

At a Court of General Sessions, convened on April 14, 2010, the Grand Jurors of Richland County present upon their oath:

MURDER

That Jamaal Hinson did in Richland County on or about January 16, 2010, feloniously, willfully and with malice aforethought, kill one Anthony Salley by means of a gunshot wound and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

VS.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2010 -GS- 40 - 829

AW#:

M237686

Date of Offense:

1-16-10

S.C. Code §:

16-3-10

CDR Code #:

0116

AKA:

Race:

Black

Sex:

Male

Age:

DOB:

SS#:

Address:

City, State, Zip:

Columbia, SC 29229

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

Murder

in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 77500
 Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-289 (DUI Breath Test)	\$500	\$
\$35.13 (Public Def/Prob)	\$25	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
\$90.11 TP (SCCJ Surcharge)	\$5	\$
TOTAL	\$	\$

Court Reporter:

Jeanette McBride
Clerk of Court Deputy Clerk

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____

\$25 \$

☐ Appointed PD or appointed other counsel, §35.13 TP☐ Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2161

11-18-11

RECEIVED

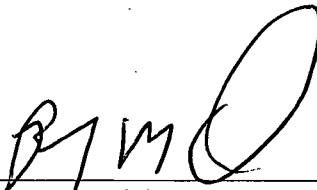
NOV 22 2011

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 7th, 2013



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Richland County

DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

RECEIVED

JUN 07 2013

SC Court of Appeals

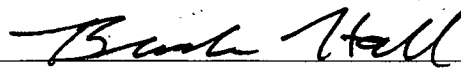
V.

JAMAAL HINSON,

APPELLANT

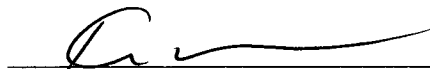
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of June, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 7th day of June, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013