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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Richland County

Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL JUAN SMITH,

APPELLANT

APPELLATE CASE NO 2015-001905

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT #50 (VIDEO), STATE'S EXHIBIT #58 (VIDEO), STATE'S EXHIBIT #59 (VIDEO), STATE'S EXHIBIT #60 (VIDEO), STATE'S EXHIBIT #63 (VIDEO), STATE'S EXHIBIT #64 (VIDEO), STATE'S EXHIBIT #65 (VIDEO), STATE'S EXHIBIT #70 (VIDEO), STATE'S EXHIBIT #74 (CD), STATE'S EXHIBIT #79 (PHOTO), STATE'S EXHIBIT #80 (PHOTO), STATE'S EXHIBIT #89 (JAIL PHONE CALLS), STATE'S EXHIBIT #101 (CD), DEFENDANT'S EXHIBIT #1 (PHOTO), DEFENDANT'S EXHIBIT #2 (PHOTO), DEFENDANT'S EXHIBIT #3 (PHOTO), DEFENDANT'S EXHIBIT #6 (VIDEO ENHANCEMENT), DEFENDANT'S EXHIBIT #21 (CD).

1 like to --

2 (WHEREUPON, Defendant's Exhibit No. 23 was
3 marked for identification only.)

4 BY MS. ZMROCZEK:

5 Q Oh, I'm going to show you, excuse me, what's been
6 marked as Defendant's 23. Do you recognize that?

7 A Yes, ma'am. Defendant's Exhibit 23 is a copy of my
8 CV.

9 MS. ZMROCZEK: Your Honor, at this time, we would
10 like to move Mr. Robinson in as an expert in ballistics
11 and enter Defendant's 23 into evidence.

12 THE COURT: Voir dire?

13 MS. CAMPBELL: I just need to see the CV.

14 MS. ZMROCZEK: Your Honor, it was e-mailed to them
15 two weeks ago.

16 MS. CAMPBELL: No objection.

17 THE COURT: Do you want to voir dire, Ms. Campbell?

18 MS. CAMPBELL: Not at this time.

19 THE COURT: All right.

20 Ladies and gentlemen, this witness will be an expert
21 in the area of ballistics. He will be allowed to give
22 opinion testimony in that area. That does not mean that
23 you have to accept his opinion, but it is evidence for you
24 to use in any way that you see fit and give it the weight
25 and credibility you believe is appropriate as you are

1 required to do with each and every witness that appears
2 before you.

3 And Defendant's Exhibit No. 23 is admitted without
4 objection.

5 Ms. Zmroczek.

6 MS. ZMROCZEK: Thank you.

7 (WHEREUPON, State's Exhibit No. 23 was admitted
8 into evidence.)

9 BY MS. ZMROCZEK:

10 Q When were you first contacted about this case?

11 A I believe it was --

12 Q Approximately.

13 A -- last Wednesday or Thursday.

14 Q And what were you asked initially to do in this case?

15 A I was asked to examine some x-rays to see if there
16 was -- if I was able to determine the caliber of a bullet
17 from the x-rays and what was my opinion if someone were to
18 say if they could tell that.

19 (WHEREUPON, Defendant's Exhibit No. 24 was
20 marked for identification only.)

21 BY MS. ZMROCZEK:

22 Q Let me show you what's been marked as Defendant's
23 Exhibit 24. Were those some of the x-rays and scans that
24 you were asked to review?

25 A Yes, ma'am.

1 MS. ZMROCZEK: Your Honor, at this time, we'd like to
2 move Defendant's 24 into evidence?

3 MS. CAMPBELL: Without objection.

4 THE COURT: Without objection.

5 (WHEREUPON, Defendant's Exhibit No. 24 was
6 admitted into evidence.)

7 BY MS. ZMROCZEK:

8 Q You were asked to look at some x-rays and scans
9 because -- to be able to make a determination as to
10 determine what kind of bullet. Are you able to do that?

11 A No, ma'am.

12 Q Tell the jury why you're not.

13 A No one is able to determine that because of the
14 situation with x-rays. They have to be taken exactly
15 73 inches away from the bullet. In order to do that, you
16 have to take a side x-ray, determine how far the bullet is
17 inside of the body. So when you take the x-ray, if you
18 don't take it correctly, you can magnify the bullet and
19 make it larger, so it's imperative that you take it at a
20 certain distance.

21 Likewise, there's about 16 calibers of bullets that
22 are within the range of bullets that were -- this
23 particular bullet looks like a .40-caliber, so there's
24 about 16 other bullets that it could be in that range.

25 Q Did you prepare a chart to help you explain that to

1 the jury?

2 A Yes, ma'am.

3 (WHEREUPON, Defendant's Exhibit No. 25 was
4 marked for identification only.)

5 BY MS. ZMROCZEK:

6 Q I'm showing you what's been marked as Defendant's 25.
7 Is that the chart you prepared?

8 A Yes, ma'am.

9 Q Would that assist you in your testimony?

10 A Yes, ma'am.

11 MS. ZMROCZEK: Your Honor, at this time, we'd like to
12 admit Defendant's 25 into evidence?

13 MS. CAMPBELL: With the caveat it doesn't represent
14 any ammunition in this case.

15 MS. ZMROCZEK: Okay.

16 MS. CAMPBELL: Okay. That's fine.

17 THE COURT: Without objection.

18 (WHEREUPON, Defendant's Exhibit No. 25 was
19 admitted into evidence.)

20 BY MS. ZMROCZEK:

21 Q Mr. Robinson, if you would step down off the stand,
22 but make sure --

23 MS. ZMROCZEK: Your Honor, may he?

24 THE COURT: Keep your voice up. You can step down,
25 sir. Sure.

1 THE WITNESS: Okay.

2 BY MS. ZMROCZEK:

3 Q Explain to the jury what you mean when the bullets
4 are so similar.

5 A The question here was could I tell if this bullet was
6 a .40-caliber bullet. The shape of the bullet, you can
7 see is a .40-caliber bullet. This is a hollow point.
8 It's got a nice flat nose to it. I took all these other
9 pictures of these different calibers to show you how
10 similar all the bullets were from nine millimeters up to
11 44 Magnum and .40-caliber bullets.

12 A 40, the diameter of the base of the bullet measures
13 .401 inches. That's how you measure that. That's why
14 it's called a .40-caliber. If go all the way up to nine
15 millimeter, it's .045. So the difference between this is
16 about four hundredths of an inch, four hundredths. If I
17 go the other way and go up to a 454 assault, it's about
18 .051 at the base of the bullet, so it's five hundredths.

19 So the difference between all these bullets is about
20 five hundredths of an inch. So for anyone to say they can
21 look at an x-ray and tell you that they know for a fact
22 that that is a .40-caliber, they're preposterous.

23 Q You pointed out that it was a hollow point. Why is
24 that significant?

25 A Well, it was supposed to be a hollow point because I

1 believe the type of ammunition that was used in the gun by
2 Mr. Smith had a hollow point cartridge, that was a
3 Winchester. So the bullet that was recovered or is in the
4 body of the victim is supposed to be a .40-caliber
5 Winchester hollow point bullet. I don't know that it's a
6 hollow point. That's just the testimony that it's a
7 hollow point.

8 Q What would you expect to see?

9 A Well, I would have liked to have seen if it was a
10 hollow point bullet from Winchester, it would have had
11 more expansion. It would have flattened out, created a
12 wider wound track. I don't see any expansion with that
13 bullet, so I'm not even sure it's a hollow point bullet.
14 Hollow points are designed to enter and they open up two
15 or three times their normal size. I don't see any
16 mushrooming or expansion on that bullet.

17 Q Were you able to review some of the medical records
18 as well?

19 A Yes, ma'am.

20 Q And what was significant about the -- in particular,
21 the broken rib?

22 A The angle of the bullet is kind of going down --

23 MS. CAMPBELL: Objection, Your Honor. He's now
24 reviewing medical records and giving opinions?

25 THE COURT: Right.

1 MS. ZMROCZEK: I can ask him the basis for that.

2 Your Honor, I can ask him to lay a foundation to explain
3 how he's able to discuss that.

4 THE COURT: Okay.

5 BY MS. ZMROCZEK:

6 Q Have you had an opportunity -- what, if any,
7 opportunities have you had to determine bullets and their
8 affect on human bodies?

9 A During my 10 years with the Georgia Bureau of
10 Investigation, that was part of my job, to go down and
11 examine gunshot wounds with the medical examiners,
12 determine the trajectory of the bullet through the body,
13 the damage done to the body, range of fire. So it was
14 well within my scope to be able to look at gunshot wounds
15 and help and aid the medical examiner in their
16 determinations.

17 THE COURT: Okay. I'll allow the question.

18 BY MS. ZMROCZEK:

19 Q So what, if any -- what significance did the broken
20 7th rib have?

21 A Based on the orientation of the bullet and its
22 downward angle into the spine, it was critical to
23 determine why would it come to rest in such a position.
24 Well, when it strikes the rib, the bullet wants to go at
25 the path of least resistance. That's what it's trying to

Chris Robinson - Direct by Ms. Zmroczek

1 find at all times. So when it strikes the rib, it would
2 just be easy to turn down, so it just finds the path of
3 least resistance.

4 So I would like to know did it crack the rib, did it
5 shatter the rib? These are important to me because that
6 helps me kind of look at bullets to determine their energy
7 and their force. A larger bullet would probably just
8 shatter the rib and continue forward. A smaller caliber,
9 if it was a nine millimeter, it might just deflect off the
10 rib, which it did in this case. But I can't tell you
11 exactly the caliber bullet it was.

12 Q I want to move to -- you've seen the videos that have
13 been provided in this case?

14 A Yes, ma'am.

15 Q And you've been told that there's testimony that --
16 first of all, let me ask you this. Tell the jury, would
17 they see a muzzle flash before they hear it -- or before
18 -- explain to the jury what a muzzle flash is.

19 A Muzzle flash would be when you fire the bullet, you
20 would see the flash of the powder being ignited inside the
21 gun. So therefore, you would see a muzzle flash if it was
22 at night.

23 Q And the jury has heard a little bit about a dropped
24 gun. Explain how that works.

25 A Depending on the type of weapon, if you have a poorly

1 made weapon, when you drop a gun, such as a Lorcin or a
2 Bryco just has a firing pin and it has a piece of metal
3 that's pulling the firing pin back. If you drop that gun
4 on its top, the inertia will cause the bar to come away
5 from the firing pin and allow the firing pin to come
6 forward. So if you have certain types of weapons that are
7 poorly made, you can drop them and cause them to fire by
8 just dropping them on the ground.

9 Q Tell the jury what difference you would see between
10 an amber from a cigarette and a muzzle flash from a gun.

11 A It would be extremely different. When you fire a
12 weapon, it's going to burn up very quickly, be a quick
13 little flash. Ambers from a cigarette, when you throw a
14 cigarette down, you would expect to see the ambers coming
15 away from the cigarette. It would be much brighter. It's
16 just going to be a very quick muzzle flash.

17 Q And did you prepare an exhibit to explain distance
18 that bullets would travel?

19 A Yes, ma'am.

20 (WHEREUPON, Defendant's Exhibit No. 26 was
21 marked for identification only.)

22 BY MS. ZMROCZEK:

23 Q I'm going to show you what's been marked as
24 Defendant's Exhibit 26 and ask you if you recognize that?

25 A Yes, ma'am, I do.

1 Q Would that assist you in explaining your conclusions
2 to the jury?

3 A Yes, ma'am.

4 MS. ZMROCZEK: Your Honor, at this time, we'd like to
5 move Defendant's 26 into evidence?

6 MS. CAMPBELL: No objection.

7 THE COURT: Okay.

8 (WHEREUPON, Defendant's Exhibit No. 26 was
9 admitted into evidence.)

10 BY MS. ZMROCZEK:

11 Q If I could ask you to step down one more time and
12 keep your voice up. Explain to the jury what this is.

13 A What you see here is the red dot would be the victim.
14 The individuals were in the middle here about 50 feet away
15 from the victim. Mr. Smith is over here about 115 feet
16 away from the victim in the video. When the first
17 so-called muzzle flash that is seen in the middle of the
18 video goes off, the victim begins to flinch about .03 to
19 .05 seconds after you see the flash. You see a second
20 flash on the edge of the screen, which I guess is
21 Mr. Smith firing his weapon, and again, firing in this
22 direction.

23 I want you to understand a nine millimeter or a 40
24 are both traveling at about 1,000 feet per second. It's
25 critical about the flinching of the victim and how she

1 reacts to being struck by the bullet because at the
2 50-foot mark, it takes about .05 seconds. That's how she
3 reacts in that amount of time.

4 With Mr. Smith, it would take about a 10th to almost
5 a 12th of a second to react to being hit. So therefore,
6 it's much more likely that the bullet that struck her was
7 fired from these individuals in the middle when the gun
8 falls to the ground and you see the muzzle flash than it
9 would be from Mr. Smith's gun.

10 Q Thank you.

11 MS. ZMROCZEK: Thank you. Please answer any
12 questions that they have for you.

13 CROSS-EXAMINATION

14 BY MS. CAMPBELL:

15 Q Mr. Robinson?

16 A Yes, ma'am.

17 Q I don't think we've ever met?

18 A No, ma'am.

19 Q I want to talk a little bit about your background and
20 your training. You mentioned that you worked in Atlanta
21 as a crime lab director for a period of time?

22 A Yes, ma'am.

23 Q And what years did you work there, sir?

24 A From 2008 to 2010.

25 Q 2008 to 2010?

1 A Yes, ma'am.

2 Q And when did you leave Atlanta?

3 A September of 2010.

4 Q September?

5 A Yes, ma'am.

6 Q And before that, I believe you said you had 10 years?

7 A Ninety-eight to 2008.

8 Q Thank you.

9 A With the GBI.

10 Q And you said today that you have testified how many
11 times?

12 A Five hundred ninety-eight.

13 Q Total?

14 A Yes, ma'am.

15 Q And you've testified that how many of those were for
16 the State?

17 A Five twenty.

18 Q And 72 -- was it --

19 A Seventy-eight.

20 Q Seventy-eight. So you're familiar with courtrooms,
21 needless to say, 598 times, that's 600 times?

22 A Yes, ma'am.

23 Q And do you remember talking about -- or testifying in
24 a case of State vs. Marcus Daniel in December of 2003?

25 A No, ma'am.

1 Q Because in December of 2003 when you've been doing
2 this for five years, you testified you had testified 137
3 times?

4 A Okay.

5 Q And then do you remember testifying in the State vs.
6 Todd Russell in May of 2006?

7 A No, ma'am.

8 Q You don't remember?

9 A No.

10 Q And you stated that you've done 174 times. So in
11 that two-and-a-half year period, there's a difference of
12 about 40. Would you agree with that?

13 A Yes, ma'am.

14 Q But then in November of 2013, you had testified 555
15 times. Do you remember testifying to that in the State of
16 Mississippi vs. Brown?

17 A Yes, ma'am.

18 Q So from 2006 to 2013, seven years, you testified 381
19 times. Would you agree with that, the numbers?

20 A That's the math, yes, ma'am.

21 Q And when you testify for court, I mean, generally,
22 are you testifying more than once a week or twice a week?

23 A It would just depend on what I was doing at that
24 time. At the APD crime lab, I was the only firearm
25 examiner, as well as the crime lab director, so I

1 testified a great deal for the Atlanta Police Department.

2 Q Well, let's get one thing straight, you're gone
3 in 2010 and then you're just working for defense, right?

4 A Correct.

5 Q So you would agree with me that you don't testify as
6 much for the defense?

7 A That's correct.

8 Q But if you testify once a week for seven years,
9 that's 364 times. And again, three of those years is for
10 the defense. So doing the math, you would have to have
11 testified at least once a week with no vacations?

12 A Okay.

13 Q To reach that number?

14 A Okay.

15 Q Why did you testify so much more exponentially after
16 2006?

17 A Well, maybe I was wrong in 2006. Maybe I was
18 incorrect in that number, but I know for a fact -- I went
19 back and tracked them all from GBI. I know it's 598. So
20 all I could tell you is maybe I was wrong on the dates on
21 the 137 and 174, but I know for a fact it's 598 today.

22 Q Well, let's talk about you being wrong.

23 A Okay.

24 Q Back at the Georgia Bureau of Investigation when you
25 worked there, in 2000, you were suspended for jeopardizing

1 the security of the system by improper use of computer
2 hardware and software?

3 A Yes, ma'am, we used each other's passwords.

4 Q And then in 2000 in October of that year, you were
5 officially reprimanded by them for issuing an incorrect
6 report concerning muzzle and target distance?

7 A Yes, ma'am, that was one of my first cases.

8 Q In October of 2000, you'd been three years almost?

9 A Ninety-eight -- July of '98 is when I started.

10 Q You initially said the gun was fired from one inch.
11 It was a contact shot, right?

12 A Correct.

13 Q And then you changed it to saying it was not a
14 contact shot, it was fired from three feet or longer?

15 A Correct.

16 Q And you said the mistake was because you were
17 pressured by police to give them an answer?

18 A Yes, ma'am. I didn't get the autopsy report like I
19 was supposed to. It was one of the first cases I ever
20 worked.

21 Q Well, let's talk about in 2001. You were testing in
22 the lab at GBI and you shot yourself in the hand?

23 A Yes, ma'am, it was a faulty weapon. I had pulled the
24 trigger and it didn't fire. I grabbed the slide and the
25 gun went off without me pulling the trigger and it went

1 through the soft part of my hand.

2 Q And then you left there and you went in 2008 to the
3 Atlanta Police Department?

4 A Yes, ma'am.

5 Q Why did you leave the Atlanta Police Department in
6 2010?

7 A I was let go because I bought a piece of equipment
8 that they said I didn't have authorization, but I had the
9 signatures of both my major and my chief. I've sued the
10 City. It's been going on five years now. I'm in the
11 appeal process right now against the City for wrongful
12 termination.

13 Q Good. I'm glad you went into that. Basically, you
14 were terminated and then you sued the City. And tell them
15 why you sued the City?

16 A For wrongful termination.

17 Q You said you were wrongfully terminated because of
18 your race?

19 A Correct.

20 Q That you were being discriminated against because you
21 were white?

22 A Correct.

23 Q Are you familiar with a Major Darryl Tollison?

24 A Absolutely.

25 Q He gave a deposition on August 13th, 2013?

1 A Yes, ma'am.

2 Q He said the biggest issue we had with Mr. Robinson is
3 not that he needed to be disciplined, it came down to
4 credibility when you're a crime lab manager and that
5 Mr. Robinson had credibility issues as it related to
6 testifying in court?

7 A No, that's not true at all. That's not what he said
8 about credibility in court about my credibility, about me
9 buying equipment without getting proper authorization.
10 However, we found out that he falsified his -- well, he
11 perjured himself when he gave his deposition, so
12 therefore, there was no question about my credibility and
13 my work ethic.

14 Q Okay. We'll get back to -- you're familiar with some
15 of your testimony that's on Youtube?

16 A Sure.

17 Q But after he gave that deposition, then summary
18 judgment was granted for the City of Atlanta
19 September 17th of 2014, by a United States District Court
20 Judge?

21 A Correct.

22 Q And that after you were fired from the Atlanta Police
23 Department, the Fulton County District Attorney, which
24 would be the equivalent of the solicitor's office in
25 Atlanta, district attorney, issued a statement that

1 evidence in more than two dozen cases would have to be
2 retested because of you?

3 A Yes, ma'am.

4 Q Because you couldn't be trusted in court?

5 A No, ma'am, that's just standard procedure. When
6 you're let go, they want to make sure that your work -- I
7 worked those cases with GBI. They wanted to go back to
8 have the work retested to make sure it was all correct.
9 All my work was reviewed when I was at the Atlanta Police
10 Department by Kelly Flythe who's done it for 45 years. So
11 none of my work is being called into question.

12 Q But you agree your lawsuit was dismissed by a federal
13 judge?

14 A And we're appealing it right now, that's correct.

15 Q Okay. Well let's talk about when you testified last
16 month, State of Georgia vs. Jamie Hood. You testified
17 that the Atlanta Police Department found that you lacked
18 maturity and the skill set to be trusted as the manager of
19 the crime lab?

20 A No, I didn't testify to that. That's what Ken
21 Mullen, the DA read that. That's what they said were the
22 reasons for me being terminated.

23 Q Because you were terminated from the Atlanta Police
24 Department because of grave concerns regarding unethical
25 conduct, illegal purchases and reckless disregard from

1 following proper procedures and protocols. Do you
2 remember that?

3 A Yes, ma'am.

4 Q And that the Atlanta Police Department had found your
5 actions and poor decisionmaking compromised the integrity
6 of the work of the crime lab and the Atlanta Police
7 Department?

8 A But it should be noted that in July of the same year,
9 I got an outstanding, the highest you can get on your job
10 performance, and then two months later they fired me,
11 so...

12 Q And that lawsuit has been dismissed where you said
13 you were discriminated against because you're white. You
14 also testified last month that you had absolutely no
15 training from 2007 to the present?

16 A Correct, but I do take proficiency tests on a yearly
17 basis.

18 Q And then in 2000, was it 10, that you declared
19 bankruptcy?

20 A Sure.

21 Q Let me ask you this, you were contacted last week
22 when?

23 A Wednesday or Thursday.

24 Q Of last week?

25 A Yes, ma'am.

1 Q So about four or five days ago?

2 A Sure.

3 Q And at that point, you were retained by defense
4 counsel; is that correct?

5 A Yes, ma'am.

6 Q And when you were retained, you said you viewed the
7 video?

8 A Yes, ma'am.

9 Q And what else did you review?

10 A I reviewed x-rays, medical records, police reports,
11 interviews.

12 Q Okay. And I never got your report. Where is it?

13 A I didn't do a report.

14 Q And where was your review done and where was your
15 testing done?

16 A My testing was done at my home in Sharpsburg,
17 Georgia. My review was done in Sharpsburg, Georgia.

18 Q Where is Sharpsburg, Georgia?

19 A It's about 30 minutes below Atlanta.

20 Q And are you getting paid for your testimony?

21 A Yes, ma'am.

22 Q And how much do you get paid for your testimony?

23 A \$1,200.

24 Q \$1,200?

25 A Yes, ma'am.

1 Q So between Wednesday and today, you've earned \$1,200.
2 And when did you first tell defense counsel of your
3 opinions in this case?

4 A Probably last Wednesday or Thursday when she called
5 me.

6 Q And are you aware that last Wednesday or Thursday
7 when she called you -- so you put in a day's worth of work
8 before you had an opinion?

9 A Yes, ma'am.

10 Q For \$1,200?

11 A And me testifying.

12 Q Okay. Does that include your testifying or do you
13 get paid more?

14 A No, ma'am. It includes me testifying.

15 Q And at that point, you told her unequivocally in
16 reviewing the x-ray, because you only reviewed the x-ray,
17 that there was no way this was a hollow point?

18 A No. I told her there was no way that anyone could
19 say that's a .40-caliber.

20 Q Just to be correct, are you a trauma surgeon?

21 A No, ma'am.

22 Q How many people have you operated on and removed
23 bullets?

24 A None.

25 Q How many thousands of gunshots wounds have you

1, treated?

2 A None.

3 Q Were you the one that actually went and did the
4 surgery on Martha Childress, repaired all her injuries and
5 looked and saw that bullet?

6 A No, ma'am.

7 Q Do you know what this is even called?

8 A I believe it's a radiograph.

9 Q Have you heard the term CAT scan, CT scan?

10 A Sure.

11 Q What is this called?

12 A X-ray.

13 Q Are you familiar with why this is more significant
14 than this when you first rendered your opinion with the
15 x-ray, the only thing you have looked at?

16 A The x-ray is more critical to, a forensics
17 examination.

18 Q Well, you would agree with me more information is
19 better, isn't it?

20 A Absolutely.

21 Q And you would agree with me that this is mushroomed
22 down here when you see the actual CT scan, which gives a
23 three-dimensional?

24 A No, ma'am, I don't know what that is. I can't tell
25 what that is.

1 Q Because you aren't a trauma surgeon?

2 A No, ma'am.

3 Q In your CV, which she entered, you say that you are
4 responsible for rendering detailed written reports and
5 testimony. You didn't think it was important to write a
6 report?

7 A No, ma'am, I wasn't asked to write a report.

8 Q But you would agree with me that in the forensic
9 world, it's important there are protocols in place?

10 A Sure.

11 Q And labs are accredited for a reason, right?

12 A Yes.

13 Q To control the quality so that when people come to
14 court, they can't just try to help out and testify to
15 whatever; is that correct?

16 A Sure.

17 Q And those things don't happen with you, do they?

18 A I mean -- I don't understand the question.

19 Q Do you have any accreditation, like ASCLD, anybody
20 like that?

21 A No, ma'am, I just --

22 Q Do you even have a laboratory?

23 A Yes. I have a laboratory, yes.

24 Q And who all works in your laboratory?

25 A Myself.

1 Q So there's no peer review?

2 A Yes, I have peer review, yes.

3 Q Who does your peer review?

4 A Kelly Flythe, a 45-year veteran in the field.

5 Q Is he employed by your office?

6 A No, ma'am.

7 Q I thought I missed something. And you've gotten up
8 here to say now that it could be a hollow point, but you
9 aren't sure and that nobody should be able to say anything
10 about a bullet from an x-ray even though you were going to
11 testify to it?

12 A It doesn't exhibit anything from a hollow point. A
13 hollow point expands. Winchester is one of the most
14 premier lines in the world. They designed the hollow
15 points to expand. I see no expansion on that bullet.

16 Q Are you familiar with Dr. Smith?

17 A No, ma'am.

18 Q And in order for you to be hired and come to court
19 and testify, you have to give information that's favorable
20 to the defense?

21 A I guess you can look at it that way. I'm going to
22 tell the truth either way.

23 Q And now, you're talking about how a bullet entered
24 into Martha Childress's chest and whether or not it should
25 break a rib versus crack a rib?

1 A Yes, ma'am.

2 Q That's amazing.

3 MS. ZMROCZEK: Is that a question, Your Honor?

4 THE COURT: No commentary, please, Ms. Campbell.

5 MS. CAMPBELL: Yes, sir.

6 BY MS. CAMPBELL:

7 Q And were you here for Dr. Smith's testimony?

8 A No, ma'am.

9 Q And in reviewing the video, did you actually see any
10 stills or any of the video where you saw anybody throw a
11 cigarette down and the flash went off like it did?

12 A I did.

13 Q And that doesn't affect your opinion?

14 A No, ma'am.

15 Q Okay.

16 A In fact, it makes it stronger. In one of the stills,
17 you can see someone throw a cigarette down and the ashes
18 go everywhere. When you see the flash of the gun, it's
19 just a real quick flash when the gun hits the ground. So
20 it makes it much stronger. I do believe it's the -- the
21 two flashes from Mr. Smith's gun and the gun that struck
22 the ground are almost identical, which means they're
23 muzzle flashes.

24 Q How did you get the stills?

25 A They were sent to me on Dropbox by the investigator.

1 Q And you said you saw stills of the other person
2 throwing down the cigarette?

3 A No, not stills. It was a video of someone smoking a
4 cigarette and throwing it down.

5 Q Because -- so you haven't seen the stills where in
6 one frame, there's a flash and the next one, there's
7 nothing?

8 A Yes, I've seen the stills, but not a still of someone
9 smoking a cigarette.

10 Q And you talked about how fast a bullet travels; is
11 that correct?

12 A Yes, ma'am.

13 Q Are you familiar with once a bullet leaves a weapon,
14 does it continue in a straight course?

15 A It does until it strikes something.

16 Q Until it strikes something?

17 A Correct.

18 Q And in this case, the bullet entered Martha at a
19 slightly downward angle?

20 A Yes.

21 Q And when you were given your instructions, what were
22 you specifically looking for?

23 A She asked if I could tell what caliber the bullet was
24 or if I had any opinion at all. She wanted to know if I
25 could tell if it was a hollow point or not. And then she

1 asked me to look and see is this consistent with a muzzle
2 flash from a gun being dropped on the ground versus
3 Mr. Smith's -- do you see two muzzle flashes. I said yes.
4 Then she asked me based on when the victim starts to react
5 to the bullet, the distances, the 50 feet is much more
6 consistent with the shot that struck the victim versus
7 115 feet.

8 Q How were you able to determine it was 115 feet?

9 A Based on the investigator's measurements and the
10 dimensions and the software of where the individuals were
11 on the street.

12 Q So your testimony is where you have those spots
13 marked on that diagram, that's accurate?

14 A Yes, ma'am, pretty close.

15 Q Well, pretty close is kind of important when you're
16 talking about .03 seconds?

17 A Yes, ma'am.

18 Q How did you come to the conclusion of .03 seconds?
19 Were you told that by Mr. Watkins?

20 A No. I'm doing the -- the measurements are 50 feet to
21 1,000 feet per second. It's .04 to .05, .03, somewhere in
22 that area as fast as I can react.

23 Q And you would agree with me that firing a weapon,
24 whoever fires it, into a crowd is against the law?

25 A Yes, ma'am.

1 Q And finally, Doctor --

2 A I'm not a doctor.

3 Q Excuse me. Sir, the biggest issue they had with you
4 is the credibility issues in regards to testifying in
5 court?

6 A No, ma'am, that's not true.

7 Q And you're --

8 A APD says I can testify anytime. My work was never in
9 question. They questioned me about purchasing equipment
10 and about buying ammunition. I kind of bought things out
11 of order and then I submitted the invoice. I have their
12 signatures on a document that said I could purchase that.
13 When it came back and I had to pay \$32,000 from the lab, I
14 was director of the lab, so somebody had to be fired and
15 they fired me. My work has never been in question.

16 Q You just testified you were terminated from the
17 Atlanta Police Department because of grave concerns
18 regarding unethical conduct, illegal purchases, reckless
19 disregard for following proper procedures and protocol,
20 that your actions and poor decisionmaking compromised the
21 integrity of the work at the crime and the Atlanta Police
22 Department?

23 A I never testified to that. I think that's Ken
24 Mauldin read in court in Athens. That's not what the
25 statement of the charges for my termination state.

1 Q But you were terminated and then they dismissed your
2 suit for being terminated because you were white?

3 A Yes, ma'am.

4 MS. CAMPBELL: Beg the Court's indulgence.

5 (Pause.)

6 BY MS. CAMPBELL:

7 Q So just to be clear, did you ever go to the scene to
8 take any measurements yourself?

9 A No, ma'am.

10 Q And amazingly, you talked about the four or five
11 areas where the Defense counsel asked you questions
12 regarding the type of bullet, the trajectory, things of
13 that nature?

14 A Yes, ma'am.

15 Q And you were able to amazingly help her on all those
16 points?

17 MS. ZMROCZEK: Your Honor, she keeps inserting the
18 word amazingly into her questions.

19 THE COURT: The question is proper.

20 Answer the question.

21 THE WITNESS: I was able to answer her questions,
22 that's correct.

23 BY MS. CAMPBELL:

24 Q Let me ask you this. Do hollow points always expand
25 even when they hit bone in the body?

1 A I would say definitely when they hit bone. When they
2 hit muscle, maybe not, but when they hit bones, something
3 hard, yes, they're designed to expand, yes.

4 Q What happens to the hollow point if it gets plugged
5 by clothing, if there are layers of clothing in between?

6 A Sometimes you would expect to see the hollow point
7 fold inward and then flatten out, mushroom out in a big
8 mushroom.

9 Q Did you know how many layers of clothing that this
10 bullet passed through prior to it entering her body?

11 A No, ma'am.

12 Q And your testimony is not here today that the bullet
13 always breaks or cracks the rib, sometimes it may graze
14 it?

15 A Correct.

16 Q And you don't know exactly how -- well, you didn't
17 perform the surgery, so you don't know exactly how this
18 happened?

19 A Correct.

20 Q Who is your actual proficiency test provider?

21 A CTS, Collaborative Testing Services.

22 Q And has anyone peer reviewed your testimony here
23 today?

24 A No, ma'am.

25 Q Does Winchester make a .40-caliber ammunition in full

1 metal jacket?

2 A Yes.

3 Q And was what you found as far as what's in Martha
4 consistent with that?

5 A No, ma'am. It almost looks like a flattened nose on
6 the bullet to me. I can't tell what it is. I'm not sure
7 if it's a 40 or, like I told you, one of the other 16
8 other calibers that I listed.

9 Q And if the bullet travels in a straight line, if it
10 doesn't strike an object, why does it eventually fall to
11 the ground?

12 A Because it runs out of energy. If it's traveling a
13 thousand feet per second, it only has so much velocity.
14 And after it runs out of energy, it's just going to fall
15 to the ground, gravity.

16 Q And the hollow point slows down the further it
17 travels, you would agree with that?

18 A Everything slows down the further it travels.

19 Q And at some point, does it reach a point where it's
20 too slow to expand, or less velocity?

21 A Yes.

22 MS. CAMPBELL: Thank you, Your Honor. I don't have
23 anything further.

24 THE COURT: Redirect?

25 MS. ZMROCZEK: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. ZMROCZEK:

Q Mr. Robinson, is it your experience in testifying when they can't discredit your work, they try to discredit the person?

A Yes, ma'am. It was always funny, when I worked for the prosecution, I was a genius for all those years. I was never questioned on anything. Even by the defense attorneys, they never questioned my work. But now that I'm working for the defense, the prosecution, all they have to do is bring up that black mark. I can't help I got fired. That's the way it happened. I can provide my records that say I was outstanding work.

We were working cases for six other counties besides Fulton County, which is Atlanta. Everybody started bringing me their work because the GBI was so backlogged. They started bringing their work to us. We were going to start charging these counties for working their cases, so under my supervision, the lab was working as fast as it ever worked. We changed the laws to let evidence be brought us. The law used to be everything had to go to the GBI. I was part of that that went before legislature to have the law changed so you could bring the evidence to who you want to.

I'm sorry I got fired. I left the GBI on my own

1 accord. I was the technical leader when I left. I chose
2 to go to APD. It didn't work out. Yes, all the other
3 individuals in this case besides Dale Tollison, who was
4 white, were African American individuals. None of them
5 were punished in any way. I was the only one that took
6 the fall. Therefore, I sued on the grounds of wrongful
7 termination based on my race. And I was a minority at the
8 Atlanta Police Department.

9 Q And none of your work that was reviewed has ever
10 been -- the 2,000 cases that they said they were going to
11 have to review, they didn't find any problems with those?

12 A Oh, it was two dozen cases. To be honest with that,
13 they wrote a letter out to all the attorneys that said
14 they found some conflicts with my cases. The problem with
15 that is, Kelly Flythe, who had been doing this for 45
16 years reviewed my work. The GBI individuals, they can't
17 match Glock bullets. Glock bullets are very different to
18 match. I matched the bullets that the GBI kids that
19 couldn't match them. So the GBI wanted to discredit me
20 because I'm working with the defense, so they wrote a
21 letter out stating these things.

22 Q So the --

23 MS. CAMPBELL: Objection, Your Honor. Let him
24 finish.

25 THE COURT: You can finish.

1 THE WITNESS: So therefore, all my work has been peer
2 reviewed and there has been no discrepancies in any of my
3 work.

4 Q So the outfit that Ms. Childress was wearing this
5 night, a flowy shirt and a thin tank top, would that have
6 significantly changed any path of the bullet?

7 A No, ma'am.

8 Q And there are no pictures. You were provided no
9 pictures in the discovery of the entrance wound, were you?

10 A That's correct.

11 Q And the only -- first time that Dr. Smith made his
12 opinion that he could determine what the bullet was was
13 the Friday before trial; isn't that true?

14 A That is correct.

15 Q And that's why you were contacted?

16 A Yes, ma'am.

17 Q And if Mr. Samuel was standing at 52 feet, would that
18 change his bullet striking her spine?

19 A No, ma'am. It would be much quicker. It still would
20 have struck her spine. It's going to ricochet off the
21 rib. It would account for the downward angle into her
22 spine because once it strikes the rib, it would give you a
23 slight downward angle.

24 Q In reviewing the police report, did you ever note
25 where they ruled out a flash as being a cigarette ash?

1 A No, ma'am, I can't remember that. But I think -- I
2 read so much real quick there, so I'm not sure about that.

3 Q Because they didn't know it was there?

4 A I mean, I think it's a muzzle flash, if anything.

5 MS. ZMROCZEK: Thank you.

6 MS. CAMPBELL: Just a couple of questions.

7 RECROSS-EXAMINATION

8 BY MS. CAMPBELL:

9 Q Just a couple questions. She asked you about your
10 qualifications and everything. Again, just to make sure,
11 it came down to credibility issues related to testifying
12 in court?

13 A No, ma'am.

14 Q You deny that?

15 A I totally deny that.

16 Q And you left the GBI, you just testified,
17 voluntarily?

18 A I did.

19 Q When you got terminated from the Atlanta Police
20 Department, did they hire you back?

21 A I didn't want to go back.

22 MS. CAMPBELL: Nothing further, Your Honor.

23 THE COURT: Okay. Thank you very much. You may step
24 down. Have a nice day.

25 Call your next witness.

1 MS. ZMROCZEK: Your Honor, at this time, the Defense
2 rest.

3 THE COURT: Okay. Ladies and gentlemen, if you will
4 step back to your jury room. Do not discuss the case.
5 Keep an open mind. Do not let anyone discuss the case
6 with you. We'll be back with you in a few moments.

7 Everyone remain seated while the jury is dismissed.

8 (WHEREUPON, the jury left the courtroom at 11:57
9 a.m.)

10 THE COURT: Okay. Motions?

11 MS. ZMROCZEK: Your Honor, at this time, we would
12 renew our motion for a directed verdict, especially on the
13 attempted murder. They've shown no -- this is a specific
14 intent crime. They've shown no specific intent to kill
15 their -- what I understand their theory to be is that he
16 recklessly fired a weapon into a crowd. That's what I
17 understand their theory to be. Your Honor, we would
18 submit that that doesn't meet the specific intent to
19 commit a murder under the statute.

20 THE COURT: All right. Response?

21 MS. CAMPBELL: Your Honor, his own testimony says
22 that he just shot into -- at three random people in front
23 of him at some point who were all in the crowded area. We
24 think we have met our burden of showing specific intent to
25 kill. He said he was firing in self-defense because he

1 heard a gun -- heard multiple gunshots, Your Honor. So,
2 obviously, he intentionally fired. And our position would
3 be that firing into a crowd, Your Honor, would be a
4 specific intent to kill.

5 THE COURT: Okay. Your motion for a directed verdict
6 is denied based upon the existence of the evidence and not
7 the weight or credibility of the evidence. The State has
8 submitted sufficient evidence to send that issue forward
9 to the jury.

10 All right. Are you're going to have recall
11 witnesses?

12 MS. CAMPBELL: We're talking about that, Your Honor.
13 If you could give us 10 minutes?

14 THE COURT: Do you want me to release them for lunch?

15 MS. CAMPBELL: That would be perfect.

16 THE COURT: Okay. Let's talk about scheduling.
17 Y'all approach.

18 (WHEREUPON, a bench conference was held.)

19 THE COURT: All right. I'm going to go tell the jury
20 with everybody's permission that they are released until
21 1:30 for lunch. Court will resume at one o'clock for any
22 other legal issues that need to be taken up, if any.

23 Okay. Thank you very much.

24 (WHEREUPON, a lunch break was taken.)

25 THE COURT: Okay. Where are you on calling other

1 witnesses?

2 MS. CAMPBELL: (Indicating in the negative.)

3 THE COURT: You're not going to call any?

4 MS. GARFIELD: No, sir.

5 THE COURT: Okay. All right. Where are you on
6 self-defense?

7 MS. CAMPBELL: Your Honor, we would agree to
8 self-defense at this point.

9 THE COURT: Okay.

10 MS. CAMPBELL: And we would just ask for mutual
11 combat, Your Honor.

12 MS. ZMROCZEK: I don't know if Your Honor had ruled
13 on the attempt -- the felony attempted murder. Your
14 Honor, I had done some research into what the felony
15 murder statute was for or what that issue was for.

16 Your Honor, it's just another way to define malice.
17 The felony that they want to I think hang their hats on is
18 the carrying of a gun. Your Honor, that's a status crime.
19 That doesn't -- it's not inherent in the felonies that are
20 listed under the felony murder. Those are like burglary,
21 armed robbery, where you're committing an act that is
22 likely to lead.

23 And I know that the reasonable question then becomes
24 well, he was carrying a gun. Isn't that likely to lead?
25 Well, Your Honor, there are several people that could have

1 been carrying a gun that night as long as they had a
2 concealed weapons permit. I understand that him being a
3 convicted felon prohibits him from doing that; however,
4 that's a status crime, again, not an aggravated situation,
5 an aggravated felony. That's our strongest position as to
6 why we feel like that is not an appropriate charge to
7 create in this case.

8 THE COURT: Do you have any law that supports that?

9 MS. ZMROCZEK: No, Your Honor. It's not ever been --
10 that is a status crime. I can certainly pull that, but
11 it's not -- I've done extensive research and there has
12 never been challenged an attempted -- a felony attempted
13 murder charge, so I couldn't find any law on it.

14 THE COURT: Ms. Campbell?

15 MS. CAMPBELL: Your Honor, I think the law is clear
16 that -- and she is correct, that is another way to infer
17 malice. I think the law supports the charge of that. We
18 are just merely asking you to charge the law that is
19 applicable. I don't --

20 THE COURT: Where does the felony murder jury charge
21 that says the direct result of the commission of a felony
22 say it has to be a certain kind of felony?

23 MS. CAMPBELL: It doesn't that I'm aware of, Your
24 Honor. If she has law that says something different, I'll
25 be glad to look at it.

1 MS. ZMROCZEK: Beg the Court's indulgence, Your
2 Honor.

3 MS. CAMPBELL: I think the only language I've ever
4 seen, Your Honor, is something about felonies that are
5 inherently dangerous. Our position would be how a person
6 who is not allowed by law to carry a gun would be a felony
7 and is inherently dangerous. And I don't even know if
8 that's the language.

9 I'm sorry, Your Honor. I would have pulled the law,
10 but she did not object to this in any of her multiple
11 texts or e-mails over the weekend or anything else.

12 We did receive her additional request to charge --

13 THE COURT: Hold on, hold on. One thing at a time.

14 MS. CAMPBELL: Yes, sir.

15 MS. ZMROCZEK: I'm sorry, Your Honor. I thought I
16 had it, but now I can't seem to find it. I just -- in
17 reading the intent of -- intent of the legislature for
18 allowing the felony murder, again, I --

19 THE COURT: It's not statutorily defined.

20 MS. CAMPBELL: It's not statutorily --

21 THE COURT: Is it?

22 MS. ZMROCZEK: No, it's not statutorily. I guess,
23 Your Honor, my issue is there have been several, several
24 malice charges, and this just seem like another malice
25 charge. My concern is that they're going to take felony

1 attempted murder and say oh, well, he was committing a
2 felony, so he's automatically responsible for the result.

3 THE COURT: The jury charge doesn't say that. It
4 just says you can infer malice.

5 MS. CAMPBELL: You can infer malice.

6 THE COURT: You're doing it while you're committing a
7 felony.

8 MS. CAMPBELL: That's the extent of what I was
9 understanding you were charging.

10 THE COURT: It says the law allows the jury to infer
11 malice. If you conclude that the attempted murder was the
12 proximate direct result of the commission of a felony, and
13 for that regard, three of the gun charges would be
14 felonies under our law, you can imply that malice existed
15 if a person is in the commission of a felony at the time
16 of the offensive fatal blow. If one attempts to kill
17 another during the commission of a felony, the inference
18 of malice may arise.

19 I mean, do you have a murder case that says gun
20 possession as a felony doesn't count?

21 MS. ZMROCZEK: No, Your Honor. I'm simply reading
22 the case law. The way that I read it is that it was
23 intended for crimes such as kidnapping, armed robbery,
24 burglary.

25 THE COURT: Okay. I don't know what case law you're

1 reading. You haven't told me.

2 MS. ZMROCZEK: I know. I can't find it, Your Honor.
3 I had it in my box before I went to lunch, and now, I
4 don't know where it went, so...

5 THE COURT: Okay. Let's move on to the next issue
6 while we search for that.

7 MS. ZMROCZEK: Thank you.

8 THE COURT: Okay. So one of the requested
9 Defendant's charges was -- hold on one second. The prior
10 record of the Defendant limited for impeachment. I don't
11 know how to do this. It says you have heard evidence that
12 the Defendant was convicted of a crime other than the one
13 for which he is now on trial. This evidence may be
14 considered by you if you conclude it is true only in
15 deciding whether the Defendant's testimony is believable
16 and for no other purpose. That's actually not a correct
17 statement of the law because it's an element of two of the
18 crimes.

19 So what's the State's position on that?

20 MS. CAMPBELL: Your Honor, I think it's an incorrect
21 statement of the law and what she's submitted is incorrect
22 in this case. It is an element of two of the -- we
23 deliberately -- remember, Judge, we didn't ask him about
24 any other crimes.

25 THE COURT: Right.

1 MS. ZMROCZEK: Right. And, in fact, Your Honor, I
2 would have -- that can be removed since they didn't.

3 THE COURT: Okay.

4 MS. ZMROCZEK: I didn't know what they were going to
5 ask him about.

6 THE COURT: I'm not saying you did.

7 MS. ZMROCZEK: Yeah.

8 THE COURT: I'm just trying to apply it to the facts.
9 So I'm going to remove that. I am leaving in prior record
10 of witnesses.

11 Is there any objection to that?

12 MS. CAMPBELL: That's fine. If you're referring to
13 it as witnesses, that's fine.

14 THE COURT: Yeah, a person whose past criminal record
15 is competent. It doesn't affect their ability to testify.
16 It may be considered in determining believability. And
17 then prior inconsistent statements. Any objection to
18 that?

19 MS. CAMPBELL: No objection.

20 THE COURT: Hold on. Let me get to the other thing.
21 On the assault and battery, I took out all the sex
22 stuff.

23 MS. ZMROCZEK: Thank you.

24 THE COURT: So all the lewd, lascivious, touching.

25 MS. CAMPBELL: We would agree.

1 THE COURT: Is that okay with you, Ms. Zmroczek?

2 MS. ZMROCZEK: Absolutely, Your Honor. That's not a
3 part of this.

4 THE COURT: And then you want all the way down to
5 assault and battery third charged?

6 MS. ZMROCZEK: Yes, Your Honor. After consulting the
7 PCR case law, it seems that maybe I can't -- there are
8 certain things that I shouldn't waive.

9 THE COURT: Okay. In the possession of a weapon
10 during the commission or attempt to commit a violent
11 crime, it's a correct statement of the law that attempted
12 murder and ABHAN are violent crimes, correct?

13 MS. CAMPBELL: Yes, sir.

14 THE COURT: Is that right? Okay. I looked that up.
15 So it won't just read attempted murder, it will say
16 attempted murder and assault and battery of a high and
17 aggravated nature.

18 All right. With respect -- are you okay with right
19 to act on appearances, Ms. Campbell, in the self-defense
20 standard charge?

21 MS. CAMPBELL: Yes, Your Honor.

22 THE COURT: Okay. Hold on. Let me go -- I'm looking
23 through my highlights to make sure I went through all of
24 them.

25 Okay. So other than the felony murder one, any other

1 charges you want to take up?

2 MS. ZMROCZEK: No, Your Honor. I'm just -- how
3 many -- what are the malice charges?

4 THE COURT: Okay. Well, let -- is there anything --
5 I'm going to go print this and give it to you.

6 MS. ZMROCZEK: Okay.

7 THE COURT: And give you a few minutes to look at it.
8 So before I print a big copy, is there anything you
9 know --

10 MS. CAMPBELL: Yes. The only other thing we would do
11 is on the transferred attempt.

12 THE COURT: Hold on. Let me get to that. Hold on.

13 MS. CAMPBELL: Sorry, sir.

14 THE COURT: Okay. She told me how to get to it
15 faster.

16 MS. CAMPBELL: In the third sentence, the Defendant
17 will be guilty of, it says assault and battery with intent
18 to kill.

19 THE COURT: Okay. I changed that.

20 MS. CAMPBELL: And that should be attempted murder.

21 THE COURT: Okay. It says if the Defendant with
22 malice aforethought attempts to kill another person, but
23 by mistake injures or kills a different person, the
24 Defendant still has the intent to attempt to kill.

25 MS. CAMPBELL: Yes, sir.

1 THE COURT: The attempt to intent to kill -- it's
2 going to be a tongue twister -- is merely transferred from
3 the original person the Defendant attempted to kill to the
4 actual person killed or injured. The Defendant would be
5 guilty of attempted murder just as if the attempt had
6 resulted in the death or injury of the person the
7 Defendant had attempted to kill.

8 MS. CAMPBELL: Yes, sir, the only thing we would ask
9 is an additional -- transferred intent can apply to any
10 level of assault.

11 THE COURT: Okay.

12 MS. CAMPBELL: So we would ask for it to say the
13 doctrine of transferred intent applies to all degrees of
14 assaults. I think that would be the easiest way to put
15 it. I mean, transferred intent -- I mean, that -- because
16 that applies just the attempted murder.

17 THE COURT: Applies to all?

18 MS. CAMPBELL: All degrees of assaults.

19 THE COURT: Okay.

20 MS. CAMPBELL: Just so it's not a question that it
21 only applies to attempted murder.

22 THE COURT: Okay. What else before I go print you
23 off a copy and everybody can look at it?

24 MS. CAMPBELL: Your Honor, you can print it, I'll
25 look at it, and we can take up anything.

1 THE COURT: Okay.

2 It says voluntary intoxication is in, sentencing is
3 in and then my standard thing I say at the end about a
4 duty to deliberate, and then I have a verdict form. I'm
5 going to print that and send that to you, too.

6 Anything else, Ms. Zmroczek?

7 MS. ZMROCZEK: Yes. Thank you, Your Honor. I found
8 where I had -- I think I had my notes from regarding the
9 limitations of the felony murder rule. The South Carolina
10 Supreme Court stated that -- in Gore V. Lee that the rules
11 should only apply to those felonies which are inherently
12 foreseeable dangers to human life.

13 If the commission or attempted commission thereof
14 creates a substantial foreseeable human risk and actually
15 results in the loss of life, that's State v. Thompson.
16 The Gore court goes on to distinguish daytime burglaries
17 and felonies and different -- it analyzes different
18 felonies, Your Honor. It says care must be taken with
19 manslaughter. If it's a felony, it's obviously inherent
20 danger, yet if felony murder doctrine were to apply
21 manslaughter as a separate offense would entirely
22 disappear. The manslaughter discussion represents the
23 merger rule whereby the felony murder rule applies only if
24 there is a felony independent of felonious assault on the
25 victim. This rule represents a substantial legal

1 authority. And this is a United States Supreme Court
2 case, Your Honor.

3 THE COURT: Voluntary manslaughter doesn't have
4 malice.

5 MS. CAMPBELL: That's correct.

6 THE COURT: Right?

7 MS. ZMROCZEK: Correct. And I think that the
8 difference between ABHAN and all of the lower assaults is
9 difference in malice as well.

10 MS. CAMPBELL: Well, all we're saying is there's an
11 inference of malice from that. We're not saying -- I
12 don't understand what you mean.

13 THE COURT: Well, I would agree that the felony
14 murder rule doesn't apply to anything besides attempted
15 murder.

16 MS. CAMPBELL: Yes.

17 THE COURT: That's why I read it at the end of the
18 attempted murder. The only crime that's present that
19 requires malice is attempted murder.

20 Okay. I'm going to charge the -- we'll just call it
21 the felony murder rule for lack of a better thing to call
22 it at this point in time.

23 I believe that the carrying of a firearm in these
24 conditions with the Defendant's criminal history put
25 everybody in an extreme risk of danger that was present in

1 the area that night. There was no doubt based upon the
2 evidence submitted and based upon the defense attorney's
3 opening statement and his conviction in federal court that
4 he was, at least, committing a federal crime and
5 potentially committing, at least, two State felonies while
6 carrying the firearm.

7 So the difference in this situation is it's not like
8 we have somebody in the community lawfully carrying a
9 firearm that chooses to, you know, use it or to defend
10 themselves. This is an individual who based upon his
11 prior criminal history would not be allowed to carry a
12 firearm period in state court or in federal court. And so
13 I -- you know, I think the unlawful carrying of a pistol
14 by a convicted felon in our community in a situation such
15 as a crowd in Five Points and in a situation where,
16 according to his own testimony, he knew was violent, he
17 had been beaten up and assaulted rises to a different
18 level, and I will charge the version of felony murder. Of
19 course, it's attempted murder. I understand that. That
20 is -- I'm going to give y'all a copy of the charges and
21 take a few minutes to look at it.

22 MS. ZMROCZEK: Your Honor, is there a way to make
23 sure they understand that's just limited to the attempted
24 murder? I understand that you're reading it at the end,
25 but maybe say this only applies to.

1 MS. CAMPBELL: It says it only has an inference of
2 malice.

3 THE COURT: Right.

4 MS. CAMPBELL: That's all it says, so that's inherent
5 in what he's reading.

6 THE COURT: Yes, I mean, I'll -- my guess is a copy
7 of the charge with it being 36 pages is going back anyway,
8 but, yeah. And I intentionally put it right after the
9 attempted murder and before I described anything else
10 because none of the other assaults have malice as an
11 element. The only purpose of that is that's another way
12 to infer malice. Okay.

13 MS. ZMROCZEK: Certainly. And Your Honor, just in
14 case -- and I believe that I did not, so I wanted to make
15 sure that the objections that I had raised during the
16 trial were preserved.

17 THE COURT: Your objections during trial were
18 preserved and my rulings upon them are the same.

19 MS. ZMROCZEK: Thank you. And also, what about
20 causation?

21 THE COURT: Okay. What about causation?

22 MS. ZMROCZEK: I had submitted it. I didn't know --
23 we didn't discuss that.

24 THE COURT: Okay. Hold on. Let me get back.

25 I think causation is in the charge.

1 MS. ZMROCZEK: Okay.

2 THE COURT: But let me pull it back up.

3 Okay. So what theory are you referring to causation?

4 MS. ZMROCZEK: Well, Your Honor, when I was doing the
5 research on the felony murder rule, it related to
6 causation. It says even though a felony armed robbery
7 meets the requisite inherent danger, still not every
8 resulting death would support a felony murder conviction.
9 Such patron of the robbed store should see the robbery in
10 progress and decide to wait outside until it's over and
11 then be killed by a falling sign. His death would be a
12 mere coincidence for which the robbers would be legally
13 responsible. On the other hand, should a gun pointed at
14 one of the robbers accidentally discharge by virtue of
15 over sensitive trigger malfunction and kill the clerk, the
16 robbers would be responsible.

17 Your Honor, at issue here is whose bullet caused
18 the -- whose bullet caused the injury. And I believe that
19 the question of -- if they can't determine that it is
20 Mr. Smith's bullet, then they can't find him guilty of
21 attempted murder.

22 MS. CAMPBELL: That's not necessarily true, Your
23 Honor. If they find that Mr. Smith's actions caused the
24 others to act in any way, he's responsibility for
25 everything. If she wants the proximate cause charge that

1 she just read from that book as part of your charge, we
2 have no problem with that whatsoever; on the example part.

3 But as far as proximate cause, Your Honor, usually
4 that's in a case where somebody gets assaulted and then
5 dies a year later from the actual assault. Proximate
6 cause is appropriate. I don't know -- even in her charge,
7 it says where a person inflicts a potentially fatal injury
8 on another person and that other person dies at a later
9 time, I don't know how any of that is applicable.

10 THE COURT: I don't get the whole proximate cause
11 thing.

12 MS. CAMPBELL: There's no intervening act. There's
13 no anything else. It's all what happened that night then
14 and there.

15 THE COURT: I'm listening. I mean, based upon the
16 charge that you just read, based upon his own testimony,
17 it was an intentional act.

18 MS. ZMROCZEK: Correct, Your Honor, but if that was
19 his intentional act as a result of somebody else's
20 intentional act, I think it would be improper for him to
21 be held responsible if it's the other person's bullet
22 that's in her spine.

23 MS. CAMPBELL: Self-defense is available for her --
24 we've agreed that should be charged to the jury. Which if
25 she's saying he's acted in self-defense -- she's arguing

1 multiple.

2 THE COURT: I don't understand how proximate cause
3 applies to this. I'm listening. I mean, your proximate
4 cause charge that you've submitted to this Court states
5 the following, Where a person inflicts a potentially fatal
6 injury on another person and that person dies at a later
7 time, you must be convinced beyond a reasonable doubt that
8 the infliction of the first injury was the proximate cause
9 of the victim's condition, meaning death. Proximate cause
10 is direct cause. It is the immediate cause. It is the
11 efficient cause. It is the cause without which the injury
12 of the victim would not have resulted.

13 I don't understand how that applies to this case.

14 MS. ZMROCZEK: Well, Your Honor, just like with all
15 the other charges that we dealt with that dealt with
16 death, I would substitute great bodily injury.

17 THE COURT: But great bodily injury didn't occur
18 later. A great bodily injury occurred immediately.
19 That's the difference.

20 MS. ZMROCZEK: Okay. Right.

21 THE COURT: I mean, if you hit somebody in the face,
22 and they go to the hospital and live for three months and
23 then die of a stroke, there is your proximate cause.
24 That's a proximate cause issue.

25 MS. ZMROCZEK: Okay.

1 THE COURT: I'm not charging proximate cause other
2 than what's already in the malice charges.

3 Anything else?

4 MS. ZMROCZEK: Not that I can see, Your Honor.

5 THE COURT: Okay. All right. She should be back in
6 just a second. I'll give y'all those.

7 MS. CAMPBELL: Judge, if I may, one other thing is in
8 her opening statement, she talked about how he had been
9 convicted in federal court.

10 THE COURT: Right.

11 MS. ZMROCZEK: Your Honor -- sorry.

12 THE COURT: Go ahead.

13 MS. ZMROCZEK: I've just been -- I think I've been
14 very clear I'm not bringing up the federal stuff. I've
15 said it a million times.

16 MS. CAMPBELL: We just wanted to make sure, Your
17 Honor.

18 MS. ZMROCZEK: I haven't brought it up in six days,
19 and I do not intend to bring it up today.

20 THE COURT: Yes, none of this he pled guilty to
21 federal charges. He is now facing the same charges in
22 State Court.

23 MS. ZMROCZEK: I will, however, Your Honor, be
24 asserting the missing witness rule with Mr. Samuel.

25 THE COURT: Okay. What are you going to say about

1 that?

2 MS. ZMROCZEK: Just that he was under their -- I
3 mean, he's a material witness that they had contact with
4 apparently recently and didn't bother to bring him in.

5 THE COURT: Okay. No one said they had contact with
6 him recently. I have the transcript from Investigator --

7 MS. ZMROCZEK: VanHouten, right.

8 THE COURT: He did not testify that he had had
9 contact with Mr. Samuel recently. He testified -- and I
10 have the transcript.

11 MS. ZMROCZEK: I guess that's why I need
12 clarification. That's why I ordered it this morning, but
13 was told I couldn't have it.

14 THE COURT: Mr. Samuel is currently located in
15 Lawrenceville, Georgia. We have spoken to Ms. Pinkney,
16 who identified herself as his aunt. Mr. Samuel as of
17 today has refused to travel back to Columbia, South
18 Carolina to testify in this trial fearful of gang
19 retaliation. He is scared for his safety.

20 So no one testified that they spoke to him.

21 MS. ZMROCZEK: Okay.

22 THE COURT: I mean, I think she can say where is
23 Mr. Samuel.

24 MS. CAMPBELL: Of course.

25 THE COURT: Yeah, I mean, you can stand up and say

1 where is Mr. Samuel. Why isn't he here to do whatever,
2 but I don't think it can go much beyond that as far as in
3 that issue.

4 Okay. So here is the verdict form. Y'all come up
5 here.

6 (WHEREUPON, a bench conference was held.)

7 THE COURT: You can go back and read them. That's
8 your copy.

9 MS. ZMROCZEK: Thank you.

10 THE COURT: Felony murder won't be highlighted if it
11 goes back.

12 MS. CAMPBELL: Yeah.

13 THE COURT: That was me reading it and marking things
14 I wanted to discuss. We're missing a whole gun charge.

15 MS. ZMROCZEK: And, Your Honor, I understand that
16 they're going to put boards up to show what the
17 definitions are, and they have case law cited underneath
18 it. I would object to the case law being shown to the
19 jury.

20 THE COURT: Why?

21 MS. ZMROCZEK: Because it gives it more -- it gives
22 it an air of authority.

23 THE COURT: Well, it is authority, right?

24 MS. ZMROCZEK: Right.

25 MS. CAMPBELL: It's what he's going to say.

1 MS. ZMROCZEK: Okay. So it's just -- she's just
2 going to repeat everything that you're going to say?

3 MS. CAMPBELL: No.

4 THE COURT: I hope not.

5 MS. ZMROCZEK: Because I don't understand if it's --
6 I guess that's my concern is that we're going to be here
7 all afternoon, which is fine. It's not my choice, again,
8 not my issue.

9 THE COURT: Oh, don't go down that road with me,
10 Ms. Zmroczek.

11 Did y'all not submit any gun charges on the crime of
12 violence and violent crime?

13 MS. CAMPBELL: We did, Your Honor. I can get you
14 another copy.

15 THE COURT: This is possession of a weapon during the
16 commission of. All right. Y'all keep reading while I fix
17 this issue.

18 Where are your crimes of violence defined?

19 MS. McDUFFIE: 16-23-10.

20 THE COURT: You sure that statute number is, right?

21 So which one does the attempted burglary go with?

22 That's what I don't understand.

23 MS. CAMPBELL: Crime of violence.

24 THE COURT: What?

25 MS. CAMPBELL: Crime of violence.

1 THE COURT: That's the attempted burglary?

2 MS. CAMPBELL: Burglary second. This is the extent
3 of what we submitted, which mirrors the other one. It's
4 just a different crime.

5 THE COURT: Okay. Now, I've got that fixed.

6 Okay. What are we on now?

7 MS. CAMPBELL: The other thing I have is something
8 about the jury form.

9 THE COURT: The what?

10 MS. CAMPBELL: The jury form -- the verdict form,
11 excuse me.

12 THE COURT: Okay.

13 MS. CAMPBELL: The only other thing I'd say is the
14 first one, it says we, the jury, it has one. It has
15 guilty, not guilty and then it tells you what to do.

16 THE COURT: Okay.

17 MS. CAMPBELL: Then you go to number two, the only
18 thing on that page is not guilty. Guilty is on the top of
19 the page. If we could instruct them that many of these
20 have them on the second page or just format it so that
21 both could be on the same page just so they think they
22 have an option.

23 THE COURT: Right.

24 MS. CAMPBELL: And I think that happens on several
25 different pages.

1 THE COURT: Okay.

2 MS. CAMPBELL: That's it.

3 MS. ZMROCZEK: Just because of the way that the
4 jury -- that the verdict form is read, if we maybe want to
5 move the possession of a weapon during the commission of a
6 violent crime up from Page 24 to Page 22 and make that the
7 first gun charge. It just seems to flow more.

8 THE COURT: Okay. What else?

9 Anybody have anything else they want to say about the
10 charge? Speak now.

11 MS. GARFIELD: Your Honor, I don't have anything
12 about the charges, but may I approach briefly?

13 THE COURT: Sure.

14 (WHEREUPON, a bench conference was held.)

15 THE COURT: Okay. All right. This is how it's going
16 to work. I'm going to print out a final copy for me.
17 We're going to take short break. When we come back in,
18 we're going to start closing arguments.

19 Who's closing first?

20 MS. CAMPBELL: (Indicating).

21 THE COURT: And then you're closing?

22 MS. ZMROCZEK: Yes.

23 THE COURT: And who's closing last?

24 MS. WALKER: (Indicating).

25 THE COURT: Okay. I want everybody out here to

1 listen to me. This case is very important to everybody
2 involved regardless of what side of the case you're on.
3 Okay. I understand that and I want everybody to be
4 present, but this is these attorneys last opportunity to
5 address the jurors, okay. So I want silence in here.
6 There shouldn't be any phone in here anyway. I don't want
7 people coming in and going out. It's very distracting.
8 It's very distracting to the jurors. It's not fair to any
9 of the parties in the case. Regardless of what side of
10 the case you're on, everybody wants the jurors to have
11 their full attention and to give their full attention to
12 the attorneys.

13 So once closing arguments start, Mr. Tolbert, I don't
14 want anybody coming in or out, just keep them out.

15 Once closing arguments stop, I will kind of take a
16 pause, and that's right before I give my jury charge. So
17 there will be three closing arguments, the State, the
18 Defense, the State, and then I will pause, okay.

19 If you want to leave or you need to excuse yourself,
20 that's the time to do it because once that pause takes and
21 I start reading this charge to the jury, the law requires
22 that we lock the back door and no one be allowed out at
23 all.

24 So if you don't want to hear me authenticate for 30
25 or 45 minutes on the law, then that's a good time to slide

1 out. And you'll see most of the attorneys that are in the
2 room that are coming in to watch closing, they'll all --
3 they all know to kind of move out because the charge is
4 not that exciting. So if you need to move out at that
5 point in time, that will be your opportunity do so.

6 We're going to take a quick break, five to seven
7 minutes. Anybody can do whatever they need to do. When
8 we come back in, you need to be prepared to stay until my
9 jury charge starts. Thank you very much.

10 (WHEREUPON, a short break was taken.)

11 THE COURT: Okay. One thing I want is to reword in
12 the felony murder, it says and for that regard, three of
13 the gun charges would be felonies under our law. I don't
14 want to say three because one of them is the possession
15 during the commission of a violent crime, so I'm just
16 going to say two instead of three. Okay.

17 MS. CAMPBELL: Thank you.

18 THE COURT: All right. Everybody ready?

19 (There was no response.)

20 THE COURT: Okay. If there's anybody that believes
21 they can't follow my instructions that I gave earlier
22 about not coming in and going out, being a disturbance and
23 all that kind of stuff, now is your opportunity to leave.
24 Okay.

25 Again, once the jury starts -- the jury charge

1 starts, the back door will be locked, so if you want to
2 leave after closing arguments, you will be allowed to do
3 so. I have no objection to that, but do make a quick and
4 quiet exit, please.

5 Okay. Bring them in.

6 (WHEREUPON, the jury entered the courtroom at
7 2:20 p.m.)

8 THE BAILIFF: The jury is seated, Your Honor.

9 THE COURT: All right. Welcome back, ladies and
10 gentlemen. At this point this time, you have heard all
11 the evidence and the testimony that you are going to hear
12 in the case. We have reached the point in the trial known
13 as the closing arguments. This is the opportunity -- this
14 is the attorneys' opportunity to give you their final
15 closing arguments or thoughts about the case. Because the
16 State has the burden of proof, they will be allowed to go
17 first, and they will be allowed to go last. So please
18 give the attorneys your undivided attention.

19 You all have done an excellent job this week of
20 staying with us and staying alert and awake and paying
21 attention. I just ask that you do the same.

22 Ms. Campbell, you may begin.

23 MS. CAMPBELL: May it please the Court?

24 THE COURT: Yes, ma'am.

25 CLOSING ARGUMENT BY THE STATE

1 MS. CAMPBELL: Good afternoon. First thing I would
2 like to do on behalf of the State of South Carolina, the
3 citizens of Richland County is to thank you for your
4 service in this case. I know last Monday when you came to
5 court, you might wonder what type of case would I be
6 sitting on. Would it be a car wreck? Could it be someone
7 in possession of a stolen vehicle? But as the days have
8 progressed, I think you've come to understand that this is
9 a very important case both to the State of South Carolina
10 and to this Defendant, Michael Juan Smith, and to the
11 victim, Martha Childress.

12 As the Judge has mentioned, you've been very
13 attentive and we truly appreciate that because it's very
14 important in this case because this case boils down to
15 credibility, ladies and gentlemen, believability. Who can
16 you believe? What's believable in this case? And I'll
17 get back to that in a minute.

18 Now, I'm going to get up here and talk to you a
19 little bit about the law in the case, and then you're
20 going to hear from the Defense attorney. And then the
21 State will have an opportunity to get back up here and
22 talk in more depth about the facts of the case. Listen
23 carefully because if I do anything to misstate what the
24 law is, you listen to what Judge Hood will tell you after
25 you've heard from all of us as to what the law is that you

1 must apply to the facts. If I misquote, it's not
2 intentional, but listen carefully to him. He is the sole
3 instructor of the law.

4 In that same vein, if either side gets up here and
5 mischaracterizes or misquotes the facts, you remember
6 them. Because the roles in this courtroom, ladies and
7 gentlemen, are well defined, and it's for a purpose.

8 The role of the State is to present all the relevant
9 admissible evidence in the case. The role of the Defense
10 is to defend her client to the best of her ability. The
11 role of the Judge is to determine what is admissible, what
12 evidence you are allowed to hear, and then, ultimately, to
13 charge you or tell you what the law is once we're finished
14 here.

15 But by far, ladies and gentlemen, the most important
16 role in this courtroom is yours. And it's each of you
17 individually and then once you've heard what the law is
18 you are to apply it collectively when you get back in that
19 jury room because all of you must agree on a verdict,
20 whatever it may be.

21 Now, you have heard all the evidence you can consider
22 in this case. And very simply, the Judge will tell you
23 what the evidence is. As he mentioned before, it's not
24 the questions by attorneys. The evidence is the actual
25 answers, the sworn testimony that comes from this stand

1 and/or the exhibits that have been entered into evidence.
2 It's not fishing expeditions, innuendo, conjecture or just
3 plain wishful thinking on anyone's behalf. You must
4 decide what happened back on October 13th of 2013.

5 And I want to apologize if during the course of this
6 trial if I have done anything, Ms. Walker, Ms. Garfield
7 has done anything to offend you in any way. At times, I
8 know my question has been inartful, clumsy, sloppy. At
9 times, evidence has not come before you and then because
10 of certain legal issues, you've been able to hear it.
11 There have been many times you've been sent back to that
12 room to sit while we've been out here discussing things.
13 So if we have done anything, on behalf of the State, on
14 behalf of Martha Childress, please don't hold that against
15 us.

16 Now, a criminal case is somewhat unique. It's
17 different from a civil case because a defendant, as he
18 should, has an absolute right to confront each and every
19 witness against him. It's guaranteed by the Constitution
20 and that's the way it should be.

21 When you say confront each witness, you've heard
22 reference to statements, test results, the doctor's
23 medical records, things of that nature, but you've
24 actually heard from those people. And the reason for that
25 is very clear, ladies and gentlemen. It's so that you,

1 each of you would have the opportunity to observe the
2 demeanor, to determine the credibility of each and every
3 witness. There are no depositions. There are no audio
4 depositions that are before you. Each witness appears
5 live because you have the right to confront each and every
6 witness in this case.

7 Now, as Ms. Garfield told you and the Judge told you
8 before this case ever started, before you heard any
9 evidence, the burden is on the State of South Carolina to
10 prove this Defendant guilty beyond a reasonable doubt.
11 And, ladies and gentlemen, that is a burden that in this
12 case, in this courtroom, with this evidence, the State
13 welcomes. We don't have to prove and overcome every
14 possible doubt. We just have to prove this Defendant's
15 guilt beyond a reasonable doubt.

16 And as you listen to the Judge as he instructs you,
17 what is a reasonable doubt. I'm going to look at some of
18 the terms that are going to be coming before you as far as
19 in this case as to what the evidence shows and what
20 standards you should apply to it.

21 What is a reasonable doubt? Proof -- this is how the
22 courts have defined it. Proof beyond a reasonable doubt
23 is proof that leaves you firmly convinced of the
24 Defendant's guilt. There are very few things in this
25 world that we know with absolute certainty and in criminal

1 cases, the law does not require proof that overcomes every
2 possible doubt. If based on your consideration of the
3 evidence, you are firmly convinced that the Defendant is
4 guilty of the crime charged, you must find him guilty.

5 If on the other hand, you think there is a real
6 possibility that he is not guilty, you must give him the
7 benefit of the doubt and find him not guilty. Proof that
8 leaves you firmly convinced.

9 Even in criminal cases, the law recognizes that
10 everyone can doubt anything, but in this case, all you're
11 saying is the Defendant's guilt beyond a reasonable doubt
12 that leaves you firmly convinced.

13 The law recognizes there are very few things in this
14 world we know with absolute certainty. And in criminal
15 court, the law does not require proof that overcomes every
16 possible doubt. Firmly convinced. Listen when the Judge
17 charges you on the law as to what he says about that.

18 Now, also, in every criminal case, it is upon the
19 State to prove that the defendant acted with criminal
20 intent. The Judge will charge you with something similar
21 to this. In order to establish criminal liability,
22 criminal intent is required. For example, these are
23 examples, the mental state required to be proved by the
24 State for a particular crime might be purpose, intent,
25 knowledge, recklessness or criminal negligence. Criminal

1 intent must be proved by the State beyond a reasonable
2 doubt. It is always a matter that must be determined by
3 the jury from the circumstances surrounding the situation.

4 There is no way to prove intent to a mathematical
5 certainty. There is no way that medical science can
6 dissect a person's brain and determine what that person
7 had in mind. So the law says that criminal intent may be
8 inferred from circumstances shown to have existed.

9 This is how you make a determination of whether or
10 not the element that requires intent was present. It is
11 not necessary to establish intent by direct or positive
12 evidence. Intent may be established by inference in the
13 same way any other fact by taking into consideration the
14 act of the parties and all the facts and circumstances of
15 the case.

16 Criminal intent is a mental state, a conscious
17 wrongdoing. It is up to you to determine what the
18 Defendant intended to do based upon the circumstances that
19 are shown to have existed. Criminal intent can arise from
20 an action or a failure to act. It may arise from
21 negligence, recklessness or indifference to duty or to
22 consequences that are considered by the law to be the
23 equivalent of criminal intent. And again, it can arise
24 from negligence, recklessness or an indifference to a duty
25 or consequences. And I submit, ladies and gentlemen, that

1 sums up what we have here.

2 Now, in the beginning of the case, the Judge told you
3 there's several charges. There is one count -- one
4 indictment that's attempted murder. And I'm going to
5 talk -- because the Judge is going to charge you --
6 whenever there's a greater offense, he also charges you on
7 the law of lesser offenses. So I'm going to talk about it
8 all and I'm going to try to start with the attempted
9 murder and work my way down. Then I'm going to talk to
10 you a little bit about the gun charges and what those are.

11 Now, attempted murder is defined in our law simply as
12 follows: A person who with intent to kill attempts to
13 kill another person with malice aforethought either
14 expressed or implied, then he commits the offense of
15 attempted murder.

16 When you consider that, the easiest way I know to
17 understand what is attempted murder, would it be murder if
18 Martha Childress had died or anyone else standing near
19 her? Would it have been murder if he had shot the
20 intended target? I'm going to talk about transferred
21 intent later. That's the easiest way for me to go about
22 and tell you what is intent to kill. But in this case
23 with that, the law did defines some terms that you've seen
24 there. Malice aforethought, what does that mean?

25 The Judge will instruct you, malice can be hatred,

1 ill will or hostility towards another person. It is the
2 intentional doing of a wrongful act without just cause or
3 excuse and with an intent to inflict an injury or under
4 circumstances that the law will infer an evil intent.
5 Malice may be inferred from conduct showing a total
6 disregard for human life.

7 And I submit, ladies and gentlemen, any version of
8 Michael Smith's and his shooting that night showed a total
9 disregard for human life. The Judge will instruct you on
10 malice and go a little bit further.

11 For attempted murder, in its popular sense, the term
12 malice conveys the meaning of hatred, ill will or
13 hostility towards another. In its legal sense, however,
14 malice does not necessarily mean ill will towards the
15 individual injured, but signifies a general malignant
16 recklessness of the lives and safety of others or a
17 condition of the mind which shows a heart regardless of
18 social duty and fatally bent on mischief. A heart
19 regardless of social duty and fatal bent on mischief.

20 In other words, a malicious killing is one where the
21 act is done without legal justification, excuse or
22 extenuation. The intentional doing of a wrongful act
23 towards another without legal justification or excuse.

24 And I submit, ladies and gentlemen, when you look --
25 and you've got a video in this case which shows a lot of

1 what happened that night. And when you go back and you
2 look at Michael Smith and his -- what he was doing, what
3 he was carrying knowing he had no right under the law,
4 just beyond even that he didn't have a permit to carry it,
5 he's forbidden by law to carry that gun. When he went
6 back into an area that he says he had luckily escaped with
7 his life months before, does that even make sense?

8 The Judge will further instruct you about specific
9 intent. Specific intent to kill -- specific intent means
10 that the Defendant consciously intended the completion of
11 acts comprising the attempted offense. In other words,
12 did he mean to shoot? By his own statement, there's no
13 doubt that he intentionally shot. It wasn't an accident.
14 He intentionally shot according to Michael Smith's own
15 words. Back then, some of his words and today.

16 Intent means intending the result which actually
17 occurs, not accidentally or involuntarily. Intent may be
18 shown by acts or conduct of the Defendant and other
19 circumstances from which you may naturally and reasonably
20 infer intent. Intent may also be inferred when it is
21 demonstrated the Defendant voluntarily and willfully
22 commits an act the natural tendency of which is to destroy
23 another's life.

24 Now, his intent, ladies and gentlemen, nobody is
25 arguing was Ms. Childress. His intended targets were the

1 three young men that were out there. The Judge will
2 instruct you on transferred intent. It doesn't absolve
3 him of liability just because he's a bad shot. In fact, I
4 submit it holds him to even a higher level to shoot
5 randomly into a crowd without justification.

6 The Judge will also instruct you on what the terms
7 mean expressed or inferred or implied. Malice
8 aforethought may be expressed or inferred, sometimes the
9 word implied is used. Those are kind of interchangeable.
10 These terms expressed and inferred do not mean different
11 kinds of malice, but merely the manner in which malice may
12 be shown to exist. That is either by direct evidence or
13 by inference from the facts and circumstances which are
14 proved. Expressed malice is shown when a person speaks
15 words which express hatred or ill will for another or when
16 the person prepared beforehand to do the act which was
17 later accomplished.

18 For example, lying in wait for another person or any
19 other acts of preparation going to show that the deed was
20 done within the Defendant's mind with the expressed
21 malice. Expressed malice, acts of preparation. When
22 you've got to move your gun from inside of your pocket to
23 the other one so you'll be prepared the next time you see
24 him, that's expressed malice.

25 But you don't even have to find expressed malice.

1 There's so much malice here that it comes in all forms.
2 Malice may be inferred from conduct showing a total
3 disregard for human life. And you saw those videos and
4 you'll have those when you get back into your jury room.
5 There are people everywhere. The miracle in this case of
6 those two shots, unfortunately for Martha Childress, only
7 one hit a victim. Malice.

8 There's also the term aforethought. And what does
9 that mean? Because you're going to listen carefully to
10 the Judge. You aren't going to hear him say a word about
11 there had to be a motive for the shooting, although I
12 submit that's clear from the facts. There doesn't have to
13 be any premeditation, although also in this case we have
14 it when he's moving the gun and you see that on the camera
15 when it catches it.

16 Malice according to the law need not exist for any
17 appreciable period of time before the commission of the
18 act occurs. Malice may be conceived at the very moment
19 the blow is given. It is sufficient in law if there's a
20 combination of the evil intent and the act producing the
21 result.

22 I submit, ladies and gentlemen, and you be the judge
23 because that's your role, Michael Smith was boiling over
24 for a fight that night. Remember -- and you heard it best
25 from Shante and Asia. They didn't even want to say those

1 guys had been talking to them because they knew how he
2 would react. But Ms. White said yeah, they've been
3 talking to us.

4 This is the oldest motive in the book. He's out
5 there by his own admission drunk and high, and he thinks
6 somebody said something to his girl, so he would take care
7 of them. Doesn't avail himself to any law. In fact, he's
8 breaking laws before he even gets there.

9 Malice. The Judge will go further and tell you that
10 in this case, the law is if one attempts to kill another
11 during the commission of a felony, the inference of malice
12 may arise. What does it mean during the commission?
13 There's a shooting during the commission of a felony.

14 He will also charge you that the charge possession of
15 a weapon by a person convicted of a violent crime and
16 possession of weapon by a person convicted of a crime of
17 violence, both of which he had been convicted of, are
18 felony charges under South Carolina law. The inference of
19 malice may arise from just the commission of the felony.

20 Now, as a lesser included, you're going to hear about
21 the charge of assault and battery of a high and aggravated
22 nature. On the verdict form the Judge is going to send
23 back, there's going to be one and you must decide what, if
24 any, level of assault there are, starting with attempted
25 murder, which I've just gone over, and then there's

1 assault and battery of a high and aggravated nature.

2 And on attempted murder, there doesn't even have to
3 be an actual battery or a touching. The bullet doesn't
4 actually have to strike someone, but A-B-H-A-N, or ABHAN,
5 assault and battery of a high and aggravated nature is
6 different. Because in this case, a person commits the
7 offense of assault and battery of a high and aggravated
8 nature if the person unlawfully injures another person.
9 So there has to be an actual injury in ABHAN, not in the
10 upper level one, but just in this one, and the act is
11 accomplished by means likely to produce death or great
12 bodily injury. So the distinguishing factors are there
13 can be attempted murder if there is an injury or isn't an
14 injury, but there can be ABHAN if there is an injury. And
15 then there is the absence of malice.

16 And I submit, ladies and gentlemen, I beg you, look,
17 you have a video. You have his own words. Was the
18 Defendant out there that night -- I submit this is the
19 real issue in this case. Was it attempted murder? Was
20 there malice in his heart? Not malice for Martha
21 Childress, but malice in his heart when he shot into the
22 crowd. We submit, ladies and gentlemen, it is.

23 He wants you to believe, give him the benefit of the
24 doubt, give him the lesser included, just ABHAN. If he
25 unlawfully injures another person and is accomplished by

1 means likely to produce death or great bodily injury. I
2 don't think, I could be wrong, anyone would get up here
3 and say that shooting a gun at other people is not likely
4 to, at least, cause that type of injury.

5 The Judge will charge on an even lesser included
6 offense. First there is attempted murder, then there's
7 assault and battery of a high and aggravated nature, and
8 then there's assault and battery first degree. The Judge
9 will define it as follows: A person commits the offense
10 of assault and battery in the first degree if the person
11 unlawfully offers or attempts to injure another person.
12 This is again one like attempted murder. It can be the
13 actual injury or offer to injury. With the present
14 ability to do so and the act is accomplished by means
15 likely to produce death or great bodily injury.

16 So there's attempted murder, there's assault and
17 battery of a high and aggravated nature and then a lesser
18 included of that is assault and battery in the first
19 degree.

20 Then the two lesser includeds of that are assault and
21 battery in the second degree, an assault and battery,
22 unlawful injures another person or offers or attempts to
23 injure, again, is a different one, and to do so moderate
24 bodily injury to another person results.

25 I submit, ladies and gentlemen, paralyzing another

1 person is never going to qualify as moderate bodily
2 injury. Listen carefully to the Judge's instruction on
3 that and what it is. It's a temporary loss of some
4 feeling or a broken bone.

5 And then finally, assault and battery in the third
6 degree, which is the equivalent of simple assault, if a
7 person unlawfully injures another person or offers to do
8 with the present ability to do so.

9 I submit, ladies and gentlemen, and again, I could be
10 wrong, the issue is did he act with malice or was it just
11 an assault and battery of a high and aggravated nature?

12 Now, the Judge is also going to instruct you the
13 Defendant testified that he was in fear for his life when
14 he was acting. And it is up to the State, the burden is
15 on us, to disprove self-defense, okay. That is up to the
16 State.

17 The Judge will instruct you there are four elements
18 of self-defense, but -- that is a complete defense. If
19 any one of those elements is disapproved by the State --
20 we don't have to disprove all of them, although I submit
21 we can. If any one of those elements doesn't reach the
22 level of proof, if we disprove any one, then self-defense
23 is not available to this Defendant.

24 And the first and the foremost number one, the
25 Defendant is without fault at bringing on the difficulty.

1 And I submit, ladies and gentlemen, when you go to Five
2 Points and you take a gun and you put it in your jacket
3 when you are forbidden by law in so many different ways
4 from carrying that gun and then you transfer it over to
5 another pocket --

6 We'll talk about duty to retreat, because at the
7 moment of that initial supposed run-in there at the
8 corner -- do you remember seeing the video? At that
9 point, he has not only got to be without fault in carrying
10 a gun unlawfully, but he also has a duty to retreat at
11 that point. But I'm skipping ahead of myself on the
12 different elements.

13 The Defendant armed himself. He's the one that
14 stopped. He's the one that turns around when a young
15 man -- when the shots are fired, their back is to the
16 Defendant. He doesn't get past the first element.

17 He then has -- the second element is he actually
18 believed he was imminent danger of losing his life or
19 sustaining serious bodily injury. That he actually
20 believe it or he was. And it's hard to understand what
21 their theory is. It changes because either somebody
22 dropped a gun or someone was shooting at him, according to
23 Michael Smith. And we'll get back to credibility.

24 If his defense is based on actual belief of imminent
25 danger, would a reasonable prudent man of ordinary

1 firmness and courage have entertained the same belief?
2 Again, he doesn't make it because it didn't happen that
3 way. As much as they wish or hope, it didn't happen that
4 way. According to Michael Smith, and this is his
5 testimony here today, there were shots coming at him, not
6 shots going away from him. He could tell the shots were
7 coming at him and that's when he fired. That's his
8 testimony. And that he was without fault in bringing this
9 on.

10 And further, he has the right to act on appearances.
11 The Judge will tell you that, he can act on appearances.
12 But according to him, he wasn't acting on appearances. He
13 was acting on the fact that somebody was shooting at him
14 multiple times and the bullets were coming for him. That
15 is his testimony, not what's seen in the video anywhere
16 under any interpretation.

17 And finally, that he had no other probable means of
18 avoiding the danger of losing his own life. He had no
19 other recourse than to start shooting into the crowd.

20 Self-defense? He's the one that brought the gun
21 unlawfully. He's the one that chose to go back to where
22 he supposedly was beaten at some unknown time on some
23 unknown street by some unknown people. It doesn't even
24 make sense. And ladies and gentlemen, that's the problem
25 when it's not the truth.

1 But further, self-defense is eliminated because even
2 if you want to believe what they say, that the other young
3 man had a gun, whether it fell accidentally and then shot
4 at Michael -- I'm not quite sure how that could happen
5 multiple times. Anyway, even if you want to believe
6 everything he said, he doesn't get it. Self-defense is
7 not available to him because of mutual combat, because the
8 law recognizes when two people, two groups of people or
9 two people come together for the purpose of fighting and
10 both are armed, you don't get self-defense. You want to
11 go in there and pick a fight, you want to go in there and
12 have a fight, then you don't get self-defense.

13 Listen carefully, for mutual combat, there must be a
14 mutual intent and willingness to fight. This intent may
15 be shown by the acts and conduct of the parties and the
16 circumstances surrounding the combat. He confronts them
17 by anyone's imagination before any shots.

18 In addition, it must be shown that both parties are
19 armed with a deadly weapon. If he voluntarily
20 participated in mutual combat for purposes other than
21 protection, killing the victim would not be self-defense
22 if he voluntarily participated. And by his account under
23 any version you want, anything he said on any occasion,
24 he's got -- well, he did say on that one occasion it was
25 the other guy's gun that he picked up, but he admits

1 that's not true. But now, here we are, he went there with
2 the gun. He was spoiling for a fight. Voluntarily
3 participated in mutual combat for purposes other than
4 protection.

5 If, however, at any point had he backed up, had he
6 said no, ma'am, we don't have a beef with you, anything
7 like that, then at that point, he could act self-defense.
8 But by his own admission, that's not what happened.
9 Mutual combat alone, he doesn't meet any of the elements,
10 I submit, of self-defense.

11 Now, there's the thing about transferred intent. And
12 very simply, the Judge is going to instruct you, as
13 Ms. Garfield said in her opening, the intent follows the
14 bullet. Basically, if I go out and I get a gun and I
15 decide to go to Five Points and shoot someone, just
16 because I miss doesn't relieve me of responsibility. The
17 intent goes with the bullet.

18 If the Defendant with malice aforethought attempts to
19 kill another person, but by mistake injures or kills
20 another person, the Defendant still has the intent to
21 kill. The intent to kill is merely transferred from the
22 original person the Defendant attempted to kill to the
23 actual person killed or injured. The Defendant would be
24 guilty of attempted murder just as if the attempt had
25 resulted in the death or injury to the original person he

1 attempted to kill.

2 The Judge will tell you another thing when
3 considering all your lessers, transferred intent applies
4 to all assaults. It applies to attempted murder, to
5 assault and battery of a high and aggravated nature, and
6 to assault and battery first, second and third. The
7 intent can be transferred because the law recognizes
8 there's something inherently wrong when innocent people
9 get hurt just because he decided to shoot.

10 Now, I want to talk to you briefly about the gun
11 charges. Possession of a firearm during the commission of
12 a violent crime. It is unlawful to possess a firearm or
13 to visibly display what appeared to be a firearm during
14 the commission of a violent crime. The Judge will
15 instruct you that in this state both attempted murder and
16 assault and battery of a high and aggravated nature are
17 violent crimes.

18 So if you find him guilty of attempted murder or
19 assault and battery of a high and aggravated nature, you
20 would then consider whether or not he had or displayed
21 what appeared to be a gun. And in this case, ladies and
22 gentlemen, the gun was found on him.

23 The Judge will also instruct you on unlawful
24 possession of a firearm by a person convicted of a violent
25 crime. So that charge applies to when a person is

1 committing the crime we're here for. This charge is
2 unlawful for a person who has been convicted of a violent
3 crime to possess a firearm or ammunition within this
4 state. And ladies and gentlemen, you heard from the clerk
5 of court and you have the piece of paper, he was convicted
6 of burglary in the second degree, which is a violent
7 crime.

8 In addition to that, he has another charge because it
9 has a different element with a different underlying
10 charge, unlawful possession of a handgun by a person
11 convicted of a crime of violence. I know these words
12 sound alike, violent crime and crime of violence, but
13 they're defined differently. And the Judge will instruct
14 you that it's unlawful for a person convicted of a crime
15 of violence to possess a handgun within this state.
16 Attempted burglary second, which you also have from the
17 clerk's office where he was convicted of that separately,
18 is a second offense. It's another reason he can't have
19 the gun he chose to arm himself with that night.

20 Finally, ladies and gentlemen, unlawful carrying of a
21 weapon, of a pistol. Very simply, unless you have a
22 permit, a concealed weapons permit, which the testimony
23 has been he did not have one -- it doesn't matter if he
24 had one, he couldn't get one -- it is unlawful for a
25 person to carry a weapon about his person whether

1 concealed or not. A weapon is about the Defendant's
2 person if it is readily accessible and convenient for
3 immediate use. It doesn't get much more convenient than
4 this.

5 And then finally, the Judge will instruct you on the
6 law of possession and constructive possession. And very
7 simply, ladies and gentlemen, you've heard and it's not in
8 dispute that the gun was on his person when he was
9 actually apprehended. He's testified he shot the gun, all
10 those things.

11 Now, a couple more concepts of law. You've also
12 heard testimony that the Defendant was, I believe those
13 were his words, drunk and high that night, that he had
14 been drinking earlier in the evening and smoking
15 marijuana, or something else I think it was..

16 Voluntary intoxication is never an excuse or a
17 defense to a crime. A person who voluntarily renders
18 himself intoxicated is no less responsible for his acts
19 while in such condition. If a person voluntarily drinks
20 intoxicating liquors or takes drugs and becomes
21 intoxicated and if while in that condition commits an act
22 which would be a crime if it had been committed by a sober
23 person, the fact of drunkenness or intoxication would not
24 relieve him from responsibility.

25 So the fact that his judgment may have been

1 influenced by what he choose to do that night does not
2 relieve him of any criminal responsibility under our law.

3 In addition to that, the Judge will also instruct you
4 that voluntary intoxication does not preclude one's
5 ability to act with malice aforethought. It is not the
6 defense to a crime.

7 The Judge will also instruct you there are two types
8 of evidence. Direct evidence and circumstantial evidence.
9 What is direct evidence? It's that type of evidence
10 that's perceived through the senses, what you see, hear,
11 touch, feel. In this case, the vast majority of the
12 evidence in the case is direct evidence.

13 However, there's also circumstantial evidence in the
14 case. The fact that he's caught with the gun right
15 afterwards and it's warm to the touch. One might infer
16 it's been recently shot because of the warm to the touch
17 part. That's a kind of circumstantial evidence.

18 In this case, as with most cases, we have both direct
19 and circumstantial evidence. And the great thing about
20 this case is you've got the direct evidence, that's the
21 eyewitness testimony that can be corroborated and/or
22 disputed depending on which witness you want to talk
23 about, that's corroborated in this case to a great degree.
24 You have a video. That's not that ordinary in an ordinary
25 day.

1 There are two types of evidence. Direct evidence
2 proves the existence of a fact and does not require
3 deduction. Circumstantial evidence is proof of a chain of
4 facts and circumstances indicating the existence of a
5 fact. Crimes can be proven by circumstantial. The law
6 makes no distinction between the weight or value given to
7 either direct or circumstantial evidence. But to the
8 extent the State relies on circumstantial evidence, all
9 the circumstances must be consistent with each other and
10 when taken together point conclusively to the guilt of the
11 accused beyond a reasonable doubt. If they merely portray
12 his behavior as suspicious, the proof has failed. Ladies
13 and gentlemen, his behavior wasn't just suspicious.
14 There's no dispute he's out there shooting.

15 The burden rests with the State regardless of whether
16 we rely on direct or circumstantial evidence or a
17 combination of the two. In this case, the gun being
18 warming to the touch corroborated the fact he had just
19 shot it as an example of circumstantial evidence.

20 You also heard about how he made a statement to the
21 police from Investigator Gilliam who talked to him shortly
22 after, read him his rights. And he waived those rights
23 according to Investigator Gilliam and he spoke to him.

24 Now, on the stand, Michael said he didn't. But
25 luckily, in this case, there's a recording from the car

1 where he says the exact same story he told Investigator
2 Gilliam.

3 And remember she asked him why he didn't take a
4 written statement when he took him down to headquarters to
5 take a written statement. He said he didn't want to talk
6 anymore, take him back to the jail. But in this case, you
7 have the car video where he talks about what happened that
8 night.

9 His first explanation once he got past the I didn't
10 mean to shoot to the first officer, then it's oh, they
11 shot at me, and then I picked up the gun, because he's
12 thinking, and ran.

13 The last thing I want to talk to you about, ladies
14 and gentlemen, is credibility. In this case, that's what
15 it is. This is about credibility, believability. Because
16 either you believe the video and the State's witnesses
17 that were credible or you believe Michael Smith. Because
18 either Michael Smith was acting in self-defense or he's
19 guilty of attempted murder.

20 And she'll get up here and she may say well, you
21 know, convict him of the gun charges because he is guilty
22 of those, but that doesn't mean, ladies and gentlemen,
23 that he's not guilty of attempted murder. Credibility of
24 witnesses.

25 Credibility simply means believability. It becomes

1 your duty as jurors to analyze and to evaluate the
2 evidence and determine which evidence convinces you of its
3 truth. In determining the believability of witnesses who
4 testified, you may believe one witness over several or
5 several witnesses over one witness. You've may believe
6 part of the testimony of a witness and reject the
7 remaining part of that same witness. You may believe the
8 testimony of a witness in its entirety or reject it in its
9 entirety. You may consider whether any witness has
10 exhibited to you any interest, bias, prejudice or other
11 motive in this case. You may also consider the appearance
12 and manner of a witness while on the witness stand.

13 And ladies and gentlemen, you may wonder why when
14 Michael Smith took the stand, we went over all those
15 statements he made on those phone calls. Because it
16 affects his credibility. Because why is he having to
17 instruct witnesses on what to say if he acted in
18 self-defense? It doesn't even make sense. That's why
19 you're allowed to hear them. He admitted -- because we
20 didn't have to put the calls in. He admitted to what he
21 said in those calls. Credibility.

22 Now, the Defense has absolutely no burden to put up
23 any, as they shouldn't, but once they put up a case, once
24 the Defendant takes the stand, you judge their case, their
25 witnesses in the same way you judge any other witness in

1 this case. That is --

2 MS. ZMROCZEK: Your Honor, may we approach?

3 THE COURT: Sure.

4 (WHEREUPON, a bench conference was held in the
5 presence of the jury, but outside the hearing of the
6 jury.)

7 MS. CAMPBELL: Credibility. I beg you to judge the
8 State's evidence. What makes sense? All we ask is that
9 when you go back to your jury room, you look at all the
10 evidence in the case and once you consider that evidence
11 that you come up with a verdict that speaks the truth.

12 Hold Michael Juan Smith responsible for his choices,
13 what he did back on October 13, 2013. Thank you.

14 THE COURT: All right. Thank you, Ms. Campbell.

15 All right. Ms. Zmroczek.

16 MS. ZMROCZEK: Thank you, Your Honor. I need about
17 five minutes to set up the TV. It won't even take that
18 long.

19 THE COURT: All right. Ladies and gentlemen, retire
20 to your jury room. Do not discuss the case in any way,
21 shape, or form. Keep an open mind. We'll be back with
22 you in just a couple minutes.

23 (WHEREUPON, the jury left the courtroom at 3:03
24 p.m.)

25 MS. ZMROCZEK: I'm ready, Your Honor.

Closing Arguments by the Defense

1 THE COURT: Ready?

2 MS. ZMROCZEK: Yes, sir.

3 THE COURT: Okay. Everybody ready?

4 MS. CAMPBELL: (Nods in the affirmative.)

5 THE COURT: Okay. Let's bring them back in, please.

6 (WHEREUPON, the jury entered the courtroom at
7 3:06 p.m.)

8 MS. CAMPBELL: Your Honor, may we approach real
9 quick?

10 THE COURT: Sure..

11 (WHEREUPON, a bench conference was held.)

12 THE BAILIFF: The jury is seated, Your Honor.

13 THE COURT: Thank you very much.

14 Welcome back, ladies and gentlemen.

15 Ms. Zmroczek, you may close.

16 MS. ZMROCZEK: Thank you, Your Honor. May it please
17 the Court?

18 THE COURT: Yes, ma'am.

19 CLOSING ARGUMENT BY THE DEFENSE

20 MS. ZMROCZEK: Oh, no, Cuz. Oh, no, no, no. They
21 want you to believe that that can't happen.

22 Ms. Campbell and I agree on one thing. The video
23 can't lie. When I took this case two months ago and I
24 started going through discovery, one of the first disk I
25 put in entitled person who shot at ground --

1 MS. WALKER: Objection, Your Honor. Those facts are
2 not in evidence.

3 THE COURT: Overruled.

4 MS. ZMROCZEK: But they don't want to tell you who
5 made that disk. Just tell me, I asked. I asked this
6 investigator right here, lead investigator, and he said,
7 he read it to you, he said that's what it says, and he
8 said, I didn't make that. That would have been somebody
9 over at SLED. Joe West, I said? Joe West. So I called
10 Joe West. He doesn't work for me. Joe West, You've seen
11 this disk? I didn't make that disk.

12 Ladies and gentlemen, these aren't facts that I'm
13 creating. These aren't wishes and hopes and dreams. This
14 is evidence. This is their evidence. I just looked at
15 it.

16 You've been brought here today to answer a very
17 serious question of fact and the State didn't give you the
18 answers. Your guide will be the law. Judge Hood will
19 tell you that. Judge Hood will tell you there's no room
20 for speculation when it comes to a young man's life. And
21 I want to stop right there for one moment.

22 Hate Michael Smith. Call him a gangster. Call him a
23 thug. Call him all the things that they want you to
24 believe because then you can convict him. But that's not
25 what this case is about. This case isn't about Michael

1 Smith and whether he wants to see naked pictures of his
2 girlfriend after he's been in jail for two years. That's
3 just to make him look bad.

4 This isn't -- this case isn't about what he did or
5 didn't say or what he admitted to saying and apologized
6 for it because he'd been in jail for three days and he
7 didn't understand why. That's what they want to make this
8 case about. They want you to hate him. All these
9 Facebook pages and posts, those don't have anything to do
10 with the question that you came to answer. And that
11 question is this, who shot her?

12 I can't imagine what it's like for her to have been
13 sitting here all week. I can't imagine what it was like
14 for her to shake the hand of the person who sat up there
15 and said he didn't know anybody with a gun. I can't
16 imagine that. I can't imagine for two-and-a-half years
17 being told there was one gun out there, and then coming in
18 this courtroom two-and-a-half years later and finding out
19 something different.

20 I didn't ask Ms. Childress any questions. The
21 questions that I've asked, I tried to -- I tried to ask
22 and be respectful of our time to get to what happened.
23 Ms. Childress doesn't know what happened because as you
24 can see and you will see again, she was standing, camera
25 facing here, waiting for a cab. It doesn't matter if she

1 was drunk. She did nothing wrong. The one question I
2 wanted to ask her, the one question I wanted to ask her
3 was shouldn't the person who did this to you be sitting in
4 that chair, and shouldn't we be sure about it?

5 The Judge told you that the State gets an opportunity
6 to go, and then you get to hear from me, and then I sit
7 down. You don't get to hear from me again. Then the
8 State will come up. And I'll tell you, as a defense
9 attorney, this is the hardest part of any job because I
10 have to sit there, and I can't respond. I can't say, but
11 what about this and what about this. I can't do that.
12 And we'll discuss this again later on, but it's done this
13 way for a very, very important reason.

14 The State has the burden of proving their case beyond
15 a reasonable doubt that Michael Smith committed attempted
16 murder. And it's done that way for a reason. It's the
17 highest, highest level of jurisprudence. It's the reason
18 that we go to war. It's the reason that we protect our
19 country. It's not a legal theory. We don't put juries in
20 boxes to police the community. We have legislatures and
21 we have policemen to do that.

22 The Judge will tell you that even though we put on a
23 state, we were not required to do so -- put on a case, we
24 were not required to do so. We could have sat back, asked
25 no questions of any witnesses and they still would have

1 the burden. I want to make sure it's very clear we did
2 put up a case. And yes, our witnesses should be tested
3 for credibility. But just because we put up a case
4 doesn't mean that we have to prove anything. The burden
5 still and always remains with them.

6 I want to talk to you -- I've broken my closing
7 remarks down into kind of three different areas. The
8 first is talk to you about my fear, get it out there. I
9 want to address the State's case and then briefly address
10 our case.

11 I told you from the very beginning, from the first
12 time you met me on Tuesday afternoon, Tuesday -- Monday
13 afternoon, what our biggest fear was and what my biggest
14 fear is. My biggest fear is that the pressure of the
15 press, the pressure of this innocent victim combined with
16 their piling on of what a terrible human -- I don't even
17 know why he's still alive, Michael Smith, will lead you to
18 your decision.

19 But you raised your hand and you told the Judge no,
20 we will not listen to that. We will look at the facts,
21 and we will look at the evidence as it's presented and
22 we'll decide for ourselves individually and collectively,
23 and we'll be proud of what we determine because one day it
24 could be our luck on that scene.

25 Ms. Campbell talked to you a lot about credibility.

1 In fact, told you this cases boils down to credibility,
2 boils down to credibility. I submit it boils down to
3 video that can't be changed. We'll come back to this in a
4 bit. Mr. Watkins and Ms. Robinson both sat up on that
5 stand and withstood a vicious credible -- a vicious
6 character attack.

7 A witness, Mr. Watkins, who the State, Ms. Campbell,
8 put up in her last case, but now, what he does is no good.
9 And Mr. Robinson and his silly little measurements and
10 silly little explanations as to how that bullet could have
11 come from the gun in Daquan Samuel's hand.

12 The State knew that that was coming, or maybe they
13 didn't, and they could have addressed it at the head, or
14 they could have put Agent Thrower back up on that stand to
15 say Robinson is wrong. That's a lie. They didn't do
16 that. That's because they can't. You can't argue with
17 the science and you can't argue with the video.

18 Credibility. As we watched the video and we watched
19 Ms. Samuel return looking for his shell casing or a lady,
20 as Agent VanHouten would like you to believe, because that
21 doesn't make sense with their story.

22 Credibility. A simple question like why didn't you
23 record his interview? Well, I didn't have my recorder.
24 You recorded eight interviews, including one of
25 Investigator McLaughlin, you're own investigator.

1 There's no reason. That doesn't even matter. That
2 doesn't make sense. There are a lot of things don't make
3 sense. And when they don't make sense, you just admit
4 that you did something wrong. It's okay. I've done it
5 probably 10 times in this trial. Some would argue 100.
6 But you admit when you make mistakes, especially when
7 we're talking about criminal charges.

8 Investigator Gilliam recognized the notes where he
9 talked about the dreads, white shirt and had a gun. He
10 didn't know where these notes came from.

11 If you can get here and say it's Michael Smith for
12 certain, if, and I submit we can't even get past here, why
13 was he doing it in self-defense? You heard him testify
14 today. Testifying is nerve racking unless you've been
15 doing it for 15 years. You have people that your life is
16 in their hands look at you and hear some of the awful,
17 horrible, regretful things that you've said and know
18 that's what they're going to judge you on and not what
19 can't be changed on this video.

20 He shot because he heard a shot. It doesn't matter
21 if it was coming at him. He thought it was coming at him.
22 The video shows it wasn't.

23 The Judge will instruct you that just because he had
24 a gun and he wasn't supposed to does not disqualify him
25 for self-defense.

1 The other night -- last night actually, I was trying
2 to think, I've been in this trial a week now. We're
3 talking about what happened between 2:10:29 and 2:18:56,
4 eight minutes and 27 seconds. And when those videos go
5 back with you, you get to watch each and every one of
6 them, including the made-up videos. Then you take the
7 made-up videos and you compare them to what's on the
8 unmade-up videos and you'll find that they're the same.
9 They're zoomed in. There's been allegations that things
10 weren't allowed to be done that way, but we didn't have
11 any testimony.

12 (WHEREUPON, video was played in open court for
13 the jury.)

14 MS. ZMROCZEK: Sunday October 13th, 2:10, Mr. Samuel,
15 cigarette in his left hand. He was turning around meeting
16 some friends. And here we have Mr. Tucker and
17 Mr. Woodard. The State asked that you judge the
18 credibility of each and every one of those witnesses.

19 And I'd ask to remind you of the credibility of
20 Mr. Tucker who was screaming and angry because he was mad
21 that I accused him of a crime, who also told you he didn't
22 know Woodard. He didn't even know his name. But he knew
23 he was a gang member. There's the first who brought gangs
24 into this and that was Byron Tucker. He told
25 investigators yeah, Donnell Woodard said we're in Blood

1 territory.

2 They want you to believe this is about females, but
3 it's on the video. The queen of the Folk looking right at
4 two people she knows. They want to tell you that Michael
5 Smith intimidated witnesses. Don't you know with all the
6 gun charges that they brought up, if he had intimidated a
7 witness, that would have been another charge. Don't you
8 know if there would have been a text messages, it would
9 have been shown to you, or a phone call, it would have
10 been played for you.

11 They know Shante. Oh, but he told Shante what to say
12 on the stand. She didn't listen to him. She didn't help
13 him at all.

14 There is no conversation amongst the males and
15 females. There's a conversation amongst Mr. Woodard
16 saying something which we know, slob, to Michael.

17 There's the Tucker that I knew from the stand. Yes,
18 at that moment, Michael moved the gun to his right hand
19 for protection. We're at 2:11. In seven minutes, he's
20 going to be leaving Five Points because what happens in
21 seven minutes is they walked down to The Library. And
22 they're closed as they should be because it's 2:11, but
23 they let the girls in to go to the restroom and the guys
24 go pee, and they meet up and they leave. They go to
25 leave. That's what the video shows. If he had blood

1 boiling, why didn't he shoot him from over here? Why
2 didn't he shoot him from over here? He didn't. He only
3 had to it protect himself. And yes, we admit he should
4 not have had it.

5 They want you to believe the credible witnesses.
6 They had to arrest them to make them come testify.
7 Mr. Woodard was in jail. Ms. Bethel is on an ankle
8 monitor. Ms. T-Boo was given the choice testify or go to
9 jail. But they can't --

10 MS. WALKER: Your Honor, may we approach?

11 THE COURT: Yes, ma'am.

12 (WHEREUPON, a bench conference was held in the
13 presence of the jury, but outside the hearing of the
14 jury.)

15 THE COURT: All right. The jury will disregard any
16 statement about anybody being threatened to be put in jail
17 before testifying.

18 MS. ZMROCZEK: Ms. White, T-Boo, testified that she
19 didn't want to be here, that she was threatened. But they
20 made her come. They didn't make Mr. Samuel come. And
21 they say that they didn't make Mr. Samuel come because he
22 was scared. They have subpoena power. He's a material
23 witness. The last thing he did -- the last thing he knew
24 was VanHouten telling him you're going to be arrested. We
25 saw you drop that gun. He didn't show up. We don't get

1 to judge his credibility.

2 I submit to you when you take the videos back from
3 the State's Exhibits and the zoomed-in videos, you'll see
4 exactly what it shows. Michael leaving, them chasing
5 after him -- or them. It shows Mr. Tucker running away to
6 a corner by some trash cans meeting someone. Michael
7 leaving. There are so many cameras from so many angles
8 that if you take the time to look at them, then another
9 story seems possible.

10 Why is Mr. Samuel running less than 30 seconds? Mr.
11 Tucker said he didn't see them. His testimony from this
12 stand, I was looking for my cousin. He was looking right
13 at him. He was looking to make sure he got rid of the
14 gun. Then they walk back, and then he leaves.

15 Asia Bethel was arrested that night. T-Boo had a
16 warrant issued for her. Ryan was arrested that night.
17 Mr. Tucker was never arrested. Mr. Woodard was arrested.
18 Mr. Samuel wasn't. If it doesn't matter, then just tell
19 me.

20 Ladies and gentlemen, I want to talk about the
21 science briefly. There was a big cross-examination about
22 why this was just turned over to the State. It wasn't
23 just turned over to the State. These are the State's
24 videos. These are the State's placements per the video.
25 These are what make sense.

1 They want to say that Mr. Robinson is not credible
2 because he got fired from a job for ordering some parts.
3 Then put somebody up to say this is wrong, just one
4 person, anybody, Joe West, Agent VanHouten in his
5 professional opinion. But they can't, ladies and
6 gentlemen, because you can't argue with it. This is what
7 they saw, and this is what they knew.

8 From the very beginning of the case, Ms. Campbell
9 talks about how sometimes defenses change. I had a hard
10 time keeping up in the beginning because I wasn't sure if
11 there was one gunshot or two. Officer Arrowood talked
12 about the echo, so it could have just been one shot, but
13 on his report that night, he put two.

14 The State said believe their witnesses. Tucker and
15 Samuel, one of them had a gun or one of them was handed a
16 gun. More importantly, ladies and gentlemen, just believe
17 your eyes.

18 The very first time Dr. Smith ever makes any
19 reference or statement about the caliber of a weapon is
20 the Friday before trial.

21 Flash, standing back to the camera. You were out
22 there. You stood under that camera. You know where it
23 is. But more importantly, here's the flash from Michael
24 Smith's gun. She's already down.

25 Mr. Samuel, he can't be here, so we can't judge his

1 credibility, but we can judge what we see with our eyes.
2 What you'll see is he drops something, a lighter,
3 presumably, or a cigarette after he meets back up with
4 Mr. Daquan, after he's showing exactly what he did. And
5 notice, he just uses his fingers this time.

6 They say that's his hand, not a gun. Why is he
7 running? Why is he messing with his shirt? 2:18, why 10
8 minutes later is he walking down that very same path
9 looking on the ground?

10 These aren't facts I created. These are the facts.
11 You know exactly what he's looking for, ladies and
12 gentlemen. He's looking for the shell casing that was
13 ejected from his gun when he dropped it. Or if you want
14 to believe Agent VanHouten, he's looking for this. But
15 remember the burden is always, always with the State.
16 Maybe he's looking for that cigarette he dropped because
17 we know he found his lighter.

18 They want to tell you that it's a cigarette ash.
19 When you go back and you watch all the videos, especially
20 this video because this video, they said, didn't line up
21 with our video, so here's the unzoomed video, the video as
22 they put it in.

23 What you see down here, ladies and gentlemen, is
24 Mr. Samuel going after Michael. But more importantly,
25 what you see is one of the many, many people that were

1 smoking that night who tossed their cigarette right there
2 on the ground because that's what it looks like when you
3 toss a cigarette on the ground.

4 The State told you this is always about justice and
5 truth. And she talked to you about the law and she talked
6 to you about reasonable doubt. And yes, Michael Smith is
7 guilty of those gun charges. Ladies and gentlemen, I
8 submit he is not guilty of attempted murder.

9 You have to ask yourself those questions. Have they
10 proven to you who shot? Have they proven why? Have they
11 proven to you beyond a reasonable doubt that he's acted --
12 not acted in self-defense?

13 And the Judge will tell you it's in his charge and I
14 think there is nothing certain. It's a hesitation to act.
15 And you may define these differently, probably not, maybe,
16 perhaps. Perhaps not guilty, possibly guilty, possibly
17 not guilty, strong belief of guilt still doesn't rise to
18 the level that's required.

19 I have a story that I always tell and I try to mix it
20 up because I get bored myself. I have six sisters, and I
21 would always get in trouble for things that they would do.
22 And one day right before my dad went to go spank me, a
23 gust of wind caused him to think maybe she didn't slam the
24 door this time.

25 And that's how I try to explain reasonable doubt,

1 it's that hesitation. If I'm running up the stairs every
2 time I get yelled at and I slam the door, and then I get
3 punished. Then my sister runs up the stairs one day and
4 the door is slammed and I decide she is getting punished.
5 My dad goes upstairs and he opens that door and right as
6 he's going to yell, the wind slams it shut. Just for a
7 second, he puts that hand. And I think that's the best
8 way to explain what reasonable doubt is, ladies and
9 gentlemen, because that's the standard that we have to
10 hold the State to.

11 We're about to put on your shoulders the most solemn
12 responsibility that you individually or collectively have
13 faced, and all of you told the judge that you could do it.
14 And I want you to take pride in what you do because when
15 you walk out of this courtroom, you don't have to answer
16 to one person. You will not be judged on making the right
17 decision. The Judge will read you the law, but you are
18 the judge of the facts.

19 Heard a lot about the presumption of not guilty, and
20 I remind you that even though we did put up a case, that
21 we were not required to do so, and that burden doesn't
22 shift to us to prove Michael Smith innocent. They have to
23 prove to you each and every element of attempted murder
24 and the lower -- lesser included, and they have to
25 disprove self-defense.

1 And if they fail to prove any of these elements, you
2 are required -- the Judge will tell you you're required to
3 find Michael Smith not guilty of attempted murder. Only
4 if it can be said in your intellectual honesty may you
5 consider all of the facts and find him guilty.

6 The Judge and Ms. Campbell told you about the intent.
7 They want you to focus on the malice, what a bad person he
8 is, but that's not the intent.

9 I'm an idealist. I've been doing this for a long
10 time. I believe firmly in the integrity of our courts and
11 our jury system. The reality is a jury is no better than
12 each and every one of you sitting before me. I am
13 confident that you will review the evidence without
14 passion, without emotion, and that you will do your duty.

15 I don't get the chance again -- like I said earlier,
16 I don't get the chance to come up and talk to you, so I
17 ask that you do this, pay the same respectful, intelligent
18 attention to my colleague, Ms. Walker, and realize that I
19 have to sit over there and squirm because I can't get up.
20 I can't get up and I can't say but, but, but what about
21 this. So I ask you to do this, anytime an issue is raised
22 that piques your curiosity or your interest, and you say I
23 wonder what Ms. Zmroczek would say about that, I wonder
24 how she would respond to that, I ask that you do it.

25 And they leave those questions and they can't be

1 answered, I'm going to ask that you do your duty, and you
2 light the candles for the Constitution and you tell the
3 State Michael Smith is not guilty of attempted murder
4 because you have not proven to us beyond a reasonable
5 doubt that he is.

6 You ask them why he's leaving? Why they're chasing
7 him? Why when that gun goes off and she falls to the
8 ground and then his gun goes off, why nobody came up here
9 and told you that these measurements and these timings
10 were wrong? Why these videos aren't lined up? And I
11 submit that they won't because they can't because they
12 couldn't because as we can all agree, the video doesn't
13 lie. And it shows Michael Smith leaving, and it shows
14 that group chasing them, and it shows Mr. Samuel dropping
15 that gun, not a cigarette ash, and .03 to .05 seconds
16 later as it goes off because he can't get it in his pants,
17 that is when she gets hit.

18 Those are the facts and that's the science and that
19 can't be changed. Whether or not he said something
20 inappropriate in the jail, whether or not he asked to see
21 a naked picture of his girlfriend, that doesn't have
22 anything to do with this.

23 I submit to you the testimony about the awful
24 treatment that she's going to have to endure was only,
25 only to inflame your passion and maybe embarrass her. How

1 awful for her, but how even more awful that the State not
2 be required to produce to you the person that put that
3 bullet in her spine.

4 After reviewing those facts, you tell them Michael
5 Smith is not guilty of attempted murder.

6 Thank you.

7 THE COURT: All right. Thank you, Ms. Zmroczek.

8 MS. WALKER: I'll give her a moment.

9 Do you need help with anything?

10 MS. ZMROCZEK: Do you need me to take it down?

11 MS. WALKER: Yes. I would like all that down,
12 please.

13 THE COURT: All right. You need a couple minutes?

14 MS. WALKER: No, sir. I'm just waiting for her.

15 THE COURT: All right.

16 Everybody stand up, stretch your legs, twist your
17 body, whatever you need to do while we get things set up.

18 All right. Do you have what you need?

19 MS. WALKER: Yes, Your Honor, I do.

20 THE COURT: All right. Let's come back to order.

21 Did we lose -- oh, there she is. I wanted to make
22 sure you were still in here.

23 MS. ZMROCZEK: I did not leave.

24 THE COURT: Okay. Thank you.

25 Okay. Ms. Walker, the floor is yours.

1 MS. WALKER: Thank you, Your Honor. May it please
2 the Court?

3 THE COURT: Yes, ma'am.

4 CLOSING ARGUMENT BY THE STATE

5 MS. WALKER: Good afternoon. Like Ms. Campbell did,
6 I, too, want to thank you for the time and attention that
7 you've put into this trial. When y'all are on your way to
8 the courthouse, we talk about the fact that y'all don't
9 know what type of trial you're going to be in. There was
10 no way that you were going to know that you were going to
11 have to sit here and listen to the worst night of a
12 20-year-old's life.

13 And as y'all were anticipating what type of trial you
14 would be sitting in, Ms. Campbell and Ms. Garfield and I
15 were anticipating what type of defense Ms. Zmroczek and
16 Mr. Smith would finally rest on. And I think we probably
17 still don't know because it's kind of evolved over the
18 course of this trial.

19 But we were anticipating what would this defense be?
20 What's the defense when you're caught with the gun right
21 after you shoot it? What's the defense when the gun is
22 still warm to the touch? What's the defense when you wipe
23 your hands in your pockets to get GSR out? Because
24 remember, you're not an amateur at this. And the GSR test
25 still comes back positive. What's the defense when people

1 who have no dog in this fight, like Michael Painter -- and
2 you know, she talked about all of the witnesses in this
3 case, but she didn't talk about Michael Painter because
4 that's the one witness she can't get around. What's the
5 defense when he comes on the stand and points her client
6 out as the shooter? Simply put, how to you defend the
7 indefensible? Because what happened to Martha Childress
8 was indefensible.

9 And late last week after they started producing
10 random videos that I'll get to in a minute, on Wednesday,
11 or experts come in on Friday -- on Monday morning without
12 reports, the defense in this case became very clear. And
13 it became even more clear when she decided to put this in
14 her pocket, put on a sideways cap, give herself some sort
15 of a black man accent and say what's up, cuz, drop it to
16 the ground.

17 And what may be the most offensive thing that's
18 happened in the courtroom this week, you see a black man
19 on that video in the vicinity of the actual shooter, call
20 him a gang member. Does he have dark-complected hands,
21 say it's a gun. Accuse anybody in the vicinity of Michael
22 Smith that night of being a criminal and blame it on them.
23 That was the defense.

24 And it really didn't matter which one she picked
25 because one person said Byron Tucker was the shooter. The

1 Defendant said Byron Tucker was the shooter this morning.
2 His attorney just came in and said Daquan Samuel was the
3 shooter. They don't even agree on their defense and
4 they've been sitting together for almost seven, eight
5 days.

6 How do you defend the indefensible? You do whatever
7 it takes. You've malign whoever you have to. You accuse
8 whoever you have to. You publically call people with
9 absolutely no criminal records criminals and gang members.
10 You make fun of the way they walk. Do you remember that?
11 He kind of has a funny gait. You make fun of the way they
12 talk. And you need absolutely no evidence to support any
13 of your accusations because you don't have a burden.

14 There were -- I mean, there were moments where people
15 in this courtroom literally laughed out loud at the
16 defense that was being presented, whichever version of the
17 defense you want to believe because it evolved. And I'll
18 get to that in a minute. And it's almost funny. It's
19 almost funny if it wasn't so offensive. If I didn't walk
20 into this courtroom and see a paralyzed 20-year-old every
21 day, maybe it's funny. Maybe the attempts at defending
22 Michael Smith are humorous if you don't malign good men
23 like Byron Tucker to do it.

24 I want to talk to you about the witnesses in this
25 case and the inconsistencies of their statements and

1 sometimes the more absurd things that they said. But
2 before I talk about Ms. Zmroczek's witnesses, I want to
3 actually talk to y'all about the credible witnesses.

4 You heard from Martha. First semester freshmen at
5 USC. She had been inducted into her sorority. Her
6 childhood friend came down to visit. They went to a
7 concert, went back to campus, and then she walked down to
8 Five Points. The last time she would ever make that walk.
9 They went to a bar. They went to get something to eat,
10 and then they went and stood in line for a cab.

11 The same thing her friend, Ellison, said. She heard
12 a series of noises, and then she fell to the ground and
13 could not feel her legs. At that point in time, she
14 didn't know what had happened to her. Ellison said her
15 friend reached up to her and said, Help me up. I can't
16 feel my legs. They didn't point out the shooter. They
17 didn't know the shooter. They came in here, and they gave
18 you the part of the story that they knew. Judge her
19 credibility.

20 Then you heard from Michael Painter. He is the
21 Defendant's inconvenient witness because from the moment
22 he talked to law enforcement that night until the moment
23 he came in here and took the stand his story has been the
24 same. He saw the man in the tan outfit fire shots toward
25 the fountain. I guess I Shante didn't get to him and say

1 they were in the air. That was part of her job, but she
2 failed that. Do you remember the man in the tan outfit
3 with this ensemble.

4 Why would Michael Painter make it up? I don't think
5 Mr. Painter has a beef with the Bloods. He came in, told
6 you what he saw. Mr. Smith, in his vicious and untamed
7 tee-shirt, saw him fire shots and run away. And you see
8 him run away on the video, with his hand in his pockets.
9 He's got to get the GSR off. He's not an amateur at this,
10 he knows what he's doing.

11 Unfortunately for the Defendant, where Mr. Painter's
12 story ends, Officer McLaughlin's story picked up. He saw
13 him running. He heard the gunshots. He went to the
14 Defendant, put him up against the wall, reached down
15 towards his pocket and found the gun that was still warm
16 to the touch. We have literally brought you the smoking
17 gun in this case.

18 Remember what he said on cross-examination by
19 Ms. Campbell, that part, running into the cops wasn't
20 really part of his plan that night, but it happened. And
21 then he had to deal with it. The first thing that he says
22 is I didn't mean to shoot. He got up on the witness stand
23 today and said something different. He meant to shoot.
24 He pulled the trigger on purpose. I didn't mean to shoot.

25 Then it's the Michael Smith theory of evolution began

1 to take place. Because I didn't mean to shoot isn't
2 really going to work when you shoot multiple times. When
3 the gun isn't malfunctioning, I didn't mean to shoot just
4 isn't going to work. So he's sitting in the back of the
5 police car -- and you'll hear it up. I encourage you to
6 play it again in the jury room where it will be a little
7 bit louder and you may be able to hear it a little bit
8 better. And he said, F, I'm not trying to do any time.
9 Damn, man, MFer shoot at me. I pick up the gun -- at this
10 point, he realizes not only did he admit to shooting on
11 purpose, he's got to distance himself from the gun because
12 he's not even legally allowed to have that. That's why he
13 has to say it's someone else's gun. He has to say he
14 picked it up and ran away. MFer shoot at me, I pick it up
15 and haul ass. Now, I'm getting blamed. They say
16 something shot. I ain't got anything to do with that.

17 You heard from Ben Arrowood. He was the officer who
18 first saw Martha. Heard over the radio that Officer
19 McLaughlin had a person in custody and went down there to
20 check on that. Ryan Ellison, whose testimony I will get
21 to in a second, was arrested for drunk and disorderly
22 conduct.

23 You heard from the crime scene investigator, Officer
24 Potash. He recovered one shell casing that night. He
25 said that's not uncommon because when shootings like this

1 happen and people scatter like you saw on the video, those
2 things get kicked and they can get misplaced. It doesn't
3 mean that there was only one shot fired from that gun. It
4 means that they could only recover one shell casing. And
5 in a crowded area like Five Points when kids are trying to
6 get home and people coming and shooting into the crowd and
7 people scatter, those things get kicked. We were able to
8 find one and bring to it you and match it to the
9 Defendant's gun.

10 The other people that were down there that night who
11 were actually on the scene, Ryan Ellison, very tall kid,
12 came down here. He's at Job Corp right now. He knew the
13 Defendant's name. He knew him by Flame. That wasn't us
14 mocking the Defendant or trying to make fun of the
15 Defendant. That's what he goes by.

16 He didn't know that he had a gun. He got -- he
17 didn't -- I'm sorry. Ryan did not know the Defendant had
18 a gun. He got separated from his family because he
19 stopped to talk to girls.

20 The thing about the video is that he's so tall, you
21 can see him stop at that cab area and talk to girls. He
22 saw people arguing with his family. He saw one guy lift
23 up his shirt, but he did not see a gun.

24 Ms. White, she came in and testified. She testified
25 that she didn't want to be here. Remember, Ms. Zmroczek

1 said they had to go get her and make her testify. But
2 what she left out is why she didn't want to testify.
3 Because the Defendant's family had been threatening her.
4 My brother gets 30, I'm going to get 30 because I'm going
5 to do something to somebody. Do you remember that? She
6 came here. She was under subpoena. She took the stand.

7 And Mr. Smith was right on that jail phone call that
8 he admitted to saying. She held on that first one, but on
9 that second one, she broke. She told him. She said that
10 she was with the Bethels, with Ryan, with Flame. They
11 were walking across the street, somebody said something to
12 them. Flame said, Were they talking to y'all? And that's
13 when it's escalated. Because Flame isn't a person who
14 takes getting disrespected. That's not something that's
15 going to happen to him. That's why he carries a gun.
16 It's not for some phantom beating that happened.

17 And before I forget about it. I know I'm jumping
18 around, but let me talk about this beating for a second.
19 He was beaten on a street in Five Points with people all
20 around, with cops all around. He is beaten by more than
21 five people in the street and no one stopped to do
22 anything. The bystanders wouldn't help him. He doesn't
23 even know who these people are.

24 It's a funny thing about Flame, isn't it, wherever he
25 goes, there are just random people who want to beat him,

1 who want to shoot him. So he keeps going back to the same
2 place. But he's beaten by these people so badly that he's
3 laying in the street. No good Samaritan will help him.
4 His friend comes by, puts him in his truck and then has to
5 zoom him off to his mother's house where he's been
6 attacked by a mob, and no one thinks to take the boy to a
7 doctor. His teeth were almost kicked out of his mouth,
8 and he doesn't need to see a dentist. Her son comes to
9 her after this brutal beating and no one decides to call
10 the police?

11 And what Ms. Zmroczek said, it was kind of cute when
12 she opened, was there were no cops in Five Points that
13 night. There were no cameras in Five Points when Michael
14 Smith was beaten. He didn't tell anybody about it. How
15 are the cops or the cameras supposed to get there? I
16 submit to you he didn't tell anybody about it because it
17 didn't happen, but he needed a reason to arm himself when
18 he went to Five Points. So he came up with this story of
19 this brutal beating that happened in the streets that no
20 one other than him knows about.

21 But the problem with that story again is that when he
22 armed himself, he wasn't even going to Five Points. He
23 was going to Jet where he had never been and never been
24 beaten. But when you're Flame, you always -- you got to
25 be prepared.

1 And then we got to the Bethel sisters -- or the niece
2 and the aunt, I'm sorry. They all said they were going to
3 Jet. They stopped and went by -- they stopped because Jet
4 wasn't open, so they went to Five Points. And the one
5 thing that Shante and Asia were consistent on is that when
6 the young men started hitting on them, you know, somebody
7 said y'all are too broke to talk to us and words were
8 exchanged. I think they said they got called bitches.
9 They didn't want to tell Flame what the young men were
10 saying or who they were talking to.

11 Do you remember Taqayya said she sees somebody lift
12 up a shirt, and she turns and talks to somebody. Shante
13 sees someone lift up a shirt and she turns and talks to
14 somebody. Asia sees a gun because remember, she had to
15 get on board and say she saw a gun because that's what he
16 said on the jail phone call that he admitted to saying.
17 It was important that she said that. But nobody was
18 afraid?

19 Does that sound credible? Does that ring true? No
20 one was afraid of these young men with the gun. They
21 didn't run away. They stopped and talked to each other,
22 and then he pulled out a gun and started shooting. He was
23 the only one in fear at that moment. He was the only one
24 in fear at that moment because he has to explain why he
25 shot, right. I didn't mean to shoot didn't work. They

1 shot at me, so I picked up the gun didn't work. So now
2 we're continuing to evolve until we can finally get a
3 defense that worked. And I submit to y'all they still
4 have it.

5 The defense literally changed from this morning to
6 this afternoon. This morning Byron Tucker pulled a gun on
7 him. This afternoon, according to Ms. Zmroczek, it was
8 Daquan. You see a black man waving a gun at him.

9 And then Shante Bethel testified that they had broken
10 up. They were no longer together. The jail phone calls
11 prove that that was untrue, that they were still talking
12 last week about how they were going to be together when
13 this is over and about how much they love each other.

14 She's the queen of the Folk, so she can date any
15 Blood she wants to. Not that she's saying he's a Blood
16 because that's not really something they're going to agree
17 with, despite him having confessed to law enforcement
18 about being a Blood in the past. But she can date any
19 Blood she wants to, so she decides to date Michael Juan
20 Smith. That they went to Five Points that night because
21 the other places were closed, and that she saw him with
22 that gun. Remember? And you see it on the video. And
23 she yelled at him because she knew he wasn't supposed to
24 have the gun.

25 And watch the video because as soon as he sees the

1 first two guys, he takes his unlawfully carried gun that
2 he's possessing illegally from the inside, right. You see
3 that? He looks at them and he takes it from the inside.
4 At this point, he's afraid. They called him a slob, which
5 really shouldn't offend him since he's not a Blood member,
6 so I don't understand what the problem is. But they
7 called him a slob and at that point, he doesn't go to the
8 police on every corner. He doesn't go home. What he does
9 is he takes that gun, he looks at them, moves it to this
10 outside pocket and has his hand on it for the rest of the
11 night.

12 And he wants you to believe that there isn't one in
13 the chamber. Does Michael Smith look like a person who
14 carries around a gun charge without one in the chamber?
15 Has he done anything over the course of this trial or said
16 anything to make you think there wasn't one in the
17 chamber? He needed it for defense. You never know what's
18 going to pop off, but he wants us to think that he did not
19 have a gun in the chamber that night. And he walks around
20 like this for the rest of the night.

21 I submit, ladies and gentlemen, if you are so afraid
22 that you have to walk around town with your finger on the
23 trigger, go home. It's two o'clock in the morning. At
24 some point, the night has to end. End it there if you're
25 so afraid. But he didn't, he wanted to go to the Library.

1 But he can't get into the Library with a loaded weapon.

2 They let the girls go in to use bathroom, but they
3 didn't let him go in to use the bathroom, so he goes
4 behind a dumpster, he said, to relieve himself. And as
5 soon as he saw Byron and Donnell, that's when he decided
6 he needed to put his finger on the trigger and walk around
7 like that for the rest of the night. Byron Tucker, a
8 truck driver who lived in North Carolina at the time, as
9 he still does, so I'm not sure how he knew Michael Smith
10 was a Blood or why he would call him a slob.

11 And she gave him a hard time. You see him on that
12 video multiple times. He's walking around. He crosses
13 the street coming towards Michael Smith and his friends
14 before they head to The Library and he's with Donnell
15 Woodard.

16 And the interesting thing about Byron and Donnell is
17 that until it was time to give her closing argument, they
18 had both been accused of being the one with the gun. One
19 person said it was the guy in the black shirt with the
20 white writing, I think that was Asia. Shante said it was
21 the guy with the white shirt and the black writing. The
22 Defendant says it was the guy with the braids and that's
23 going to be Byron.

24 Judge his credibility. He was angry. Who wouldn't
25 be? He's a hard working guy who lives in a different

1 state who came down here to visit and has been accused of
2 being a gang member, destroying evidence and shooting
3 someone with absolutely no evidence to back it up.

4 Donnell Woodard also accused of having a gun. They both
5 testified that they didn't have a gun. There's no proof
6 that they had a gun.

7 And do y'all think if Agent Brian VanHouten, who is
8 still sitting here, could find any proof that either one
9 of them had a weapon, he wouldn't have arrested them if
10 they were carrying it illegally? But remember, they're
11 allowed to have guns. The only person not allowed to have
12 a gun is him. But that night, there's no proof that they
13 did because they did not.

14 And as their case continued to evolve and each
15 defense was kind of being smacked down pretty hard, they
16 had to come up with a new defense. There's one who's too
17 afraid to come back to testify, who the State can't find.
18 In the closing argument, mocking, putting on a sideways
19 cap, kind of walk with a pimp -- with a limp, I'm sorry,
20 and drop a gun and say it was his.

21 And then if things aren't really working, I will put
22 in a blurry picture that even she admitted was blurry when
23 she introduced it into evidence and called his hands guns.
24 Because if you have dark-complected hand, why not call
25 them guns? No wonder people are getting shot once a week

1 here in this country who aren't armed because people
2 assume that they have guns. She wants to put in blurry
3 pictures of this young man's hands and because of his
4 complexion called them guns. I can't tell which angle
5 they've done that's more offensive or, quite frankly,
6 dangerous. Judge the credibility of Byron Tucker, what he
7 and his friends were doing that night.

8 Then you had the medical professionals who offered
9 and were able to assist Martha that night and over the
10 course of her treatment. The EMS worker who was the first
11 person to realize that she had been shot who told her that
12 she had been shot on the ambulance ride.

13 Dr. Robert Smith, the treating physician, who's
14 treated tens of thousands of gunshot wounds and looked at
15 the scan and said what caliber it was. She's right, it
16 was Friday when we figured that out because that was the
17 first time we've been able to talk to him because he is an
18 ER doctor and he is usually performing his professional
19 duties. Once he took the time out to talk to us, he
20 said -- we asked him what kind of ammunition it could have
21 been and he came in and testified to that. There was
22 Dr. Elmers, who talked about Martha's injuries, how
23 they're still life threatening.

24 You heard from other experts in this case. And we
25 didn't bring -- we didn't bring these experts in to

1 embarrass Martha. Defendants can confront and have a
2 Constitutional right to confront each and every witness
3 against them. And when we -- the State of South Carolina,
4 when we accuse someone of attempted murder, we have to
5 prove the injuries, that's why they were brought in to
6 testify because those injuries are still life threatening.
7 They were life threatening then. They're life threatening
8 now.

9 You heard from the GSR expert. She talked about how
10 he was covered in GSR. He shot one time, he rubbed his
11 hand in his pockets and he's still covered in GSR? Ladies
12 and gentlemen, I submit he shot way more than one time
13 that night because he was the only person out there
14 shooting and witnesses report hearing multiple gunshots.
15 There's the firearms expert who was able to match the
16 shell casing that was recovered to Michael Smith's gun.

17 There was Jim Truitt from the clerk of court's office
18 who talked about the various convictions that this
19 Defendant has and why it was unlawful for him to carry a
20 gun.

21 Sergeant Waters. Sergeant Waters works at the jail.
22 There's a series of jail phone calls that we wanted y'all
23 to hear. When he says that he rubbed his hands inside his
24 pockets to get the GSR off, we thought it was important
25 for y'all to hear that because it showed that immediately

1 after he committed this crime, he was trying to destroy
2 evidence. That is not something innocent people who shoot
3 in self-defense do.

4 Take a listen.

5 (WHEREUPON, the phone call was played in open
6 court for the jury.)

7 MS. WALKER: Funny, right? That's funny to him. I
8 rubbed my hands inside my pocket and then he starts
9 laughing.

10 And this one has some offensive language. I'm going
11 to quote it because it's the words they use and I want
12 y'all to listen for it.

13 He starts talking to his friend. And he said, Man,
14 what was going through your head that night? What you
15 thinking? And he said, You only shot because you saw the
16 niggers, right? And he says, Chill, chill man, you all on
17 the phone and everything. Because he knows that that
18 can't get out. If that gets out, that I accidentally
19 shot, that I picked up the weapon and shot, that I shot in
20 self-defense, all of those are blown out of the window.

21 (WHEREUPON, telephone call was played in open
22 court for the jury.)

23 MS. WALKER: It wasn't no, I didn't shoot because I
24 saw them. I shot because they shot at me. That wasn't
25 the response. The response was, Chill, chill, man. You

1 all on the phone. Because at that point in time, he was
2 still using his pin number. He hadn't gotten creative and
3 started using another inmate's pin number yet. That
4 hadn't happened. That stroke of genius comes later.

5 You heard from several law enforcement officers.
6 Captain Thornton, Investigator Gilliam, they were both on
7 the scene that night. They both reviewed the videos.
8 They saw the Defendant with the gun.

9 Ms. Zmroczek keeps talking about the fact that his
10 statement wasn't recorded. But remember what he said that
11 night -- and you'll have it back there with you in the
12 jury room, and even he testified to it. He said, I don't
13 want to talk. Take me to the county. Not I was shot, not
14 they shot at me. They called me a slob, I had to defend
15 myself. He wanted to talk to a lawyer and be taken to the
16 county. Then he said that no one advised him of his
17 rights. Here's the advice of rights. And then he refused
18 to give his self-defense story.

19 Another witness that Ms. Zmroczek didn't talk about
20 was Rueben Levy, the inmate who Michael Smith confided in,
21 who came and testified. Ms. Zmroczek didn't talk about
22 him because he's another inconvenient witness. He said
23 that he wrote Ms. Garfield a letter because he, too, has a
24 daughter in college, and it could have been her and that
25 the Defendant showed absolutely no remorse for what he

1 did. It wasn't until I guess Sunday night before his
2 trial that he got remorseful and decided to write a
3 letter. The letter that he talks about her telling him to
4 write, and then he wrote it.

5 He said that the defense -- the Defendant confessed
6 to the shooting, that he never said anything about
7 shooting in self-defense. That he had a gang altercation
8 and he needed a gun. That men approached him and Shante,
9 words were exchanged and he fired without warning. She
10 didn't talk about him. She didn't even ask him any
11 questions because there's not really much you can ask him.

12 And then after that, after those witnesses, we got
13 into the defense case. And that is when things got, I'll
14 call it interesting.

15 You heard from Christopher Watkins. He is the expert
16 in criminal defense investigation. And he has been called
17 by our office on the stand, but when we put him on the
18 stand, we make sure he leaves his time stamps on his
19 videos so that he can prove that they sync up. We don't
20 let him slow down half of the videos and speed up the
21 other half so that they can match up. We don't have him
22 introduce grainy photos where you can't see anything.

23 You know what she never asked him about while he was
24 on the stand? That spark that they want you to think is a
25 gun going off. She never asked him about that. This one

1 right here. I'm glad we were able to find this picture,
2 but like everybody has told y'all, you didn't leave your
3 common sense at the door. It's like when you're driving
4 down the street behind someone at night and they throw a
5 cigarette butt out the window and it hits the ground and
6 you see that little pop of flame. He has a cigarette in
7 his mouth all night.

8 And he didn't bend down to pick something up no
9 matter how many times Ms. Zmroczek says it. He hit the
10 deck because people were shooting. And when he did
11 that -- I'm talking about Daquan now. And when he did
12 that, his hat fell off, and he picked it up and he put it
13 back on. But they want you to believe -- and it's almost
14 a grassy knoll second shooter magic bullet theory that
15 they have going on. It's a big conspiracy theory.

16 They want you to believe that either Daquan, Byron or
17 Donnell, because they accused all three of them, shot at
18 Michael Smith. Michael Smith shot in the air or shot to
19 the side, definitely didn't shoot toward the fountain.
20 And when he's running away, the gun hits the ground and
21 then from the ground, the bullet flies up into the air,
22 takes a sharp left and goes towards Martha. That's the
23 defense. It's not even possible. She can say the words
24 that's the science all she wants. I would call it junk
25 science. It doesn't make any sense. Michael Painter told

1 you who was shooting toward the fountain, and it was the
2 Defendant.

3 And then he is the expert in criminal defense
4 investigations who hasn't reviewed any of the statements
5 because any time Ms. Campbell asked him if any of these
6 statements influenced his opinion, he said, I don't recall
7 that statement.

8 And sadly, that's the better of the two experts that
9 they put on because their ballistics expert has shot
10 himself. Their expert in weapons shot himself. I know
11 more about guns than he does. He was fired because he
12 lacked credibility in court, and I think we saw an example
13 of that today. But he doesn't want you to go with that.
14 He wants you to believe that because he was a minority in
15 the Atlanta Police Department, he was then fired. And he
16 has this shaky math that he put up where even the number
17 of times he's alleged to have testified doesn't add up.
18 Remember he backed off of that really quickly when he was
19 being cross-examined. He said maybe, maybe I was wrong
20 back then.

21 Ms. Zmroczek was right about one thing in her closing
22 argument and that's we did not bring anybody up here to
23 testify about why these numbers are wrong. We don't need
24 anybody to testify about it. It's pretty common sense.
25 He just randomly puts a red dot for where Martha was

1 standing. Remember she was taken away in an ambulance.
2 There is no one there that night who marks this is where
3 she was so that he can then go back and trace it.

4 And he puts this yellow dot relatively randomly for
5 where Mr. Smith was standing. But if y'all remember the
6 video -- do you remember the crowd that's standing right
7 here? There's a group of young people standing right
8 there, and then you see Michael Smith run around them and
9 into the shell station. I don't know what this dot is
10 about, but watch the video back there because there's a
11 crowd right here. And they are the ones who are actually
12 blocking the view of Michael Smith. We didn't bring
13 anyone up to reject it, this testimony, because it's
14 rejected on its face.

15 Not only that, but in order to get these
16 measurements -- he testified that he's never even been to
17 the crime scene, so how did he measure it? \$1,200, I
18 think it was, and he was able to render an opinion in one
19 day that took the Columbia Police Department, SLED and the
20 ATF months to get. He was able to do that in one day in
21 his unaccredited lab in his basement or wherever it is.
22 He, too, is a victim in this case, I guess, of racial
23 discrimination. That was Mr. Robinson from Atlanta.

24 And I'm almost finished. The Defendant's parents
25 testified. They seem like good people who genuinely love

1 their son.

2 And then the Defendant testified. He was confronted
3 with several things that he said. And we didn't bring up
4 things to embarrass him or to make him look bad or to make
5 you hate him because I don't want this case judged on
6 y'all's emotion. We brought up the fact that he's a gang
7 member because in her opening, she stood up and said that
8 there were three gang that night in Five Points, none of
9 whom were her client.

10 Do you remember Vince Goggins, the head of the gang
11 department in this area, said none of those three other
12 men were gang members, but the Defendant has been a gang
13 member since he was 15 years old? We brought that in
14 because she brought it up. She made gangs relevant in
15 this case.

16 And we didn't bring up his phone sex with Ms. Bethel
17 to embarrass him. We brought that up only on
18 recross-examination because she said -- or Michael
19 testified that he had been fearful this whole time. He
20 had been praying for Martha and he had been worried about
21 his case. That's not what those jail phone calls depict.
22 That's why we brought up what he was actually talking
23 about on those jail phone calls.

24 He said pray for Martha. And I'm sure he prayed
25 every day because if she died, he was going to be in even

1 more trouble. He needs her to live just about as badly as
2 anybody in this courtroom with the exception of her
3 parents. Because remember, initially, she was faking
4 paralysis. People only cared because she was white.

5 No one got onboard with what he told in his
6 statement. No one said he shot in the air, so he had to
7 admit to shooting. He never really admitted to which area
8 he shot, but he shot at the guys because he feared for his
9 life. He knew he wasn't supposed to be armed, but he was
10 armed anyway because Michael Smith doesn't care about the
11 laws of this state.

12 He admits to lying that night. He admits to telling
13 people what to say and trying to orchestrate his defense
14 from jail. And then he said that Byron Tucker, the guy
15 with the braids, is the one who shot at him. Ms. Zmroczek
16 says it's someone different. I don't know how she could
17 just randomly make that up. Judge his credibility. His
18 story has changed every time someone has asked him about
19 what happened when he was willing to talk to them.

20 Now, ladies and gentlemen, y'all are about to get all
21 of this evidence, and you're going to go back into that
22 jury room and you're going to make a decision. And you're
23 either going to base your decision on the credible
24 evidence, the evidence with timestamps, the evidence
25 that's not blurry, the evidence that's corroborated by

1 other evidence or you can base your decision on
2 Ms. Zmroczek's unstamped, blurry evidence. Because that's
3 what she's tried to do this whole time, right, kind of blur
4 the picture of what happened that night. I want you to
5 judge the evidence. I want you to judge the credibility
6 of the evidence.

7 Ms. Zmroczek said that she doesn't want y'all's
8 opinion to be swayed by sympathy for Martha. Let me be
9 very, very clear about one thing. Martha Childress is not
10 a young woman who wants or needs anyone's sympathy. She's
11 back in school. She's continuing to live her life despite
12 the injuries caused to her by Michael Juan Smith.

13 Base your evidence on the credible testimony. I will
14 hang this case on the testimony of Michael Painter, who
15 has no dog in this fight, who is able to describe exactly
16 what happened and what's corroborated by the video. I
17 will hang it on Byron Tucker, who came down here without a
18 subpoena and said what happened. He and his friends
19 didn't have a gun that night. They were shot at. He
20 smiled because he didn't believe it. He was in shock.

21 And then as Ms. Zmroczek pointed out, he walked over
22 to Martha and Martha gave him a hug because he did
23 something that he did not have to do, which was come down
24 here and testify so that the man who put her in that
25 wheelchair can be held responsible for what he did. Base

1 your decision, base your verdict on that.

2 And if you don't think that we've done it, if you
3 don't think that Michael Painter was right about the man
4 in the tan outfit firing the gun, then find him not
5 guilty. We will give him back all of his stuff and put
6 him back out on the street.

7 MS. ZMROCZEK: Objection, Your Honor.

8 THE COURT: Sustained.

9 Move on.

10 Disregard the last statement, ladies and gentlemen.

11 MS. WALKER: But if on the other hand, you believe
12 the evidence, you are firmly convinced of this Defendant's
13 guilt because of the testimony, not because of sympathy,
14 then hold him accountable, find him guilty of all the
15 charges.

16 She's admitted that he is guilty of the gun charges.
17 She's admitted that he is guilty of possessing a weapon
18 during the commission of a violent crime. She's admitted
19 that. She just doesn't want you to find him guilty of the
20 violent crime he possessed -- or the weapon he possessed
21 during the violent crime. Find him guilty of actually
22 having a weapon during the violent crime, just not the
23 violent crime, does that even make sense?

24 Hold him accountable for what he did. He is guilty
25 of being unlawfully in possession of that firearm, and

1 he's guilty of attempted murder. It doesn't matter who he
2 was trying to shoot, because as Ms. Garfield told you,
3 that malice, that ill will, that hatred, that reckless
4 disregard for human life followed that bullet. That
5 hatred, that ill will is still lodged in Martha's spine.
6 Hold Michael Juan Smith accountable. Find him guilty of
7 all charges.

8 Thank you very much.

9 THE COURT: Thank you, Ms. Walker.

10 All right. We can take a short break and I can come
11 back and charge you or you can stand up and stretch and I
12 can charge you. It will take every bit of 25 or 30
13 minutes to charge you. So what do you want to do? It
14 doesn't matter to me.

15 THE JURORS: Stand up and stretch.

16 THE COURT: All right. Stand up and stretch.

17 Anybody that wants to leave, now is your chance to
18 leave.

19 All right. Everybody ready?

20 (WHEREUPON, the jurors indicated in the
21 affirmative.)

22 THE COURT: Okay.

23 CHARGE ON THE LAW

24 THE COURT: All right. Ladies and gentlemen, we have
25 now reached the point of the trial where it is my

1 responsibility to tell you what the law is in South
2 Carolina as it pertains to the issues that have arisen in
3 this case.

4 Now, this charge that I'm about to read to you is 34
5 pages long, okay. So I'm going to do my best to keep it
6 as interesting as possible, but there's things that I have
7 to read to you, that I'm required to read to you by law
8 and required to explain to you. So you've done a great
9 job all last week and all day today paying attention to
10 everybody. It's going to take about 25 to 30 minutes, so
11 just do your best to pay attention to me, and I will do my
12 best to keep your attention throughout this time. This is
13 very important. These are the elements of the law that
14 you are required to apply to this case. Okay.

15 The indictments have charged the Defendant with
16 attempted murder, unlawful carrying of a pistol,
17 possession of a weapon during the commission of a violent
18 crime, the possession of a firearm by a person convicted
19 of a violent felony, and unlawful possession of a weapon
20 by a person convicted of a crime of violence.

21 I remind you that the fact that the Defendant was
22 arrested, charged and indicted is not evidence and cannot
23 be considered by you as evidence of guilt in this case,
24 nor does it create any presumption or inference of guilt.
25 These documents, being the indictments, are simply the

1 formal written instruments which contain the charges made
2 against the Defendant. It is the formal document by which
3 this case is brought into this court.

4 The indictments in this case allege several different
5 offenses against the Defendant, which I've already
6 explained to you. Each indictment charges a separate and
7 distinct offense. You must decide each indictment
8 separately on the evidence and the law applicable to it,
9 uninfluenced by your decision as to any other indictment.

10 The Defendant may be convicted or acquitted on any or
11 all of the offenses. You will be asked to write a
12 separate verdict of guilty or not guilty for each
13 indictment, and I will explain that to you at the end.

14 I remind you that during this trial, you and I have
15 certain duties. As trial judge, it is my responsibility
16 to preside over the trial of this case, and I also have
17 the duty to rule on the admissibility of the evidence
18 offered during this trial. You are to consider only the
19 competent evidence before you. If there is anything that
20 I ordered stricken from the record in this case, you must
21 disregard it. You are to consider only the testimony
22 which has been presented from the witness stand, the
23 exhibits which have been made a part of the record in this
24 case and any stipulations of counsel.

25 I have the additional duty to charge you the law

1 applicable to this case. As the presiding judge, I am the
2 sole judge of the law, and it is your duty as jurors to
3 accept the law and apply the law as I now give it to you.

4 If you already have an idea as to what the law is or
5 what the law ought to be and it does not agree with what I
6 now tell you the law is, you must abandon your own idea
7 because you are sworn to accept the law and apply the law
8 exactly as I give it to you.

9 In every case tried in this court before a jury, you
10 become the sole and exclusive judge of the facts. A trial
11 judge cannot state, comment on or make any statement to a
12 trial jury about the facts. Since you are the sole judge
13 of the facts, you are not to infer from anything that I
14 have said during this trial in ruling upon the
15 admissibility of evidence or otherwise or anything that I
16 say now during the course of this instruction to you that
17 I have any opinion about the facts in this case. The law
18 does not allow me to have an opinion about the facts.
19 This is a matter for you to determine. It is your duty to
20 determine the effect, the value, the weight and the truth
21 of the evidence presented during this trial.

22 Now, the Defendant has pled not guilty to the
23 indictments, and that plea puts the burden upon the State
24 to prove the Defendant guilty. A person charged with
25 committing a criminal offense in South Carolina is never

1 required to prove his innocence.

2 I charge you that it is an important rule of law that
3 a defendant in a criminal trial no matter what the
4 seriousness of the charge may be will always be presumed
5 to be innocent of the crime for which the indictment was
6 issued unless guilt has been proven by evidence satisfying
7 you of that guilt beyond a reasonable doubt.

8 This presumption of innocence does not end when you
9 begin your deliberations, but it accompanies the Defendant
10 throughout the trial until you reach a verdict of guilty
11 based upon evidence satisfying you of that guilt beyond a
12 reasonable doubt.

13 The presumption of innocence is like a robe of
14 righteousness placed about the shoulders of the Defendant,
15 which remains with the Defendant until it has been
16 stripped from the Defendant by evidence satisfying you of
17 the Defendant's guilt beyond a reasonable doubt.

18 This presumption of innocence is not a mere legal
19 theory. It's just not some legal phrase. It is a
20 substantial right to which every defendant is entitled
21 unless you, the jury, are satisfied from the evidence of
22 the Defendant's guilt beyond a reasonable doubt.

23 Now, what is beyond a reasonable doubt? The State
24 has the burden of proving the Defendant's guilt beyond a
25 reasonable doubt. Some of you may have served as a juror

1 in a civil case where you were told that it is only
2 necessary to prove that a fact is more likely true than
3 not true, such as by the greater weight of the evidence or
4 the preponderance of the evidence.

5 In criminal cases, the State's proof must be more
6 powerful than that. It must be beyond a reasonable doubt.
7 Proof beyond a reasonable doubt is proof that leaves you
8 firmly convinced of the Defendant's guilt. There are very
9 few things in this world that we know with absolutely
10 certainty and in criminal cases, the law does not require
11 proof that overcomes every possibility doubt. If based
12 upon your consideration of the evidence, you are firmly
13 convinced that the Defendant is guilty of the crime, you
14 must find the Defendant guilty.

15 If on the other hand, you think there is a real
16 possibility that the Defendant is not guilty, you must
17 give the Defendant the benefit of the doubt and find him
18 not guilty.

19 There are two types of evidence which are generally
20 presented during a trial, direct and circumstantial.
21 Direct evidence directly proves the existence of a fact
22 and does not require deduction.

23 Circumstantial evidence is proof of a chain of facts
24 and circumstances that indicate the existence of a fact.
25 Crimes may be proven by circumstantial evidence. The law

1 makes no distinction between the weight or the value to be
2 given to either direct or circumstantial evidence.

3 However, to the extent the State relies on
4 circumstantial evidence, all of the circumstances must be
5 consistent with each other, and when taken together, they
6 must point conclusively to the guilt of the accused beyond
7 a reasonable doubt. If these circumstances merely portray
8 the Defendant's behavior as suspicious, the proof has
9 failed.

10 The State has the burden of proving the Defendant
11 guilty beyond a reasonable doubt. This burden rests with
12 the State regardless of whether the State relies on direct
13 evidence, circumstantial evidence or a combination.

14 Now, a statement has been alleged to have been made
15 by the Defendant that has been admitted into evidence in
16 this case. While the Court has determined that the
17 statement is admissible, I instruct you that you make the
18 ultimate decision of whether or not the Defendant made the
19 statement.

20 If the Defendant did make the statement, you must
21 determine whether the statement was made voluntarily and
22 of his own free will. This means that the statement was
23 not caused by pressure, force, fear, threats, coercion,
24 intimidation or by hope or a promise of leniency or a
25 reward of any kind.

1 In determining whether the statement was voluntary,
2 you should consider both the characteristics of the
3 Defendant and the details of the questioning. Some
4 factors that you must consider are the age of the
5 Defendant, the Defendant's education or lack thereof, the
6 Defendant's mental ability or capacity, the Defendant's IQ
7 or intelligence, the Defendant's background and
8 environment, the place and the length of the detention,
9 the nature of the questioning and the advise or lack
10 thereof to the Defendant of his Constitutional rights,
11 including but not limited to the right to remain silent,
12 that any statement could be used against him, the right to
13 have a lawyer, that if he could not afford a lawyer, a
14 lawyer would be appointed to represent him without any
15 cost, and that he could stop making a statement at any
16 time. You must carefully consider all of the surrounding
17 circumstances before you can give any weight to an alleged
18 statement.

19 The State has the burden of proving beyond a
20 reasonable doubt that the alleged statement was voluntary.
21 If you determine it was, you may give the statement any
22 further consideration you deem proper. You must decide
23 what weight, if any, should be given to the alleged
24 statement. If you determine the alleged statement was not
25 the free and voluntarily statement of the Defendant, you

1 should not consider it at all.

2 Now, you must determine the credibility of the
3 witnesses who have testified in this case. Credibility is
4 just a big word for believability. It becomes your duty
5 as jurors to analyze and to evaluate the evidence and
6 determine which evidence convinces you of its truth.

7 In determining the believability of the witnesses who
8 have testified in this case, you may believe one witness
9 over several or several over one. You may believe a part
10 of the testimony of a witness and reject the remaining
11 part of that same witness. You may believe the testimony
12 of a witness in its entirety or reject it in its entirety.
13 You may consider whether any witness has exhibited to you
14 any interest, bias, prejudice or motive in this case. You
15 may also consider the appearance and manner of a witness
16 while on the stand.

17 Now, some things are not evidence, and you must not
18 consider them as evidence. Number one, the statements and
19 the arguments of the attorneys; number two, the questions
20 and the objections of the attorneys; number three,
21 anything that I've told you to disregard.

22 Now, we had a few expert witnesses in this trial.
23 The Rules of Evidence ordinarily do not permit witnesses
24 to testify as to their opinions or conclusions. An
25 exception to this rule exist for expert witnesses. This

1 is a witness, who by education and experience, has become
2 an expert in some art, science, profession or calling and
3 that person may state an opinion as to relevant and
4 material matter in which the witness claims to be an
5 expert and may also state the reasoning for the opinion.
6 You should consider any expert opinion received in this
7 case like any other evidence. Give it the weight that you
8 think it deserves.

9 If you decide that the opinion of an expert is not
10 based upon sufficient education and experience or if you
11 conclude that the reasons given in support of the opinion
12 are not sound or that the opinion is outweighed by other
13 evidence, you may disregard the opinion entirely. An
14 expert witness's testimony is to be given no greater
15 weight than that of another witness simply because the
16 witness is an expert. Further, you are not required to
17 accept an expert's opinion even though it is not
18 contradicted.

19 There have been -- there has been evidence presented
20 to you that witnesses have made prior statements which are
21 not consistent with the witness's present testimony. You
22 may use this evidence to decide whether or not to believe
23 the witness. You may also use evidence of the earlier
24 contradictory statements to determine the truth of the
25 statements. It is up to you to decide whether to believe

1 the earlier statements or the testimony given at trial.

2 If a witness is shown to have knowingly testified
3 untruthfully concerning any material matter, you may
4 consider this in determining whether to trust the
5 witness's testimony as to other matters. You may reject
6 all of the testimony of that witness or give all or part
7 of the testimony the weight that you believe it deserves.

8 Now, a person who has a past criminal record is
9 competent to testify at trial. A past record does not
10 affect the ability of that witness to testify. The past
11 record may only be considered by you, if at all, in
12 determining the witness's believability. Remember, you
13 are the sole judge of the facts and of the believability
14 of any and all of the witnesses.

15 In order to establish criminal liability in South
16 Carolina, criminal intent is required. For example,
17 again, these are examples, the mental state required to be
18 proven by the State for a particular crime might be
19 purpose, intent, knowledge, recklessness, or criminal
20 negligence. Criminal intent must be proven by the State
21 beyond a reasonable doubt. Criminal intent is always a
22 matter that must be determined by you from the
23 circumstances that surround the situation.

24 There is no way to prove intent to a mathematical
25 certainty. There is no way medical science can dissect a

1 person's brain and determine what that person had in mind,
2 so the law says that criminal intent may be inferred from
3 the circumstances shown to have existed. This is how you
4 make a determination of whether or not the element
5 requiring intent was present. It is not necessary to
6 establish intent by direct and positive evidence, but
7 intent may be established by inference in the same way as
8 any other fact by taking into consideration the acts of
9 the parties and all the facts and circumstances of the
10 case.

11 Criminal intent is a mental state. It is conscious
12 wrongdoing. It is up to you to determine what the
13 Defendant intended to do based upon the circumstances
14 shown to have existed. Criminal intent can arise from an
15 action or a failure to act. It may arise from negligence,
16 recklessness, or an indifference to duty or to
17 consequences that is considered by the law to be the
18 equivalent of criminal intent.

19 Now, the next thing I'm going to explain to you is
20 transferred intent. If the Defendant with malice
21 aforethought attempts to kill another person, but by
22 mistake injures or kills a different person, the Defendant
23 still has the intent to attempt to kill. The intent to
24 attempt to kill is merely transferred from the original
25 person the Defendant attempted to kill to the actual

1 person killed or injured. The Defendant would be guilty
2 of attempted murder just as if the attempt had resulted in
3 the death or injury of the person the Defendant attempted
4 to kill. This doctrine of transferred intent applies to
5 all degrees of assault.

6 The next thing that I'm going to do is explain to you
7 the different crimes that have been charged. Now, our law
8 says where a crime such as attempted murder is charged,
9 then I have to tell you about what we call lesser included
10 offenses. So you're going to hear about attempted murder
11 and then about the varying lesser degrees of assault.
12 Okay. So I'm going to explain multiple crimes that are
13 connected to the attempted murder case and define each of
14 them for you before I move on to the firearms charges.

15 So the Defendant is charged with attempted murder.
16 In order to prove this crime, the State must prove the
17 Defendant attempted to kill another person with malice
18 aforethought, either expressed or implied.

19 What is malice? Malice is hatred, ill will or
20 hostility towards another person. It is the intentional
21 doing of a wrongful act without just cause or excuse and
22 with an intent to inflict an injury or under circumstances
23 that the law will infer an evil intent. Malice may be
24 inferred from conduct that shows a total disregard for
25 human life.

1 In its popular sense, the term malice conveys the
2 meaning of hatred, ill will or hostility towards another.
3 In its legal sense, however, malice does not necessarily
4 mean ill will towards the individual injured, but
5 signifies a general malignant recklessness of the lives
6 and safety of others or a condition of the mind which
7 shows a heart regardless of social duty and fatally bent
8 on mischief. In other words, a malicious attempted
9 killing is where the act is done without legal
10 justification, excuse or extenuation. And malice has been
11 frequently substantially so defined as consisting of the
12 intentional doing of a wrongful act toward another without
13 legal justification or excuse.

14 Malice aforethought does not require that malice
15 exist for any particular time before the act is committed.
16 Malice may be conceived at the very moment the fatal blow
17 is given. It is sufficient in law if the combination of
18 the evil intent and the act produced the result.

19 Malice aforethought may be expressed or implied.
20 These terms expressed and inferred -- excuse me, inferred,
21 not implied. These terms expressed and inferred do not
22 mean different kinds of malice, but merely the manner in
23 which the malice may be shown to exist. That is either by
24 direct evidence or by inference from the facts and the
25 circumstances which are proved.

1 Expressed malice is shown when a person speaks words
2 which express hatred or ill will for another or when the
3 person prepared beforehand to do the act which was later
4 accomplished. For example, lying in wait for a person or
5 any other acts of preparation going to show that the deed
6 was within the Defendant's mind would be expressed malice.

7 Malice may also be inferred from conduct showing a
8 total disregard for human life. If facts are proved
9 beyond a reasonable doubt sufficient to raise an inference
10 of malice to your satisfaction, this inference would
11 simply be an evidentiary fact to be considered by you, the
12 jury, along with the other evidence in the case. And you
13 may give it the weight and credibility -- may give it the
14 weight you decide it should receive.

15 Now, attempted murder requires the specific intent to
16 kill. And specific intent means that the Defendant
17 consciously intended the completion of the acts
18 compromising the attempted offense. Intent means
19 intending the result that actually occurs, not
20 accidentally or involuntarily. Intent may be shown by
21 acts and conduct of the Defendant and other circumstances
22 from which you may naturally and reasonably infer intent.
23 Evidence of the character of the act, the character of the
24 instrument used, the manner in which it was used, the
25 purpose to be accomplished and the resulting wounds or

1 injuries may be considered in determining the intent with
2 which the act was committed.

3 Intent may also be inferred when it is demonstrated
4 that the Defendant voluntarily and willfully committed the
5 act, the natural tendency of which is to destroy another's
6 life.

7 Now, the law also allows you to infer malice if you
8 conclude that the attempted murder was a proximate direct
9 result of the commission of a felony. And for that
10 regard, two of the gun charges, possession of a weapon by
11 a person being convicted of a crime of violence and
12 possession of a weapon by a person being convicted of a
13 violent felony would be felonies under our law.

14 You can imply that malice existed if a person in the
15 commission of a felony at the time of the attempted fatal
16 blow, if one attempts to kill another during the
17 commission of a felony, the inference of malice may arise.

18 Okay. So now I'm going to go into the lesser
19 included levels of assault that you have for your
20 consideration. So the first one is called assault and
21 battery of a high and aggravated nature.

22 Now, none of these levels of assault that I'm about
23 to explain to you require malice, okay. If you find that
24 the State has not proven that the Defendant is guilty of
25 attempted murder, you must then determine whether the

1 State has proved that the Defendant is guilty of assault
2 and battery of a high and aggravated nature.

3 A person commits the offense of assault and battery
4 of a high and aggravated nature if the person unlawfully
5 injures another person and great bodily injury to another
6 person results or the act is accomplished by means that
7 are likely to produce death or great bodily injury. Great
8 bodily injury means bodily injury which causes a
9 substantial risk of death or which causes serious
10 permanent disfigurement or protracted loss or impairment
11 of the function of a bodily member or organ.

12 The next offense available to you is assault and
13 battery in the first degree. If you find that the State
14 has not proven that the Defendant is guilty of assault and
15 battery of a high and aggravated nature, you must then
16 determine whether the State has proven that the Defendant
17 is guilty of assault and battery in the first degree.

18 A person may also commit the offense of assault and
19 battery in the first degree if the person unlawfully
20 offers or attempts to injure another person with the
21 present ability to do so and that act is accomplished by
22 means likely to produce death or great bodily injury. And
23 I've already defined great bodily injury for you.

24 If you find that the State has not proven that the
25 Defendant is guilty of assault and battery in the first

1 degree, you must then determine whether the State has
2 proven that the Defendant is guilty of assault and battery
3 in the second degree. A person commits the offense of
4 assault and battery in the second degree if the person
5 unlawfully injures another person or offers or attempts to
6 injure another person with the present ability to do so
7 and either moderate bodily injury to another person
8 results or moderate bodily injury to another person could
9 have resulted.

10 Moderate bodily injury means physical injury that
11 involves prolonged loss of consciousness or that causes
12 temporary or moderate disfigurement or temporary loss of
13 the function of a bodily member or organ or injury that
14 requires medical treatment when the treatment requires the
15 use of regional or general anesthesia or injury that
16 results in a fracture or dislocation.

17 Moderate bodily injury does not include one time
18 treatment and subsequent observations of scratches, cuts,
19 abrasions, bruises, burns, splinters or other minor
20 injuries that do not ordinarily require extensive medical
21 care.

22 If you find that the State has not proven the
23 Defendant is guilty of assault and battery in the second
24 degree, you must then determine whether the State has
25 proven the Defendant is guilty of assault and battery in

1 the third degree. A person commits the offense of assault
2 and battery in the third degree if the person unlawfully
3 injures another person or offers or attempts to injure
4 another person with the present ability to do.

5 I'm now going to move on to the firearm charges.
6 Now, each of these firearm charges involves possession, so
7 at the end of the firearm charges, I'm going to define
8 possession for you, okay.

9 The Defendant is charged with possession of a weapon
10 during the commission of or attempt to commit a violent
11 crime. The State must prove beyond a reasonable doubt
12 that the Defendant was in possession of a firearm or
13 visibly displayed what appeared to be a firearm during the
14 commission of a violent crime.

15 A firearm means machine gun, automatic rifle,
16 revolver, pistol or any weapon which is designed to or may
17 be readily converted to expel a projectile.

18 In order to find the Defendant guilty of possession
19 of a weapon during the commission of a violent crime, you
20 must first find the Defendant guilty of either committing
21 a violent crime or attempting to commit a violent crime.
22 In this case, the crimes of attempted murder and assault
23 and battery of a high and aggravated nature are violent
24 crimes.

25 If you find the Defendant guilty of attempted murder

1 or assault and battery of a high and aggravated nature,
2 you must then determine whether the State has proven
3 beyond a reasonable doubt that the Defendant was in
4 possession of a firearm or visibly displayed what appeared
5 to be a firearm during the commission of a violent crime.
6 The State must prove beyond a reasonable doubt that the
7 weapon furthered, advanced or helped in the commission of
8 the crime.

9 The Defendant is also charged with unlawful
10 possession of a weapon by a person convicted of a violent
11 crime. It is unlawful for a person who has been convicted
12 of a violent crime to possess a firearm or ammunition
13 within this state. Burglary in the second degree is a
14 violent crime.

15 The Defendant is also charged with unlawful
16 possession of a weapon by a person convicted of a crime of
17 violence. It is unlawful for a person who has been
18 convicted of a crime of violence to possess a firearm or
19 ammunition within this state. Attempted burglary in the
20 second degree is a crime of violence.

21 The Defendant is charged with unlawful carrying of a
22 handgun. South Carolina Code of Laws defines a handgun as
23 any firearm designed to expel a projectile and designed to
24 be fired from the hand, but shall not include any firearm
25 that is recognized as antique, curiosity or a collector's

1 item or does not fire fixed cartridges.

2 The State must prove the elements of unlawful
3 carrying of a handgun beyond a reasonable doubt. They are
4 number one, the Defendant did, in fact, possess a handgun.
5 If you find the item which the Defendant possessed was
6 something other than a handgun, you cannot find him guilty
7 of the offense. Number two, the Defendant carried that
8 handgun about his person, meaning any position where the
9 handgun is readily accessible and convenient for his
10 immediate use whether or not it actually touches the
11 person of the Defendant.

12 Now, each of those firearms charges involves the law
13 of possession, so I have to explain to you what possession
14 is. To prove possession, the State must prove beyond a
15 reasonable doubt that the Defendant had both the power and
16 the intent to control the disposition or the use of a
17 handgun. Possession may be either actual or constructive.
18 Actual possession means that the handgun was in the actual
19 physical custody of the Defendant.

20 Constructive possession means that the Defendant
21 had -- the Defendant had dominion and control or the right
22 to exercise dominion and control over either the firearm
23 itself or the property upon which the firearm was found.

24 Mere presence at the scene where the handgun was
25 found is not enough to prove possession. The Defendant's

1 knowledge and possession may be inferred when a handgun is
2 found on the property under the Defendant's control.
3 However, this inference is simply an evidentiary fact to
4 be taken into consideration by you along with other
5 evidence in the case and to be given the weight you
6 believe it should have. Two or more people may have joint
7 possession of a handgun.

8 Now, voluntary intoxication. Voluntary intoxication
9 does not preclude one's ability to act with malice
10 aforethought and it is not a defense to a crime. If one
11 voluntarily drinks intoxicating liquor, wine or beer or
12 ingest drugs and becomes intoxicated to whatever degree
13 and if while in that condition commits an act which would
14 be a crime if it had been committed by a sober person, the
15 fact of intoxication would not relieve the intoxicated
16 person from responsibility.

17 Now, the next thing that I'm going to explain to you
18 is self-defense. The Defendant has raised the defense of
19 self-defense. Self-defense is a complete defense, and if
20 it is established, you must find the Defendant not guilty.

21 The State has the burden of disproving self-defense
22 by proof beyond a reasonable doubt. If you have any
23 reasonable doubt of the Defendant's guilt after
24 considering all the evidence, including the evidence of
25 self-defense, you must find the Defendant not guilty.

1 On the other hand, if you have no reasonable doubt of
2 the Defendant's guilt after considering all the evidence,
3 including the evidence of self-defense, then you must find
4 the Defendant guilty.

5 The following elements are required to establish
6 self-defense. Number one, without fault. First, the
7 Defendant must be without fault in bringing on the
8 difficulty. If the Defendant's conduct was the type which
9 was reasonably calculated to and did provoke a deadly
10 assault, the Defendant would be at fault in bringing on
11 the difficulty and would not be entitled to an acquittal
12 based upon self-defense.

13 Mutual combat. If the Defendant voluntarily
14 participated in mutual combat for purposes other than
15 protection, the attempted killing of the victim would not
16 be self-defense. This is true even if during a combat the
17 Defendant feared death or serious bodily injury. However,
18 if before the attempted killing is committed, the
19 Defendant withdraws and tried in good faith to avoid
20 further conflict and either by word or act makes that fact
21 known to the victim, he would be without fault in bringing
22 on the difficulty. For mutual combat, there must be a
23 mutual intent and willingness to fight. This intent may
24 be shown by the acts and conduct of the parties and the
25 circumstances surrounding the combat. In addition, it

1 must be shown that both parties were armed with a deadly
2 weapon.

3 Imminent danger. The second element of self-defense
4 is that the Defendant was actually in imminent danger of
5 death or serious bodily injury or that the Defendant
6 actually believed he was in imminent danger of death or
7 serious bodily injury. If the Defendant was actually in
8 imminent danger, it must be shown that the circumstances
9 would have warranted a person of ordinary firmness and
10 courage to strike the fatal blow to prevent death or
11 serious bodily injury. If the Defendant believed he was
12 in imminent danger of death or serious bodily injury, it
13 must be shown that a reasonably prudent person of ordinary
14 firmness and courage would have had the same belief.

15 In deciding whether the Defendant actually was or
16 believed he was in imminent danger of death or serious
17 bodily injury, you should consider all the facts and
18 circumstances surrounding the crime, including the
19 physical condition and the characteristics of the
20 Defendant and the victim.

21 Now, the Defendant does not have to show that he was
22 actually in danger. It is enough if the Defendant
23 believed he was in imminent danger and a reasonably
24 prudent person of ordinary firmness and courage would have
25 had the same belief.

1 The Defendant has a right to act on appearances even
2 though the Defendant's beliefs may have been mistaken. It
3 is for you to decide whether the Defendant's fear of
4 immediate danger or death or serious bodily injury was
5 reasonable and would have been felt by an ordinary person
6 in the same situation.

7 Staying with self-defense, there is no other way to
8 avoid the danger. The final element of self-defense is
9 that the Defendant had no other probable way to avoid the
10 danger of death or serious bodily injury than to act as
11 the Defendant did in this particular instance.

12 Now, the length of -- I'm going to talk to you about
13 sentencing. The length of any prison sentence rests in
14 the sound discretion of the Court. You have heard
15 testimony concerning a penalty a person may be able to
16 serve for some alleged crimes. In determining the guilt
17 or innocence of the Defendant, you cannot consider any
18 possible penalty for any particular crime. The punishment
19 for the crimes is a matter for me to determine and you
20 should never be considered -- it should never be
21 considered by you in any way whatsoever in arriving at an
22 impartial verdict as to the guilt or innocence of the
23 Defendant.

24 Okay. We're almost done. All right. Stay with me.
25 Last thing I want to talk to you about is your

1 deliberations. Deliberation is defined as a careful
2 consideration weighing up with a view to a decision. The
3 genius of this system is that it allows 12 good men and
4 women from 12 totally different backgrounds, life
5 experiences and perspectives to consider the evidence,
6 talk about it and reach a verdict.

7 We call them deliberations for a reason. You are to
8 consider the evidence carefully and deliberately and
9 discuss it in a courteous manner. You are not a partisan
10 nor an advocate for either side. You do not favor one
11 side or the other. You are a judge. You are the judge of
12 the facts. Your sole interest is to find the truth from
13 the evidence you have heard. Listen to the views of each
14 other. Consider other people's points and points of view
15 and talk through it and discuss the evidence.

16 And remember, if you are doing something
17 deliberately, you're not in a big hurry. And you should
18 not be in a big hurry here. This case is very important
19 to both sides and this is their only day in court. When
20 you retire to your jury room, you should discuss the case
21 with each other to reach an agreement if you can.

22 Your verdict must be unanimous. Each of you must
23 decide the case for yourself, but do so only after you
24 impartially consider the evidence, discuss it fully with
25 each other and listen to each other's views. Do not be

1 afraid to change your opinion if the discussion persuades
2 you you should, but do not come to a decision simply
3 because everything else thinks it's right.

4 It is important that you attempt to reach a unanimous
5 verdict, but, of course, only if each of you can do so
6 after having made your own decision. Do not change an
7 honest belief about the weight or the effect of evidence
8 simply to reach a verdict. In other words, do not change
9 your opinion solely for the sake of reaching a verdict.

10 Okay. Last thing I'm going to do with you is go over
11 your verdict form. Okay. So first thing I -- one thing
12 I've told you today you have to keep in mind, your verdict
13 has to be unanimous. That means all 12 of you have to
14 agree. Okay. The second thing, all 12 of you have to be
15 in the room to deliberate. So if somebody needs to go
16 call a spouse to say hey, pick up my kid, or somebody
17 needs to take a smoke break or even if somebody goes to
18 the restroom, deliberations have to stop. All 12 of you
19 have to be in the room to talk.

20 Next thing, there's no reason why you should ever
21 tell me the count. Don't send out a note and say the
22 count is this. Okay. The count is your count and it's
23 not for anybody else to know, so you never need to
24 communicate with me about the count. Okay.

25 Now, I'm about to send you back in the jury room.

1 You can still not deliberate, okay. Go back there. You
2 still can't talk about the case, okay. The sign that you
3 can talk about the case is when all of the evidence comes
4 back in the room. So when the bailiffs bring the evidence
5 in the room, then you can start talking, okay. My
6 alternate will come out. Okay. The alternate will come
7 out. The evidence will come in. Once the evidence is in
8 there, you're free to talk about it.

9 Now, a lot of this stuff that you've seen is on video
10 or on audio, okay. And the easiest way to do it is I will
11 let my -- when you need to hear something or you want to
12 see something or you want to look at something, then my
13 law clerk will come in and play for you what you want to
14 see and what you want to hear. Okay. So we can literally
15 move the big screen back in the room and you all can look
16 at things as much as you want to. All the videos are in
17 evidence. They're all marked and everything and the
18 recordings. But she can come back in there for you and
19 play what you want to play or what you want to hear, okay.

20 So I'm about to send you back -- oh, the verdict
21 form, last thing. Okay. Okay. All right. Now, I try to
22 make this as simple as humanly possible, okay, but there's
23 only so many ways you can do it. I have to put on here,
24 this is your verdict form, not guilty and guilty for each
25 charge. I put not guilty first. I put guilty second.

1 Don't read anything into that. I've got to put one first.
2 I've got to put one second. It's just the way it is.

3 So I'm going to go over this with you, Madam
4 Forelady. It says, we, the jury, by unanimous consent
5 find the Defendant, Michael Juan Smith, so number one is
6 as to the charge of attempted murder, not guilty or
7 guilty, okay.

8 Now, if you select guilty, you skip two, three, four
9 and five and go straight to the firearms charges, okay.
10 If you select not guilty, then you consider assault and
11 battery of a high and aggravated nature. Same thing if
12 you find guilty, skip to question six. If you find not
13 guilty, go down to question three. And so forth all the
14 way down. Okay. This has explanations on them. We try
15 to make it as simple as possible. And then starting at
16 number six, it goes through each of the firearms charges.
17 And there's a place for you to date and sign it. Okay.

18 All right. At this point in time, I'm going to
19 release you to your jury room. Take this. You're still
20 not allowed to talk about the case. I have one more legal
21 issue that I'll take up with the lawyers and then if -- I
22 may need to bring you back in and tell you something.
23 Sometimes I miss things. Otherwise, the sign that you can
24 begin deliberations is when the evidence comes back in the
25 room.

1 You still can't talk about the case. Go to your jury
2 room. Thank you very much.

3 (WHEREUPON, the jury left the courtroom at 5:22
4 p.m.)

5 THE COURT: All right. Any exception to the charge
6 other than those previously stated?

7 MS. GARFIELD: Not from the State.

8 MS. ZMROCZEK: None other than already previously
9 made. However, we do have a motion for a mistrial.

10 THE COURT: Okay.

11 MS. ZMROCZEK: Based on the inflammatory -- and I've
12 got the case law printed out for you, but I can give
13 you've the cite as well. It's 363 -- no, 336 S.C. 648.
14 It's a 1999 Supreme Court case.

15 Your Honor, it has to do with specifically
16 Ms. Walker's inflammatory comments regarding put him back
17 on the streets. She spent close to an hour talking about
18 how he was -- all of the examples of malice and how he was
19 a danger to the community. And this is a violation under
20 the 5th, 8th, 14th Amendment, Article one, Section 13 --
21 excuse me, Section 3 and 14 of the South Carolina
22 Constitution and due process violations. Injecting an
23 arbitrary factor into a calculated arena designed to
24 specifically inflame the passions and prejudice of the
25 jury. These courts have found that this denied

1 fundamental favor essential to the concept of justice.

2 Your Honor, specifically, this case is exactly on
3 point where the justices -- the prosecutor said in her
4 closing to put them back out into the community. Let them
5 back on the streets. And that's exactly what Ms. Walker
6 said as she tossed his tan outfit with the gun on top.
7 She said, we'll go ahead and give him the clothes, just
8 put him back on the street. Your Honor, we feel like at
9 that moment, that was materially and calculated to inflame
10 the passions and prejudice of the jury and is grounds for
11 a mistrial.

12 THE COURT: Okay.

13 Do you want to respond?

14 MS. WALKER: Your Honor, what I meant to say was find
15 him not guilty. I misspoke. She objected. You told the
16 jury to disregard that. I didn't talk about him being a
17 danger to the community at all during my closing argument.
18 I didn't talk about him -- I didn't talk about malice
19 during my closing argument. I said about transferred
20 intent, Your Honor, the transferred intent there. But,
21 Your Honor, I misspoke. She objected. I immediately
22 moved on and you told the jury to disregard that. I think
23 the curative instruction there is enough, Your Honor.

24 MS. CAMPBELL: And State vs. South.

25 MS. WALKER: And further, Your Honor, I'd point --

1 MS. CAMPBELL: Isn't it State vs. South? It's the
2 closing arguments by Donnie Myers, I think it's State vs.
3 South where he used that exact language.

4 THE COURT: Okay. I do not believe it rises to the
5 level of manifest necessity. The statement was made.
6 There was a proper objection made. I sustained the
7 objection, told them to disregard it. I told them in the
8 beginning to disregard anything I told them to disregard.
9 I told them at the end to disregard anything that I told
10 them to disregard. I also told them that they are not to
11 considering sentencing in any way, shape, or form. And I
12 told them, at least, twice, if not more, that the opening
13 statements and the closing arguments of the attorneys are
14 not evidence and should not be considered as evidence.
15 And therefore, your motion for a mistrial is denied. I do
16 not believe it's risen to the level of manifest necessity.

17 Okay. What else?

18 MS. ZMROCZEK: Just that we want to make sure we
19 preserved our prior objections, especially regarding the
20 felony attempted murder.

21 THE COURT: Okay.

22 MS. ZMROCZEK: Which I believe you said we did.

23 THE COURT: Okay. Those are protected.

24 It's the attorney's responsibility to make sure the
25 evidence is right before it goes back. We already have a

1 note, so.

2 Okay. Someone just asked if they could call home to
3 check on their child. We'll allow them to do that.

4 Why don't you go ahead and let them do that now while
5 they're putting all the evidence together. I'll need
6 somebody to get with Ms. Senn to make sure she knows how
7 to operate that machinery. Make sure Carlin has your cell
8 phone numbers and all the evidence is right before it goes
9 back.

10 (WHEREUPON, the attorneys went through exhibits
11 before sending back to the jury.)

12 THE COURT: What's the issue?

13 THE COURT REPORTER: Six and 21 were moved in at the
14 same time and she said Defendant's 6 was already in
15 evidence as a State's Exhibit. And then Defendant's 21
16 was admitted without objection.

17 THE COURT: I have that 6 was already in.

18 THE COURT REPORTER: Yeah, on the record, it was in
19 as a State's Exhibit. So from the record, it didn't look
20 like it came in.

21 MS. ZMROCZEK: The jury saw it.

22 MS. WALKER: Yeah, it was published to the jury. If
23 she wants to put it in -- I don't know how to handle that,
24 but if she wants to send it back to the jury --

25 THE COURT: You don't object?

1 MS. WALKER: I don't object.

2 (WHEREUPON, Defendant's Exhibit No. 6 was
3 admitted into evidence.)

4 (WHEREUPON, Court's Exhibit No. 6 was marked for
5 identification only.)

6 (WHEREUPON, the jury began deliberations at 5:44
7 p.m.)

8 (WHEREUPON, State's Exhibit No. 40 did not go
9 back because it contained live rounds and could not be
10 placed with the gun per the clerk's office.)

11 THE COURT: All right. They want a copy of the
12 charge. Anyone object?

13 MS. WALKER: No, Your Honor.

14 MS. ZMROCZEK: No, Your Honor.

15 THE COURT: Okay. Bring them in.

16 MS. GARFIELD: Ms. Childress wants to be present for
17 everything.

18 THE COURT: It will take 30 seconds. It's one
19 paragraph.

20 MS. GARFIELD: Can you just instruct them you didn't
21 have everybody come down here?

22 THE COURT: That's fine.

23 (WHEREUPON, Court's Exhibit No. 7 was marked for
24 identification only.)

25 (WHEREUPON, the jury entered the courtroom at

1 6:14 p.m.)

2 THE COURT: Okay. So you all have requested a copy
3 of the charge and Court's Exhibit No. 7, which is a note.
4 I didn't summon everybody in the world back in here. I
5 just got the lawyers and Mr. Smith back in to give you the
6 charge. I can give you a written copy of the charge, but
7 I have to tell you something to go along with it. That's
8 the only reason I brought you back in.

9 It says I will now give you a copy of these
10 instructions which I read to you earlier. During your
11 deliberations, you may refer to these instructions to
12 guide in your decisionmaking. You must consider the
13 instructions as a whole and not follow some and ignore
14 others. And then in the end when you are finished, just
15 return them to the Court.

16 I've done this with the consent of both parties.
17 Neither side has objected. And I'm giving you a copy of
18 the charges for the jury room.

19 Okay. You may go back. Thank you very much.

20 (WHEREUPON, the jury left the courtroom at 6:16
21 p.m.)

22 (WHEREUPON, Court's Exhibit No. 8 through 10
23 were marked for identification only.)

24 THE COURT: Everybody ready?

25 Okay. Listen, I know this is a very emotional case,

1 but I'm not going to allow any outbursts or screaming or
2 yelling or anything like that when this verdict is read.
3 This jury has worked very hard. They've been working for
4 six days. They're entitled to no extreme emotional
5 outbursts in the courtroom. It's okay for people to cry.
6 That's a perfectly normal reaction, but not much past that
7 is going to be tolerated by the Court. If there is
8 anybody who believes they can't do that, now is your
9 opportunity to leave. Okay.

10 All right. It's my understanding they have a
11 verdict?

12 THE BAILIFF: Yes.

13 THE COURT: Okay.

14 (WHEREUPON, the jury returned to open court with
15 a verdict at 7:04 p.m.)

16 THE BAILIFF: The jury is seated, Your Honor.

17 THE COURT: All right. Thank you, Mr. Tolbert.

18 Madam Forelady, it's my understanding that you have a
19 unanimous verdict; is that correct?

20 MADAM FORELADY: Yes, sir.

21 THE COURT: All right. Would you hand it to
22 Mr. Tolbert for me, please?

23 All right. The verdict is in its proper format.

24 Madam Clerk, you may publish.

25 VERDICT

1 THE CLERK: Thank you, Your Honor. In the Court of
2 General Sessions, the State of South Carolina in the
3 County of Richland, the State of South Carolina versus
4 Michael Juan Smith, on indictments number
5 2013-GS-40-18047, 8336, 8049, 8052 and 8053, we, the jury,
6 by unanimous consent find the Defendant, Michael Juan
7 Smith, as to the charge of attempted murder of Martha
8 Childress on indictment number 2014-GS-40-08047, guilty.

9 As to the charge of possession of a firearm by a
10 person convicted of a violent felony, on indictment number
11 2013-GS-40-08049, the jury finds the Defendant guilty.

12 As to the charge of unlawful carrying of a pistol on
13 indictment number 2013-GS-40-08052, the jury finds the
14 Defendant guilty.

15 As to the charge of unlawful possession of a weapon
16 by a person convicted of a crime of violence, on
17 indictment number 2013-GS-40-08336, the jury finds the
18 Defendant guilty.

19 As to the charge of possession of a weapon during the
20 commission of a violent crime, on indictment number
21 2013-GS-40-08053, the jury finds the Defendant guilty.
22 It's signed by the foreperson and dated August 17th, 2015.

23 Madam Forelady, is this your verdict and the verdict
24 of the entire jury?

25 MADAM FORELADY: It is.

1 THE CLERK: Thank you.

2 THE COURT: Polling?

3 MS. ZMROCZEK: Yes.

4 THE COURT: Okay. Ladies and gentlemen, you're going
5 to be asked two questions. Question number one, is this
6 your verdict? And question number two, is this still your
7 verdict? Please respond when your number is called.

8 THE CLERK: No. 319, was this your verdict?

9 JUROR: Yes.

10 THE CLERK: Is it still your verdict?

11 JUROR: Yes.

12 THE CLERK: No. 186, was this your verdict?

13 JUROR: Yes.

14 THE CLERK: Is it still your verdict?

15 JUROR: Yes.

16 THE CLERK: No. 274, was this your verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: No. 7, was this your verdict?

21 JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 JUROR: Yes.

24 THE CLERK: No. 291, was this your verdict?

25 JUROR: Yes.

1 THE CLERK: Is it still your verdict?

2 JUROR: Yes.

3 THE CLERK: No. 318, was this your verdict?

4 JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 JUROR: Yes.

7 THE CLERK: No. 203, was this your verdict?

8 JUROR: Yes.

9 THE CLERK: Is it still your verdict?

10 JUROR: Yes.

11 THE CLERK: No. 36, was this your verdict?

12 JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR: Yes.

15 THE CLERK: No. 210, was this your verdict?

16 JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 JUROR: Yes.

19 THE CLERK: No. 44, was this your verdict?

20 JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 JUROR: Yes.

23 THE CLERK: No. 74, was this your verdict?

24 JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 JUROR: Yes.

2 THE CLERK: No. 292, was this your verdict?

3 JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 JUROR: Yes.

6 THE CLERK: The jury is polled, Your Honor.

7 THE COURT: Thank you very much, Madam Clerk.

8 Ladies and gentlemen, you have put in an enormous
9 amount of work over the past six days. I know that when
10 you came to jury duty last Monday, you never expected that
11 you would be here for six days. I didn't know you would
12 be here for six days. Frankly, I usually warn juries it
13 may go into a second week. You have all persevered and
14 stayed with us. You have all paid attention. You have
15 all followed the case, regardless of what side is
16 presenting evidence and testimony. You have all done an
17 excellent job of jury service this week.

18 Thank you for being on time. Thank you for being
19 attentive. On behalf of all the circuit court judges in
20 the building, I thank you for your service. You now have
21 an exemption from circuit court jury duty for the
22 remainder of this year and for the two following years.
23 If you get called for jury duty again, just let them know
24 you served during calender year 2015. If you will head
25 back to your jury room, they will collect your things from

1 you and see you out. Thank you very much.

2 Everyone remain seated.

3 Oh, one final thing, you are now free to discuss the
4 case with whomever you want to. That is purely up to you
5 to decide. Sometimes attorneys like to contact jurors and
6 just say what did I do wrong or what did I do right or
7 what makes sense or what didn't. You're welcome to talk
8 to anybody that you want to. There is no longer a
9 prohibition on you from speaking about this case.
10 However, you do not have to talk to anybody you do not
11 want to. If anybody bothers you or harasses you, call the
12 clerk of court's office and I promise you that a circuit
13 court judge will deal with that individual quickly. You
14 have the right to be free from anybody harassing you or
15 bothering you about your verdict or your decision in this
16 case. However, if you want to discuss your verdict or the
17 case with anybody, you also have the freedom to do that.

18 All right. Everyone remain seated.

19 Thank you very much.

20 (WHEREUPON, the jury left the courtroom at 7:09
21 p.m.)

22 THE COURT: All right. I'll be back in just a few
23 minutes for motions and sentencing.

24 (WHEREUPON, a short break was taken.)

25 THE COURT: All right. Posttrial motions?

1 MS. ZMROCZEK: Your Honor, at this time, before we go
2 any further, I handed up what's been marked as Court's
3 Exhibit 6 to renew my motion for a mistrial based on the
4 comments, inflammatory comments by the solicitor. And
5 that is even magnified by the note that was sent from the
6 jury regarding their concerns for their safety. I thought
7 I set it up there. I just want to make sure that those
8 two cases are part of the record. I have provided those
9 to the State.

10 Your Honor, this was several inferences that people
11 were in danger of gang activity. It was unsubstantiated.
12 With Mr. Samuel, they just couldn't find him, so they said
13 that somebody said that he was afraid of gangs.

14 And then in addition to Ms. Walker's characterization
15 about putting him back on the street and under the case
16 law -- the current case law that we submitted as well as
17 the 5th, 8th, 14th Amendments as well as renewing under
18 Article 1, Section 3 and 14 of the South Carolina
19 Constitution, due process violations saying that her
20 argument, in particular, was calculated to arouse passion
21 and prejudice of the jury and deny fundamental fairness
22 essential to the concept of -- and again, we especially
23 highlight this in lieu of the note that I believe -- and
24 if I'm misquoting the note, I apologize.

25 THE COURT: The note speaks for itself, so.

1 MS. ZMROCZEK: So that would be the basis for the
2 motion.

3 THE COURT: What's the 8th amendment argument?

4 MS. ZMROCZEK: That it's fundamentally un -- I mean,
5 it's -- it's unjust and unfair that they can just go out
6 and say these inflammatory things and it flies in the face
7 of due process. And what they believe and what they feel
8 and what they say to -- to raise the -- inflame the
9 passions of the jury, Your Honor, are calculated just to
10 do that. And I believe that's exactly what they did in
11 this situation.

12 THE COURT: Ms. Campbell?

13 MS. CAMPBELL: Your Honor, I'll hand up two cases.
14 I've given the cites to Defense counsel, State vs. Crosby,
15 State vs. Brown, which I believe are on point.

16 In addition to that, Your Honor, as outlined in one
17 of those cases, it says it wasn't necessarily error, but
18 it was a curative instruction by the judge or as you did,
19 a motion to just strike it from the record is sufficient.

20 Additionally, Your Honor, there is an older case,
21 too, that uses, I think, the same language. I think that
22 any possible prejudice has been cured by your instructions
23 to the jury.

24 THE COURT: Okay. Your motions are denied based upon
25 my previous reasoning. For the record, the Defense is the

1 one who introduced the gang issue into the case. We had a
2 pretrial hearing where I feel certain we covered the fact
3 that I wasn't going to allow anything about gangs in the
4 trial, and then the Defense stated that -- the Defense is
5 the one that brought it up because the State would have
6 known not to go into it with their past history with me of
7 not allowing that in trials. The Defense brought it up
8 and didn't object to it throughout the trial, so from that
9 standpoint, the gang issue was always in front of the jury
10 without any objection from the Defense at all.

11 So your motion for a mistrial is denied based upon
12 the previous reasoning. And are you wanting to renew all
13 your other previous motions?

14 MS. ZMROCZEK: I am, Your Honor, specifically to the
15 jury charges as well as all the other ones that we
16 preserved.

17 Additionally, Your Honor, we would ask that the
18 verdict be set aside. By my calculations, they
19 deliberated less than an hour. I may have that wrong. It
20 may be an hour and six minutes. I couldn't tell by what I
21 wrote down when they sent it out. But I have they went
22 out at 5:46 and came back at 6:51, so yeah, it's actually
23 a little bit over an hour. There were numerous videos
24 introduced and, Your Honor, we simply feel like the jury
25 did not have time to view all that evidence.

1 The one portion of the video that they did view, Your
2 Honor, was sitting in the jury box with them, and I
3 don't -- we're not privy as to what they asked to review
4 this time, but, certainly, it's our contention that they
5 had no -- in no way any time to review all the videos in
6 this case.

7 THE COURT: Okay. And those motions are denied. The
8 jury -- this jury paid attention throughout the entire
9 trial. They were alert. They were attentive. And the
10 videos were shown ad nauseam. I mean at the point where I
11 went over and watched the videos, we watched the same
12 video and the same timeframes from, at least, four, if not
13 more different angles and the Defense had videos. All
14 those videos were shown. All the jurors were paying
15 attention. They were following along with the videos.

16 And let's not forget that as to all the firearms
17 charges, the Defense admitted during the opening statement
18 that he was guilty of all the firearms charges, so I think
19 the -- I'm going to deny that motion. I believe that the
20 time spent by the jury was sufficient and that they
21 reached a unanimous verdict after they paid close
22 attention to the trial testimony throughout the trial.

23 Okay. What else?

24 MS. ZMROCZEK: Your Honor, that's all I have at this
25 time.

1 THE COURT: Okay. Bring him forward for sentencing.

2 MS. ZMROCZEK: Okay.

3 THE COURT: Do you have sentencing sheets?

4 Okay. Is there any victim impact testimony that
5 anyone from the State needs to be heard on?

6 MS. GARFIELD: Your Honor, it's my understanding
7 Ms. Childress' mother would like to address the Court, Pam
8 Childress Johnson.

9 THE COURT: Okay. Are you Ms. Johnson?

10 MS. JOHNSON: I am.

11 THE COURT: Thank you for being here. You can come
12 right over here to this podium. That would be a good
13 spot.

14 MS. JOHNSON: Thank you.

15 THE COURT: Yes, ma'am, Ms. Johnson, I'll be happy to
16 hear from you or anybody else that wants to speak.

17 MS. JOHNSON: First and foremost, I'd like for
18 everyone inside and outside this courtroom to know that my
19 child is not a poor little girl to be pitied. She is
20 probably the strongest person in this room today. So I
21 want that to be on the record. I do not want anyone to
22 ever pity her.

23 I remember one day when we were at Shepard Center,
24 she looked at me -- in the very dark days when we first
25 got there, she looked at me one day. It was like someone

1 flicked on a light switch. She said, I'm not going to let
2 him win. I'm not going to be his victim. And from that
3 point forward, Martha came back.

4 The impact, I'm sure you can only imagine what it's
5 had on Martha, physically, emotionally, what it's had on
6 our whole family, our friends. I just beg of you the
7 maximum amount of time that he can be sentenced to, I beg
8 of you to give to him.

9 I have never seen anyone that's so full -- I mean,
10 just has no -- there's no remorse whatsoever from the
11 beginning of our journey from this. So again, I employ
12 you. I just wanted to make -- this is not a child. She's
13 a young woman and she is not to be pitied and she is not
14 some poor little girl. She is very strong and she's a
15 very strong young woman.

16 THE COURT: Thank you, Ms. Johnson.

17 MS. JOHNSON: Thank you.

18 THE COURT: Anyone else from the State?

19 MS. GARFIELD: Beg the Court's indulgence.

20 (Pause.)

21 MS. GARFIELD: No, sir.

22 THE COURT: Okay. Does he have any criminal history
23 other than the two burglaries and the grand larceny?

24 MS. GARFIELD: Your Honor, the only other thing is
25 driving without a license that he got after the last

1 burglary. Just to give you a little tiny sentencing
2 background, the attempted burglary second, he did receive
3 a sentence under the Youthful Offender Act. He was still
4 on that supervision when he was arrested for the
5 subsequent burglary charge, and he was on probation for
6 that at the time of this offense.

7 THE COURT: Okay.

8 Ms. Zmroczek?

9 MS. ZMROCZEK: Thank you, Your Honor. As you've
10 heard, my client is 22 years old. And I know that the
11 issue of remorse has come up very often. He, actually
12 when he was sentenced federally, Your Honor, did give a
13 very remorseful speech and did write a letter prior to my
14 getting involved in the case. I simply asked that he
15 provide that letter to me.

16 Oftentimes, we instruct our clients not to contact
17 the victim. And in that letter, Your Honor, he said that
18 he was very remorseful. I know that this Court didn't get
19 to hear all of his phone calls, but his mother, I believe,
20 may want to stand up, Your Honor, and speak on his behalf
21 as well.

22 THE COURT: Okay. Yes, ma'am. Would you state your
23 name for the record.

24 DEFENDANT'S MOTHER: Right here?

25 THE COURT: Yes, that would be great.

1 DEFENDANT'S MOTHER: Juanita Smith.

2 THE COURT: Okay, Ms. Smith, I'm happy to hear from
3 you.

4 DEFENDANT'S MOTHER: I'm Michael's mother. Me and
5 his father --

6 THE COURT: Just take your time, Ms. Smith. There's
7 no timeframe, okay.

8 DEFENDANT'S MOTHER: We still are raising our
9 children. Even though he's 22 and I have a son who's 21,
10 he's been in our life and we've been in his life. I ask
11 for the Court to be merciful on him. He do have a
12 four-year-old son to raise. He might can't do it
13 physically, but he can do it mentally and, at least, be
14 here in the State of South Carolina.

15 Please excuse me. A lot of stuff that was said in
16 this courtroom is not true about my son. He was beaten in
17 Five Points. No, I didn't call the police. I asked him,
18 Do you want me to call the police? Ma, I don't even know
19 who these boys is.

20 He shouldn't have had no gun. I didn't even know he
21 had a gun. I never seen him with a gun never ever. From
22 what I was always told by his friends and people that went
23 to school with him is that -- I said, Why do y'all call
24 him Flame? All his friends always say, Because Ms. Smith,
25 he don't use no weapons. He fight with his hands. He

1 fight with his fists. I don't know what was going on, how
2 he even come across a gun. How was he able to buy a gun?

3 My husband couldn't be here today because he's home
4 taking care of my grandson, which is his son. That's why
5 he hasn't been here all week, only a couple of days. He
6 can't take this. My husband cannot take this. He
7 actually had to take nerve pills just to come to court.

8 Please be merciful on my son, not sentence him to the
9 maximum. I would like to, at least, live to see my son on
10 the streets so I can put my arms around him again. I
11 would like him to be able to go to his son's something,
12 graduation, something, wedding, something.

13 I always pray and have -- still -- I've been here all
14 throughout. I pray for my son, and I also pray for the
15 victim. I always pray for her. I am so proud of her
16 because she didn't let this stop her. She kept going to
17 school. I wish my sons could have did what she's doing
18 and she's doing this in a chair. He's able to walk. My
19 other son is able to walk. That's why I -- we refuse to
20 let our grandson out of our sight one time. We don't let
21 him have no guns, no play guns, no games, no nothing that
22 consist of a gun. He's into blocks and numbers.

23 I was very -- me and my husband was very lenient on
24 our kids. We would give them a chance to go out and hang
25 out, give them a chance to have their friends over, and

1 they have a lot of friends. He has a lot of friends.

2 Clearly, I don't know where they're at, so they're
3 not his friends. I'm his friend. His father is his
4 friend. His son is his friend.

5 Please allow my son to be able to, at least, come
6 home and be with his son, help raise his son. His son
7 needs a father. Me and my husband cannot raise his son.
8 That's his son.

9 I mean, I don't know what to say. I -- I wish my
10 son -- I wish it was me paralyzed. I wish it was me. The
11 young lady has the rest of her life ahead of her. That
12 should have been me, so she can go to school. She
13 probably would have finished by now because she never
14 stepped back. I wish it was me. She could be 20, 21
15 years old, graduated from college and have a boyfriend, a
16 fiancee, a husband, a family.

17 What can I say? I mean, what can I do?

18 THE COURT: Well, Ms. Smith, you've been here
19 throughout the majority of the trial and the Court has
20 paid attention to that and noticed that. And I appreciate
21 you --

22 DEFENDANT'S MOTHER: I think you was very fair. I
23 really do. I don't know what to say.

24 THE COURT: I know that you and your husband have
25 been here throughout the trial and continue to support

1 your child and I do take notice of that. Thank you very
2 much.

3 DEFENDANT'S MOTHER: Thank you.

4 THE COURT: Ms. Zmroczek.

5 MS. ZMROCZEK: Thank you, Your Honor. He does have,
6 as you heard, a four-year-old. He is on probation. We
7 would ask, of course, any of that be terminated. It seems
8 kind of moot at the time. He also has 10 years, as you're
9 aware, that await him when he finishes whatever State is
10 given to him.

11 THE COURT: All right. Mr. Smith, you do not have to
12 address me, but you are welcome to if you want to. It is
13 completely your decision. Do you wish to say anything to
14 me?

15 THE DEFENDANT: No, sir.

16 THE COURT: Okay. All right. Now, I'm making this
17 next statement to avoid the phone calls from the media,
18 okay. I don't control federal sentences, number one,
19 okay. And although I practiced in federal court for many
20 years, I'm just going to give you my understanding of how
21 this is going to work.

22 I have been -- have done my own research on how this
23 potentially works. And my understanding based upon what I
24 have learned is that his federal sentence will not start
25 until he completes his state sentence unless the federal

1 judge ordered that they be run concurrent on the original
2 judgment and conviction.

3 I have reviewed the original judgment and conviction
4 signed by the Honorable Judge Anderson, United States
5 District Court Judge, here in Columbia and there is no
6 indication that the sentences are to run concurrent. So
7 my understanding -- and again, all I'm doing is giving you
8 my understanding, is that his federal sentence will not
9 start until he is released from state custody, okay.

10 And I just say that for the purposes of everybody
11 calling me over the next three days and saying were they
12 concurrent or consecutive. I don't have the power to make
13 that decision. That is left to the federal district
14 court.

15 Do you have the specific number of days he has been
16 incarcerated?

17 Or do you know, Mr. Smith, how many days you've been
18 incarcerated, sir?

19 MR. SMITH: Twenty-two months.

20 MS. ZMROCZEK: It was 670 as of Thursday, Your Honor.

21 THE COURT: Okay. What number would you like me to
22 write in, Mr. Smith, twenty-two months or 670 -- 674?

23 MS. ZMROCZEK: 674.

24 THE COURT: Do you object to me writing that number
25 in, Mr. Smith?

1 THE DEFENDANT: No, sir.

2 SENTENCE OF THE COURT

3 THE COURT: Okay. On the unlawful carrying of a
4 pistol charge, the sentence of the Court is that he be
5 committed to the State Department of Corrections for one
6 year, provided upon the service of time served, 674 days.

7 On the attempted murder charge, he is to be sentenced
8 to the State Department of Corrections for a determinate
9 term of 30 years, credit for 674 days.

10 On the possession of a weapon during the commission
11 of a violent crime, he is to be sentenced to the State
12 Department of Corrections for a determinate term of five
13 years, consecutive to 8047.

14 On the possession of a weapon by a person convicted
15 of a violent felony, he is sentenced to the State
16 Department of Corrections for a period of five years,
17 consecutive to 2013-GS-40-8053.

18 And on the possession of a weapon by a person
19 convicted of a crime of violence, he is to be sentenced to
20 the State Department of Corrections for five years,
21 concurrent to 2013-GS-40-8049. He is to be given credit
22 for time served on all charges.

23 As to the issue of his YOA probation, I do not have
24 the authority at this point in time. That matter is not
25 before me to terminate that case, so at this point, that

1 case is still pending. Thank you very much.

2 MS. GARFIELD: Thank you, Judge.

3 MS. WALKER: Thank you, Your Honor.

4 (WHEREUPON, the proceedings were concluded.)

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CERTIFICATE OF REPORTER

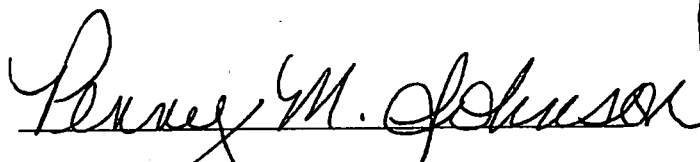
STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions Court for Richland County, South Carolina, on the days of August 10-17, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 28, 2015



Penny M. Johnson Court Reporter

My Commission Expires: 06/16/2018

WITNESSES

(S) Emmit D Gilliam
- Columbia Police Department

ARREST WARRANT NUMBER

2013A4021603362

ACTION OF GRAND JURY

TRUE BILL

Date:

VERDICT

DIRECTED VERDICT
Aug 14, 2015
RO Hood
2/64

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS4008048

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

87

THE STATE
vs.

Michael Juan Smith

Indictment for
POSSESSION OF A STOLEN PISTOL

SC Code: 16-23-0030
CDR Code: 2364

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1190

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 13,
2013, the Grand Jurors of Richland County present upon their oath:

POSSESSION OF A STOLEN PISTOL

That Michael Juan Smith did in Richland County on or about October 13,
2013, knowingly buy, sell, transport, pawn, receive or possess a stolen
pistol, or one from which the original serial number has been removed or
obliterated, in violation of Section 16-23-0030(C), S. C. Code of Laws,
1976, as amended.

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Emmit D Gilliam
- Columbia Police Department

ARREST WARRANT NUMBER

2013A4021603363

ACTION OF GRAND JURY

TRIE RII I

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS4008049

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

87

THE STATE
vs.

Michael Juan Smith

Indictment for
POSSESSION OF FIREARM OR
AMMUNITION BY PERSON CONVICT
OF VIOLENT FELONY

SC Code: 16-23-0500 (B)
CDR Code: 3434

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1192

5485

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

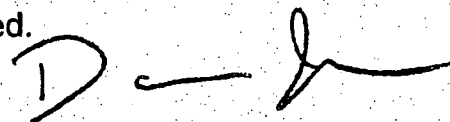
INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 13, 2013, the Grand Jurors of Richland County present upon their oath:

POSSESSION OF FIREARM OR AMMUNITION BY PERSON
CONVICTED OF VIOLENT FELONY

That Michael Juan Smith did in Richland County on or about October 13, 2013, unlawfully possess a firearm or ammunition and has been convicted of a violent crime as defined under Section 16-1-60 that is classified as a felony offense. To wit: BURGLARY 2ND DEGREE VIOLENT. In violation of Section 16-23-500(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Emmit D Gilliam
– Columbia Police Department

ARREST WARRANT NUMBER

2013A4021603364

ACTION OF GRAND JURY

FILED IN

Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS4008052

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

87

THE STATE
vs.

Michael Juan Smith

Indictment for
UNLAWFUL CARRYING OF A PISTOL

SC Code: 16-23-0020
CDR Code: 0044

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1194

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

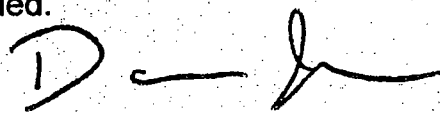
INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 13,
2013, the Grand Jurors of Richland County present upon their oath:

UNLAWFUL CARRYING OF A PISTOL

That Michael Juan Smith did in Richland County on or about October 13,
2013, carry about the person a pistol, such carrying not being authorized
by law, in violation of Section 16-23-0020, S. C. Code of Laws, 1976, as
amended.

14r
Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Emmit D Gilliam
- Columbia Police Department

ARREST WARRANT NUMBER

2013A4021603365

ACTION OF GRAND JURY

TO THE BILL

Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS4008053

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013
87

THE STATE
vs.

Michael Juan Smith

Indictment for
POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: 16-23-0490
CDR Code: 0549

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the 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 NOVEMBER 13,
 2013, the Grand Jurors of Richland County present upon their oath:

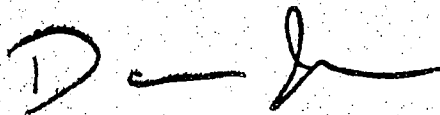
**POSSESSION OF A WEAPON DURING THE COMMISSION
 OF A VIOLENT CRIME**

That Michael Juan Smith did in Richland County, on or about October 13,
 2013, possess a firearm, or visibly display what appeared to be a firearm,
 or visibly displayed a knife, during the commission or attempted
 commission of a violent crime, in violation of Section 16-23-0490, S. C.
Code of Laws, 1976, as amended.

*has to be
 convicted of
 attempt to commit
 a violent crime*

Syr.

Against the peace and dignity of the State, and contrary to the
 statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) EMMIT D. GILLIAM

- CPD

ARREST WARRANT NUMBER

DP13323

ACTION OF GRAND JURY

TDIE RII I

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013GS4008047

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

87

THE STATE

vs.

MICHAEL JUAN SMITH

Indictment for
ATTEMPTED MURDER

SC Code: 16-03-0029

CDR Code: 3410

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1198

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

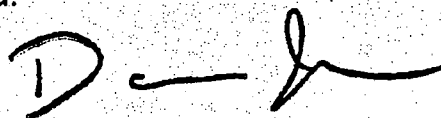
INDICTMENT

At a Court of General Sessions, convened on November 13, 2013,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Michael Juan Smith did in Richland County on or about October 13, 2013, did with the intent to kill, attempt to kill Martha Katherine Childress with malice aforethought, either expressed or implied. All in violation of SC Code of Laws § 16-3-29 (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES
(S) E.D. GILLIAM
- CPD

ARREST WARRANT NUMBER

DP13328

ACTION OF GRAND JURY

TRUE BILL

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS4008336

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2013

87

THE STATE
vs.

Michael Juan Smith

Indictment for
UNLAWFUL POSSESSION OF A
WEAPON BY A PERSON CONVICTED
OF A CRIME OF VIOLENCE

SC Code: 16-23-0030(A)(1)
CDR Code: 2364

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1200

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

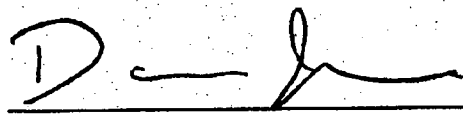
INDICTMENT

At a Court of General Sessions, convened on DECEMBER 18, 2013,
the Grand Jurors of Richland County present upon their oath:

**UNL POSSESS WEAPON BY PERSON CONVICTED OF A CRIME OF
VIOLENCE**

That Michael Juan Smith did in Richland County on or about October 13,
2013, knowingly possess or acquire a pistol after having been convicted of
a crime of violence defined in Section 16-23-10, S. C. Code of Laws, 2003,
as amended, in violation of Section 16-23-0030(A)(1), S. C. Code of Laws,
1976, as amended.

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.


DAN JOHNSON, SOLICITOR

We are all concerned about our safety.

It is our understanding that someone in a

red shirt took a picture of all of us in

the courtroom yesterday. We are not

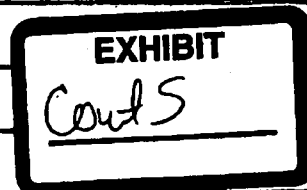
discussing the case, just concerned about

our safety. We would like to discuss

this with the judge when he has some

time.

Thanks,
Jurors



There have been concerns
expressed by the group
about safety post conclusion
of this trial.

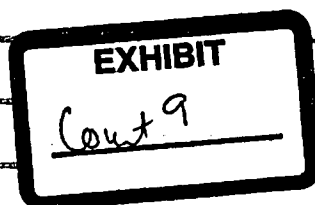
-210

We will ensure your safety
at the conclusion of the trial.

Thank you -

REA

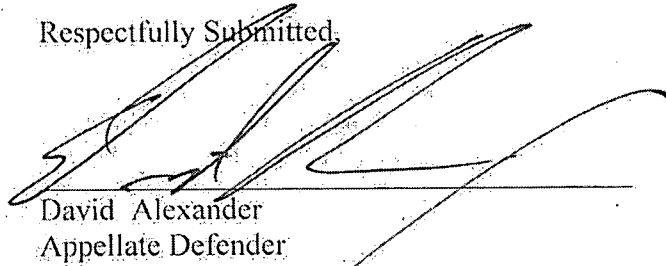
Written w/ the consent of the attorneys ~~left~~



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

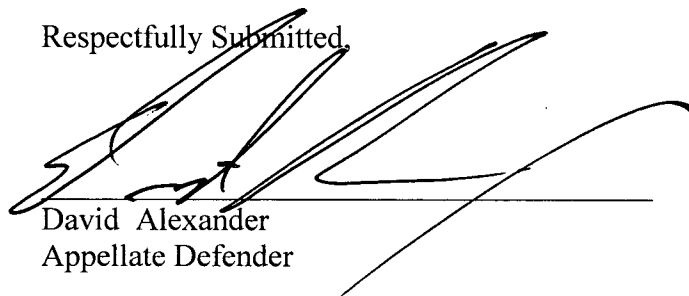
ATTORNEY FOR APPELLANT

This 17th day of January, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of January, 2017.

RECEIVED
JAN 17 2017
SC Court of Appeals